AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

1-11-85
Vol. 50 No. 8
Pages 1429-1812

federal register

Friday
January 11, 1985

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Environmental Protection Agency

Antibiotics
Food and Drug Administration

Civil Rights
Small Business Administration

Customs Duties and Inspection
Customs Service

Education
Veterans Administration

Exports
International Trade Administration

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National Aeronautics and Space Administration

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Hazardous Waste
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Marine Safety
Coast Guard

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[Docket Nos. AO-245-A8 & AO-250-A6]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal marketing orders for navel and Valencia oranges grown in Arizona and designated part of California. There are 13 major amendments to the Valencia orange marketing order and 15 to the navel orange marketing order. In addition, a number of minor changes are made for clarity, to correct grammatical and typographical errors, and to remove gender-specific references.

EFFECTIVE DATE: January 11, 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: Prior documents in this proceeding: Notice of hearing issued March 11, 1983, and published in the March 17, 1983, issue of the **Federal Register** (48 FR 11276); Notice of Recommended Decision issued April 5, 1984, and published in the April 11, 1984, issue of the **Federal Register** (49 FR 14360); and Secretary's Decision and Referendum Order issued July 12, 1984, and published in the July 18, 1984, issue of the **Federal Register** (49 FR 29071); and Amendment to Referendum Order issued on August 8, 1984, and published in the August 10, 1984, issue of the **Federal Register** (49 FR 32080).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is not subject to the requirements of Executive Order 12291.

The Acting Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California oranges for the benefit of producers and will not substantially affect costs for the directly regulated handlers.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements and orders, California, Arizona, Oranges (Navel and Valencia).

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary, and in addition to, the findings and determinations previously made in connection with the issuance of the aforesaid orders and each previously issued amendment thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreements, as amended, and Order Nos. 907 and 908, as amended (7 CFR Parts 907 and 908), regulating the handling of navel and Valencia oranges grown in Arizona and designated part of California.

Upon the basis of the record it is found that:

(1) The said orders, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said orders, as amended, and as hereby further amended, regulate the handling of navel and Valencia oranges grown in the production areas in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreements and orders upon which hearings have been held;

(3) The said orders, as amended, and as hereby further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act;

(4) The said orders, as amended and as hereby further amended, prescribe, so far as practicable, such different terms, applicable to different parts of the designated production areas, as are necessary to give due recognition to differences in the production and marketing of navel and Valencia oranges; and

(5) All handling of navel and Valencia oranges grown in the designated production areas is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make all of the amendatory provisions effective upon publication in the **Federal Register**. Any delay beyond that date would interfere with effective order administration.

The provisions of this amendatory order authorize additional alternate committee members, new committee nomination procedures and tenure requirements (for navel oranges only), increased compensation for committee members, the appointment of consumer affairs advisors, a penalty for late payment of assessments, additional considerations in marketing policies, additional authority to increase the accuracy of crop estimates and prorate base calculations, marketing incentive allotments, the establishment of specific recordkeeping and record retention requirements, and provisions for continuance referenda every six years. In order to implement many of these changes, it is necessary for the committees which administer the marketing orders locally to develop procedures and regulations for approval by the Secretary. For example, nominations of members to the Navel Orange Administrative Committee have already been delayed since September, pending the outcome of the referenda,

and the nominations cannot be made until mail balloting procedures are developed and approved.

The 1984–85 navel orange marketing season is currently underway, and the next Valencia orange marketing season is expected to begin in February 1985. To facilitate orderly marketing in these industries and to treat growers and handlers of different producing areas most equitably, the provisions of these amendments should be implemented before the onset of the Valencia orange season and to cover as large a portion of the current navel season as possible.

In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) The "Marketing Agreement, as Amended, Regulating the Handling of Navel Oranges Grown in Arizona and Designated Part of California" and the "Marketing Agreement, as Amended, Regulating the Handling of Valencia Oranges Grown in Arizona and Designated Part of California" upon which the aforesaid public hearing was held have not been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping the commodity covered by the said order, as amended, and as hereby further amended) who, during the period November 1, 1983, through June 30, 1984, for navel oranges and during the period February 1, 1983, through January 31, 1984, for Valencia oranges, handled not less than 80 percent of the volume of such oranges covered by the said orders, as amended and as hereby further amended; and

(2) The provisions of this amendatory order, amending the aforesaid orders, as amended, were favored by at least three-fourths of the producers who participated in the respective referendum, or by producers who produced for market at least two-thirds of the volume of such commodity represented in the respective referendum, all such producers having been engaged during the aforementioned representative periods within the respective production areas in the production of such oranges for market. In the absence of signed marketing agreements,

(3) The issuance of this amendatory order is the only practical means pursuant to the declared policy of the act of advancing the interests of the producers of navel and Valencia oranges in the respective production areas.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of oranges shall be in conformity to and in compliance with the terms and conditions of the said marketing orders, as amended, and as hereby further amended, as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. Section 907.10 is amended by revising the first sentence to read as follows:

§ 907.10 Handle.

"Handle" means to buy, sell, consign, transport, or ship oranges (except as a common or contract carrier of oranges owned by another person), or in any other way to place oranges in the current of commerce, between the State of California and any point outside thereof in the continental United States or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States or Canada, or within the State of Arizona. * * *

2. Section 907.17 is revised to read as follows:

§ 907.17 Carload.

"Carload" means a quantity of oranges equivalent to 1,000 cartons of oranges, or such other quantity of oranges, as may be established by the committee with the approval of the Secretary.

3. Section 907.18 is revised to read as follows:

§ 907.18 Export.

"Export" means shipments of oranges to points outside the continental United States and Canada.

4. Section 907.20 is revised to read as follows:

§ 907.20 Establishment and membership.

There is hereby established a Navel Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Six of the members and their respective alternates shall be growers. Four of the members and their respective alternates shall be handlers, or employees of handlers, or employees of central marketing organizations. One member of the committee and an alternate of such member shall be nominated as provided in §907.22(f). The six members of the committee who shall be growers are referred to in this part as "grower" members of the committee and the four members who shall be handlers, or employees of handlers, or employees of central marketing organizations are referred to in this part as "handler" members of the committee.

5. Section 907.21 is revised to read as follows:

§ 907.21 Term of office.

The term of office of each member and alternate member of the committee shall be for a period of two years, and such terms shall begin on October 1 of each even-numbered year: *Provided,* That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified. The consecutive terms of office of members, not including alternate members or additional alternate members, shall be limited to three terms. No person having served three consecutive terms shall serve as a member, alternate member, or additional alternate member for the next succeeding term of office. Members of the committee who have served three consecutive two-year terms as of October 1, 1984, are not eligible to serve on the committee as a member, alternate member, or additional alternate member until October 1, 1986.

6. Section 907.22 is amended by revising paragraphs (a), (b), (c), (d), and (e), and adding new paragraph (g) to read as follows:

§ 907.22 Nominations.

(a) With respect to paragraphs (b) and (c) of this section, the time and manner of nominating members, alternate members, and additional alternate members of the committee shall be prescribed by the Secretary. With respect to paragraph (d) of this section, the committee, with the approval of the Secretary, shall adopt procedural rules and regulations to be observed for (1) the nomination of candidates for member, alternate member, and additional alternate member positions and (2) the conducting of such nominations by mail balloting.

(b) Any cooperative marketing organization, or the growers affiliated therewith, which handled more than 50 percent of the total volume of oranges handled in fresh domestic channels, including Canada, during the fiscal year in which nominations for members and alternate members of the committee are

submitted shall nominate three grower members, three alternate grower members, three additional alternate grower members, two handler members, two alternate handler members, and two additional alternate handler members of the committee.

(c) All cooperative marketing organizations which are not qualified under paragraph (b) of this section, or the growers affiliated therewith, shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member.

(d) All growers who not qualified under paragraphs (b) and (c) of this section shall nominate two grower members, one handler member, one alternate handler member, and one additional alternate handler member.

(e) When voting for nominees, each grower shall be entitled to cast one vote which shall be cast on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The votes of cooperative marketing organizations voting pursuant to paragraph (c) of this section shall be weighted in accordance with the volume of oranges handled during the fiscal year in which such nominations are made.

* * * * *

(g) Grower and handler member, alternate member, and additional alternate member positions may be allocated pursuant to § 907.29(n) of this part.

7. Section 907.23 is revised to read as follows:

§ 907.23 Selection.

From the nominations made pursuant to § 907.22(b) or from other qualified growers and handlers, the Secretary shall select three grower members and two handler members of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 907.22 (c) or from other qualified growers and handlers, the Secretary shall select one grower member and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 907.22(d) or from other qualified growers and handlers, the Secretary shall select two grower members and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 907.22(f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

8. Section 907.31 is revised to read as follows:

§ 907.31 Expenses and compensation.

The members and alternates of the committee shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part. Members and alternates shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate shall not exceed $100 per day or portion thereof spent in performing such duties. The member and alternate nominated and selected pursuant to § 907.22(f) shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate may be greater than $100, but shall not exceed $250 per day or portion thereof spent in performing such duties.

9. A new § 907.34 is added to read as follows:

§ 907.34 Consumer affairs advisors.

The committee may appoint such consumer affairs advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

10. Add a new paragraph (d) to § 907.41 to read as follows:

§ 907.41 Assessments.

* * * * *

(d) Assessments not paid within a period of time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

11. Section 907.50 is amended by revising paragraph (a) to read as follows:

§ 907.50 Marketing policy.

(a) Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy, the committee should give due consideration to the onset and duration of prorate, and size regulation. In the event that it becomes advisable to substantially modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

* * * * *

12. Section 907.51 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 907.51 Recommendations for volume regulation.

(a) The committee may recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district. If, for any reason, the committee recommends the issuance of volume regulation but fails to recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district, views of the committee members with respect to its failure to act shall be submitted promptly to the Secretary.

(b) In making its recommendations, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production, including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of other competitive fruits; (5) trend and level in consumer income; and (6) other relevant factors.

(c) At any time prior to or during a week for which the Secretary, pursuant to § 907.52, has fixed the quantity of oranges which may be handled, the committee may, if such action is deemed advisable, recommend to the Secretary that such quantity be increased for such week. Any such recommendation,

together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

* * * * *

13. Section 907.52 is revised to read as follows:

§ 907.52 Issuance of volume regulation.

Whenever the Secretary shall find, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of oranges which may be handled in each prorate district during a specified week will tend to effectuate the declared policy of the act, the Secretary shall fix such quantity. Such regulation may be made effective, as authorized by the act, irrespective of whether the season average price for navel oranges is in excess of the parity price specified therefor in the act. The quantity so fixed may be increased by the Secretary at any time prior to or during such week.

14. Section 907.53 is amended by revising paragraphs (b), (c), (f), (g), and (h) and adding new paragraph (i) as follows:

§ 907.53 Prorate bases.

* * * * *

(b) Such application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least (1) the name and address of the producer or duly authorized agent, if any, for each grove or portion thereof, the fruit of which is included in the quantity of oranges available for current shipment by the applicant; (2) an accurate description of the location of each such grove or portion thereof, including the number of acres contained therein; (3) an estimate of the total quantity of oranges available for current shipment in terms of a unit of measure designated by the committee, contained in each grove or portion thereof described in paragraph (b)(2) of this section; and (4) an estimate of the total quantity of oranges available for current shipment by the applicant in terms of a unit of measure designated by the committee. If at the time of filing of an application under this section the committee finds that there is an error, omission, inaccuracy, or inadequacy in such application, or that any estimates contained in such application are not reasonably calculated to apprise the committee of the information required by this section, it shall return the application to the applicant for correction or completion. Applicants may resubmit applications to the committee for its consideration at any subsequent time.

(c) Each application shall include a certification by the handler that the handler has control, for all purposes relating to this part, of the oranges described in the application.

* * * * *

(f) When any person having a prorate base has remaining a quantity smaller than such person's allotment, such person shall be removed from the prorate base or that prorate base shall be reduced so that the allotment based thereon shall not exceed the quantity of oranges remaining under such handler's control: *Provided*, That such handler shall receive due allotment to the extent necessary to pay back loans which the handler is obligated to repay in any week that repayment of loans may be due.

(g) The committee shall determine the accuracy of the information submitted pursuant to this section. Except as provided in (b) of this section, whenever the committee finds that there is an error, omission, inaccuracy, or inadequacy in any such information, it shall correct the same after granting the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission, inaccuracy, or inadequacy has resulted in the establishment of a smaller or a larger quantity of oranges available for current shipment than that to which a person was entitled under this part, such quantity shall be increased or decreased, over such period as may be determined by the committee, by an amount necessary to correct the error, omission, inaccuracy, or inadequacy.

(h) During any week when volume regulation is likely to be recommended, the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments, except as provided in paragraph (b) of this section. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in the particular prorate district by each applicant and the total quantity of oranges available for current shipment in such district by all such applicants. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base so fixed.

(i) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 907.53.

15. Section 907.54 is revised by adding a new heading to the existing paragraph and designating that paragraph as paragraph (a) and adding a new paragraph (b). As revised, § 907.54 reads as follows:

§ 907.54 Allotments.

(a) *General maturity allotments.* Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, the committee shall calculate the quantity of oranges which may be handled by each such person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the prorate base of such person and the total quantity of oranges grown in such prorate district and fixed by the Secretary as the total quantity of oranges which may be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for such person pursuant to this part.

(b) *Marketing incentive allotments.* During any week in which volume regulation is in effect, any handler may handle in addition to other allotment an amount of oranges equivalent to 10 percent of the handler's weekly allotment as determined under paragraph (a) of this section in each of three separate weeks and at such other times and in such other amounts as may be recommended by the committee and approved by the Secretary. Use of marketing incentive allotment may be made by the handler upon prior notification to the committee. This incentive increase is in addition to the allowance for overshipments provided in §907.55. The committee shall, with the approval of the Secretary, adopt rules and regulations to establish the types of market development programs that would be available for marketing incentive allotments, as well as provide for a deduction against the quantity of oranges which a handler has available for current shipment in the event that the handler fails to use all or a portion of the marketing incentive allotment issued or uses such allotment for other than specified purposes. Such rules and regulations may also require that the handler, after each marketing incentive allotment period is over, furnish the committee with reports, records, and other documentation to substantiate the use of the marketing incentive allotment.

16. Section 907.55 is revised to read as follows:

§ 907.55 Overshipments.

During any week for which the Secretary has fixed the total quantity of oranges which may be handled, any person who has received an allotment for such week as calculated under § 907.54(a), and whose total allotment is not loaned, or is not required for the repayment of an allotment loan or as a deduction for a prior overshipment, may handle in addition to such allotment an amount of such oranges equivalent to 20 percent of such allotment, or one carload, whichever is the greater: *Provided, however,* That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent: *And Provided Further,* That, if subsequent to the determination of general maturity, allotment (other than short life allotment) is forfeited in any prorate district during any week such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such week unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend the handler's undershipment. Such forfeiture shall be first applied to handlers within such district in which the forfeiture occurred and second to qualified handlers in other districts. Allocation of forfeitures to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. In the case of short life allotments, any forfeiture thereof shall be credited as above provided only against overshipment of allotments issued pursuant to § 907.54(a). However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of oranges so handled in excess of each such person's allotment (but not exceeding an amount equivalent to the excess shipments permitted under this section) shall be deducted from each such person's allotment for the next week: *Provided,* That no such deduction shall apply when such quantity is handled pursuant to early maturity allotment issued under § 907.60 or its entirely reduced by application of forfeited allotment. If such person's allotment for such week is in an amount less than the excess shipments permitted under this section, as reduced by the application of forfeited allotment, the remaining quantity shall be deducted from succeeding weekly allotments issued to each such person until such excess has been entirely offset: *And Provided Further,* That no overshipment incurred during one season shall be deducted from allotments issued during the following season. The provisions of this section shall not apply to any person who, during any week, has not received an allotment under this subpart for such week. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this § 907.55.

17. Section 907.56 is revised to read as follows:

§ 907.56 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 907.52, in an amount less than the allotment of oranges for such week, such person may handle, in addition to such person's allotment for the next two succeeding weeks only, a quantity of such oranges equivalent to such undershipment except that the undershipment of early maturity allotment shall not entitle a handler to so handle an additional quantity of oranges: *Provided,* That, with the approval of the Secretary, the committee may increase or decrease the number of weeks over which undershipments of allotment may be carried forward.

§ 907.59 [Amended]

18. Section 907.59 is amended by adding "pursuant to 908.54," after the first comma in the first sentence; by changing the reference to "his" in the first sentence to read "such"; and by changing the reference to "him" in the last sentence to read "such person."

§ 907.60 [Amended]

19. Section 907.60 is amended by changing the reference to "§ 907.54" to read "§ 907.54(a)" in the first sentence thereof; by changing every reference to "he" and "him" to read "such handler"; and by changing every reference to "his" to read "such handler's."

§ 907.61 [Amended]

20. Section 907.61 is amended by changing the reference to "§ 907.54" to read "§ 907.54(a)" in the first sentence thereof.

§ 907.61a [Amended]

21. Section 907.61a is amended by changing the reference to "§ 907.54" to read "§ 907.54(a)" in the first sentence thereof.

§ 907.64 [Amended]

22. Section 907.64 is amended by changing the reference to "he" to read "the Secretary" in the first sentence thereof.

23. Section 907.67 is revised to read as follows:

§ 907.67 Oranges not subject to regulation.

Except as otherwise provided in this section, nothing contained in this subpart shall be construed to authorize any limitation of the right of the initial handler of oranges to: (a) Handle oranges to charitable institutions for consumption by such institutions or to relief agencies for distribution by such agencies; (b) handle oranges to commercial processors for processing into products, including juice; (c) export oranges or handle oranges to exporters for export purposes; (d) handle oranges by parcel post or by railway express; or (e) handle oranges in such minimum quantities or in such types of shipments as the committee may, with the approval of the Secretary, prescribe. No assessment shall be levied pursuant to § 907.41 on oranges disposed of for the purposes specified in this section. The committee shall periodically review and prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as it may deem necessary to prevent oranges shipped under the provisions of this section from entering into commercial channels of trade contrary to or in violation of this subpart.

24. Section 907.70 is revised to read as follows:

§ 907.70 Weekly report.

On or before such day of each week as may be designated by the committee, each person who first handles oranges shall report to the committee, in such manner as may be designated and on forms made available by it, the following information with respect to the total of all oranges disposed of by each such handler during the immediately preceding week: (a) The total quantity handled; (b) the total quantity disposed of for manufacture into by-products, showing the identity of each by-products processor involved and the quantity of each; (c) the total quantity disposed of for export, showing the destination and quantity of each such disposition; (d) the total quantity shipped for disposition to persons on relief, including quantity donated for charitable purposes, and shipments by parcel post or express, showing the destination and quantity of each such shipment; and (e) the total quantity disposed of otherwise, showing manner and quantity of each such disposition.

25. Section 907.71 is revised to read as follows:

§ 907.71 Manifest report.

Each person who first handles oranges shall furnish to the committee

information regarding the size of oranges in each standard packed carton or its equivalent handled by such handler whether such shipments were destined to points in the continental United States or to Canada and shall mail or deliver such information to said committee or its duly authorized representative within 24 hours after shipment is made in such manner as the committee shall prescribe and upon forms prepared by it.

26. Add a new center heading "Records and Retention" following § 907.72 and a new § 907.73 to read as follows:

Records and Retention

§ 907.73 Reports.

(a) Each handler shall maintain such records which will clearly show the details of such handler's receipts and acquisition of oranges, sales, shipments, dispositions, inventories, and such other specific information as prescribed by the committee and approved by the Secretary which will relate to the handling and disposition of oranges.

(b) All such records specified shall be retained by the handler for a period of three years following the end of the fiscal year in which such transactions occurred. If within the three-year period, the committee notifies the handler in writing that the retention of such records, or specified records, is necessary in connection with a proceeding under the act, a court action, or a compliance investigation by the Secretary or the committee specified in such notice, the handlers shall retain such records, or specified records, until further written notification from the committee. The committee shall give further written notification to the handler when retention of the records is no longer necessary.

(c) Each handler shall make available to authorized representatives of the committee and the Secretary at any time during reasonable business hours all records provided for in this part for examination and audit, and shall permit access to all premises where records are maintained or stored and where oranges are received, stored, prepared for market, or handled. The committee shall make such checks of oranges or audits of handlers' records as it deems appropriate or which are requested by the Secretary to ensure that accurate information as required in this part is being furnished by handlers.

(d) All reports and information submitted by handlers pursuant to the provisions of this part shall be received by and at all times be in the custody of one or more designated employees of the committee. Such employees shall not disclose to any person, other than the Secretary upon request therefor, data or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided*, That such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers furnishing the information is not disclosed.

27. Section 907.83 is amended by revising subparagraph (c)(1); redesignating paragraph (d) as paragraph (f); revising subparagraph (c)(3) and redesignating it as paragraph (d); and adding a new paragraph (e), to read as follows:

§ 907.83 Termination.

* * * * *

(c)(1) The Secretary shall terminate the provisions of this subpart at the end of a fiscal year in which the Secretary has found by referendum that such termination is favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of oranges in the production area: *Provided*, That such termination shall be effective only if announced on or before September 15 of the then current fiscal year.

* * * * *

(d) Upon recommendation of the committee, received not later than January 15 of an odd-numbered year, the Secretary shall conduct a referendum prior to March 15 of such year to ascertain whether continuance of this part is favored by growers as determined in accordance with (c)(2) of this section. The committee, with the approval of the Secretary, shall adopt such rules and regulations as necessary to establish the basis for the recommendation provided for in this section.

(e) The Secretary shall conduct a referendum by August 1 of the sixth year following the effective date of this section and no later than August 1 every sixth year thereafter to find whether, in accordance with paragraph (c) of this section, continuance of the order is favored by producers.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The first sentence of § 908.11 is revised to read as follows:

§ 908.11 Handle.

"Handle" means to buy, sell, consign, transport, or ship oranges (except as a common or contract carrier of oranges owned by another person), or in any other way to place oranges in the current of commerce, between the State of California and any point outside thereof in the continental United States or Canada, or within the State of California, or between the State of Arizona and any point outside thereof in the continental United States or Canada, or within the State of Arizona. * * *

2. Section 908.18 is revised to read as follows:

§ 908.18 Carload.

"Carload" means a quantity of oranges equivalent to 1,000 cartons of oranges, or such other quantity of oranges, as may be established by the committee with the approval of the Secretary.

3. Section 908.19 is revised to read as follows:

§ 908.19 Export.

"Export" means shipments of oranges to points outside the continental United States and Canada.

4. Section 908.20 is revised to read as follows:

§ 908.20 Establishment and membership.

There is hereby established a Valencia Orange Administrative Committee consisting of 11 members, for each of whom there shall be one alternate, and for each grower and handler member an additional alternate. Six of the members and their respective alternates shall be growers. Four of the members and their respective alternates shall be handlers, or employees of handlers, or employees of central marketing organizations. One member of the committee and an alternate of such member shall be selected as provided in § 908.22(f). The six members of the committee who shall be growers are referred to in this part as "grower" members of the committee and the four members who shall be handlers, or employees of handlers, or employees of central marketing organizations are referred to in this part as "handler" members of the committee.

5. Section 908.21 is revised to read as follows:

§ 908.21 Term of office.

The term of office of each member and alternate member of the committee shall be for a period of two years, and such terms shall begin on February 1 of each even-numbered year: *Provided*, That such members and alternates shall serve in such capacities for the portion of the term of office for which they are selected and qualify and until their respective successors are selected and have qualified.

6. Section 908.22 is amended by revising paragraphs (b), (c), (d), and (e) and adding new paragraph (g) to read as follows:

§ 908.22 Nominations.

* * * * *

(b) Any cooperative marketing organization, or the growers affiliated therewith, which handled more than 50 percent of the total volume of oranges handled in fresh domestic channels, including Canada, during the marketing year in which nominations for members and alternate members of the committee are submitted shall nominate three grower members, three alternate grower members, three additional alternate grower members, two handler members, two alternate handler members and two additional alternate handler members of the committee.

(c) All cooperative marketing organizations which are not qualified under paragraph (b) of this section, or the growers affiliated therewith, shall nominate one grower member, one alternate grower member, one additional alternate grower member, one handler member, one alternate handler member, and one additional alternate handler member.

(d) All growers which are not qualified under paragraphs (b) and (c) of this section shall nominate two grower members, two alternate grower members, two additional alternate grower members, one handler member, one alternate handler member, and one additional alternate handler member of the committee.

(e) When voting for nominees, each grower shall be entitled to cast one vote which shall be cast on behalf of such grower, the grower's agents, subsidiaries, affiliates, and representatives. The votes of cooperative marketing organizations voting pursuant to paragraph (c) of this section shall be weighted in accordance with the volume of oranges handled during the marketing year in which such nominations are made.

* * * * *

(g) Grower and handler member, alternate member and additional alternate member positions may be allocated pursuant to § 908.29(n) of this part.

7. Section 908.23 is revised to read as follows:

§ 908.23 Selection.

From the nominations made pursuant to § 908.22(b) or from other qualified growers and handlers, the Secretary shall select three grower members and two handler members of the committee, and an alternate and an additional alternate to each such member. From the nominations made pursuant to § 908.22(c) or from other qualified growers and handlers, the Secretary shall select one grower member and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 908.22(d) or from other qualified growers and handlers, the Secretary shall select two grower members and one handler member of the committee, an alternate and an additional alternate to each such member. From the nominations made pursuant to § 908.22(f) or from other qualified persons, the Secretary shall select one member of the committee and an alternate to such member.

8. Section 908.31 is revised to read as follows:

§ 908.31 Expenses and compensation.

The members and alternates of the committee shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part. Members and alternates shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate shall not exceed $100 per day or portion thereof spent in performing such duties. The member and alternate nominated and selected pursuant to § 908.22(f) shall receive compensation at a rate to be recommended by the committee and approved by the Secretary which rate may be greater than $100, but shall not exceed $250 per day or portion thereof spent in performing such duties.

9. A new § 908.34 is added to read as follows:

§ 908.34 Consumer affairs advisors.

The committee may appoint such consumer affairs advisors as it deems appropriate and determine the compensation and define the duties of such advisors.

10. Add a new paragraph (d) to § 908.41 to read as follows:

§ 908.41 Assessments.

* * * * *

(d) Assessments not paid within a time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the committee and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

11. In § 908.50, paragraph (a) is revised to read as follows:

§ 908.50 Marketing policy.

(a) Prior to the recommendation for regulation for each prorate district, the committee shall submit to the Secretary its marketing policy for the ensuing season. Such marketing policy shall contain the following information: (1) The available crop of oranges in the prorate district, including estimated quality and composition of sizes; (2) the estimated utilization of the crop, showing the quantity and percentages of the crop that will be marketed in domestic, export, and by-product channels, together with quantities otherwise to be disposed of; (3) a schedule of estimated weekly shipments to be recommended to the Secretary during the ensuing season; (4) available supplies of competitive oranges in all producing areas of the United States; (5) level and trend of consumer income; (6) estimated supplies of competitive citrus commodities; and (7) any other pertinent factors bearing on the marketing of oranges. In formulating its marketing policy the committee should give due consideration to the onset and duration of prorate and size regulation. In the event that it becomes advisable substantially to modify such marketing policy, the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this paragraph.

12. Section 908.51 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 908.51 Recommendations for volume regulation.

(a) The committee may recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district. If, for any reason, the committee recommends the issuance of volume regulation but fails to recommend to the Secretary the total quantity of oranges which it deems advisable to be handled during the next succeeding week in each prorate district, views of the committee

members with respect to its failure to act shall be submitted promptly to the Secretary.

(b) In making its recommendation, the committee shall provide equity of marketing opportunity to handlers in all districts and shall give due consideration to the following factors: (1) Market prices for oranges, including market prices by grades and sizes; (2) supply of oranges on track at, and en route to, the principal markets; (3) supply, maturity, and condition of oranges in the area of production, including the grade and size composition thereof; (4) market prices and supplies of citrus fruits from California, Arizona, and competitive producing areas, and supplies of other competitive fruits; (5) trend and level in consumer income; and (6) other relevant factors.

(c) At any time prior to or during a week for which the Secretary, pursuant to § 908.52, has fixed the quantity of oranges which may be handled, the committee may, if such action is deemed advisable, recommend to the Secretary that such quantity be increased for such week. Any such recommendation, together with the committee's reasons for such recommendation, shall be submitted promptly to the Secretary.

13. Section 908.52 is revised to read as follows:

§ 908.52 Issuance of volume regulation.

Whenever the Secretary shall find, from the recommendations and information submitted by the committee, or from other available information, that to limit the quantity of oranges which may be handled in each prorate district during a specified week will tend to effectuate the declared policy of the act, the Secretary shall fix such quantity. Such regulation may be made effective, as authorized by the act, irrespective of whether the season average price for Valencia oranges is in excess of the parity price specified therefor in the act. The quantity so fixed may be increased by the Secretary at any time prior to or during such week.

14. Section 908.53 is amended by revising paragraphs (b), (c), (f), (g) and (h) and adding new paragraph (i) to read as follows:

§ 908.53 Prorate bases.

* * * * *

(b) Such application shall be substantiated in such manner and shall be supported by such evidence as the committee may require, and shall include at least (1) the name and address of the producer or duly authorized agent, if any, for each grove or portion thereof, the fruit of which is included in the quantity of oranges available for current shipment by the applicant; (2) an accurate description of the location of each such grove or portion thereof, including the number of acres contained therein; (3) an estimate of the total quantity of oranges availabe for current shipment in terms of a unit of measure designated by the committee, contained in each grove or portion thereof described in paragraph (b)(2) of this section; and (4) an estimate of the total quantity of oranges available for current shipment by the applicant in terms of a unit of measure designated by the committee. If at the time of filing of an application under this section the commiteee finds that there is an error, omisssion, inaccuracy or inadequacy in such application, or that any estimates contained in such application are not reasonably calculated to apprise the committee of the information required by this section, it shall return the application to the applicant for correction or completion. Applicants may resubmit applications to the committee for its consideration at any subsequent time.

(c) Each application shall include a certification by the handler that the handler has control, for all purposes relating to this part, of the oranges described in the application.

* * * * *

(f) When any person having a prorate base has remaining a quantity smaller than such person's allotment, such person shall be removed from the prorate base or that prorate base shall be reduced so that the allotment based thereon shall not exceed the quantity of oranges remaining under such handler's control: *Provided*, That such handler shall receive due allotment to the extent necessary to pay back loans which the handler is obligated to repay in any week that repayment of loans may be due.

(g) The committee shall determine the accuracy of the information submitted pursuant to this section. Except as provided in (b) of this section, whenever the committee finds that there is an error, omission, inaccuracy, or inadequacy in any such information, it shall correct the same after granting the person who submitted such report a reasonable opportunity to discuss with the committee the factors considered in making the correction. If it is determined that an error, omission, inaccuracy, or inadequacy has resulted in the establishment of a smaller or a larger quantity of oranges available for current shipment than that to which a person was entitled under this part, such quantity shall be increased or decreased, over such period as may be determined by the committee, by an amount necessary to correct the error, omission, inaccuracy or inadequacy.

(h) During any week when volume regulation is likely to be recommended, the committee shall compute, with respect to each prorate district, the total quantity of oranges available for current shipment by each person who has applied for a prorate base and for allotments, except as provided in paragraph (b) of this section. On the basis of such computation, the committee shall fix a prorate base for each person who is entitled thereto. Such prorate base shall represent the ratio between the total quantity of oranges available for current shipment in the particular prorate district by each applicant and the total quantity of oranges available for current shipment in such district by all such applicants. The committee shall notify the Secretary of the prorate base fixed for each person and shall notify each such person of the prorate base so fixed.

(i) The committee shall, with the approval of the Secretary, adopt procedural rules and regulations to effectuate the provisions of this § 908.53.

15. Section 908.54 is revised by adding a new heading to the existing paragraph and designating that paragraph as paragraph (a) and adding a new paragraph (b). As amended, § 908.54 reads as follows:

§ 908.54 Allotments.

(a) *General maturity allotments.* Whenever the Secretary has fixed the quantity of oranges which may be handled during any week in a prorate district, the committee shall calculate the quantity of oranges which may be handled by each person during such week. The said quantity shall be the allotment of such person and shall be in an amount equivalent to the product of the prorate base of such person and the total quantity of oranges grown in such prorate district and fixed by the Secretary as the total quantity of oranges which may be handled during such week. The committee shall give reasonable notice to each person of the allotment computed for such person pursuant to this part.

(b) *Marketing incentive allotments.* During any week in which volume regulation is in effect, any handler may handle, in addition to other allotment, an amount of oranges equivalent to 10 percent of the handler's weekly allotment in each of three separate weeks and at such other times and in such other amounts as may be recommended by the committee and approved by the Secretary. Use of

marketing incentive allotment may be made by the handler upon prior notification to the committee. This incentive increase is in addition to the allowance for overshipments provided for in § 908.55. The committee shall, with the approval of the Secretary, adopt rules and regulations to establish the type of marketing incentive programs that would be available for marketing incentive alltoments as well as provide for a deduction against the quantity of oranges which a handler has available for current shipment in the event that the handler fails to use all or a portion of the marketing incentive allotment issued or uses such marketing incentive allotment for other than specified purposes. Such rules and regulations may also require that the handler, after each marketing incentive allotment period is over, furnish the committee with reports, records, and other documentation to substantiate the use of marketing incentive allotment.

16. Section 908.55 is revised to read as follows:

§ 908.55 Overshipments.

During any week for which the Secretary has fixed the total quantity of oranges which may be handled, any person who has received an allotment for such week as calculated under § 908.54(a), and whose total allotment is not loaned, or is not required for the repayment of an allotment loan or as a deduction for a prior overshipment, may handle in addition to such allotment an amount of such oranges equivalent to 20 percent of such allotment, or one carload, whichever is the greater: *Provided, however,* That the committee may, with the approval of the Secretary, reduce such 20 percent to a percentage not less than 10 percent: *And Provided Further,* That, if subsequent to the determination of general maturity allotment (other than short life allotment) is forfeited in any prorate district during any week such forfeiture shall be used to reduce the amount of maximum permissible overshipments made during such week unless the forfeiting handler shall have made a bona fide and timely offer to the committee to lend the handler's undershipment. Such forfeiture shall be first applied to handlers within such district in which the forfeiture occurred and second to qualified handlers in other districts. Allocation of forfeitures to handlers who have overshipped shall be made in proportion to, but not in excess of, the quantity overshipped by each such handler. In the case of short life allotments, any forfeiture thereof shall be credited as above provided only against overshipment of allotments issued pursuant to § 908.54(a). However, no handler who has overshipped more than the maximum permissible under this section shall participate in the credits allowed by this provision. The quantity of oranges so handled in excess of each such person's allotment (but not exceeding an amount equivalent to the excess shipments permitted under this section) shall be deducted from each such person's allotment for the next week: *Provided,* That no such deduction shall apply when such quantity is handled pursuant to early maturity allotment issued under § 908.60, or is entirely reduced by application of forfeited allotment. If such person's allotment for such week is in an amount less than the excess shipments permitted under this section, as reduced by the application of forfeited allotment, the remaining quantity shall be deducted from succeeding weekly allotment issued to each such person until such excess has been entirely offset: *And Provided Further,* That no overshipment incurred during one season shall be deducted from allotments issued during the following season. The provisions of this section shall not apply to any person who, during any week, has not received an allotment under this subpart for such week. The committee, with the approval of the Secretary, shall adopt procedural rules and regulations to effectuate the provisions of this § 908.55.

17. Section 908.56 is revised to read as follows:

§ 908.56 Undershipments.

If any person handles during any week a quantity of oranges, covered by a regulation issued pursuant to § 908.52, in an amount less than the allotment of oranges for such week, such person may handle, in addition to such person's allotment for the next two succeeding weeks only, a quantity of such oranges equivalent to such undershipment except that the undershipment of early maturity allotment shall not entitle a handler to so handle an additional quantity of oranges: *Provided,* That with the approval of the Secretary, the committee may increase or decrease the number of weeks over which undershipments of allotment may be carried forward.

§ 908.59 [Amended]

18. Section 908.59 is amended by adding "pursuant to § 908.54," after the first comma in the first sentence, by changing the reference to "his" in the first sentence to reach "such," and by changing the reference to "him" in the last sentence to read "such person."

§ 908.60 [Amended]

19. Section 908.60 is amended by changing the reference to "§ 908.54" in the first sentence to read "§ 908.54(a)," by changing every reference to "him" and "he" to read "such handler," and by changing every reference to "his" to read "such handler's."

§ 908.61 [Amended]

20. Section 908.61 is amended by changing the reference to "§ 908.54" to read "§ 908.54(a)" in the first sentence thereof.

§ 908.61a [Amended]

21. Section 908.61a is amended by changing the reference to "§ 908.54" to read "§ 908.54(a)" in the first sentence thereof.

§ 908.64 [Amended]

22. Section 908.64 is amended by changing the reference to "he" to read "the Secretary" in the first sentence thereof.

23. Section 908.67 is revised to read as follows:

§ 908.67 Oranges not subject to regulation.

Except as otherwise provided in this section, nothing contained in this subpart shall be construed to authorize any limitation of the right of the initial handler of oranges to: (a) Handle oranges to charitable institutions for consumption by such institutions or to relief agencies for distribution by such agencies; (b) handle oranges to commercial processors for processing into products, including juice; (c) export oranges or handle oranges to exporters for export purposes; (d) handle oranges by parcel post or by railway express; or (e) handle oranges in such minimum quantities or in such types of shipments as the committee may, with the approval of the Secretary, prescribe. No assessment shall be levied pursuant to § 908.41 on oranges disposed of for the purposes specified in this section. The committee shall periodically review and prescribe, with the approval of the Secretary, such rules, regulations, and safeguards as it may deem necessary to prevent oranges shipped under the provisions of this section from entering into commercial channels of trade contrary to or in violation of this subpart.

24. Section 908.70 is revised to read as follows:

§ 908.70 Weekly report.

On or before such day of each week as may be designated by the committee, each person who first handles oranges shall report to the committee, in such

manner as may be designated and on forms made available by it, the following information with respect to the total of all oranges disposed of by each such handler during the immediately preceding week: (a) The total quantity handled; (b) the total quantity disposed of for manufacture into by-products, showing the identity of each by-products processor involved and the quantity of each; (c) the total quantity disposed of for export, showing the destination and quantity of each such disposition; (d) the total quantity shipped for disposition to persons on relief, including quantity donated for charitable purposes, and shipments by parcel post or express, showing the destination and quantity of each such shipment; and (e) the total quantity disposed of otherwise, showing manner and quantity of each such disposition.

25. Section 908.71 is revised to read as follows:

§ 908.71 Manifest report.

Each person who first handles oranges shall furnish to the committee information regarding the size of oranges in each standard packed carton or its equivalent handled by such handler whether such shipments were destined to points in the continental United States or to Canada and shall mail or deliver such information to said committee or its duly authorized representative within 24 hours after shipment is made in such manner as the committee shall prescribe and upon forms prepared by it.

26. Add a new center heading "Records and Retention" following § 908.72 and a new § 908.73 to read as follows:

Records and Retention

§ 908.73 Reports.

(a) Each handler shall maintain such records which will clearly show the details of such handler's receipts and acquisition of oranges, sales, shipments, dispositions, inventories and such other specific information as prescribed by the committee and approved by the Secretary which will relate to the handling and disposition of oranges.

(b) All such records specified shall be retained by the handler for a period of three years following the end of the fiscal year in which such transactions occurred. If within the three-year period, the committee notifies the handler in writing that the retention of such records, or specified records, is necessary in connection with a proceeding under the act, a court action, or a compliance investigation by the Secretary or the committee specified in such notice, the handlers shall retain such records, or specified records, until further written notification from the committee. The committee shall give further written notification to the handler when retention of the records is no longer necessary.

(c) Each handler shall make available to authorized representatives of the committee and the Secretary at any time during reasonable business hours all records provided for in this part for examination and audit, and shall permit access to all premises where records are maintained or stored and where oranges are received, stored, prepared for market, or handled. The committee shall make such checks of oranges or audits of handlers' records as it deems appropriate or which are requested by the Secretary to ensure that accurate information as required in this part is being furnished by handlers.

(d) All reports and information submitted by handlers pursuant to the provisions of this part shall be received by and at all times be in the custody of one or more designated employees of the committee. Such employees shall not disclose to any person, other than the Secretary upon request therefor, data, or information obtained or extracted from such reports and records which might affect the trade position, financial condition, or business operation of the particular handler from whom received: *Provided,* That such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers furnishing the information is not disclosed.

27. Section 908.83 is amended by revising subparagraphs (c)(1); redesignating paragraph (d) as paragraph (f); revising subparagraph (c)(3) and redesignating it as paragraph (d); and adding a new paragraph (e), to read as follows:

§ 908.83 Termination.

* * * * *

(c)(1) The Secretary shall terminate the provisions of this part at the end of a crop year in which the Secretary has found by referendum that such termination is favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of oranges in the production area: *Provided,* That such termination shall be effective only if announced on or before December 1 of the then current fiscal year.

* * * * *

(d) Upon recommendation of the committee, received not later than August 15 of an odd numbered year, the Secretary shall conduct a referendum prior to October 15 of such year to ascertain whether continuance of this part is favored by growers as determined in accordance with (c)(2) of this section. The committee, with the approval of the Secretary, shall adopt such rules and regulations as necessary to establish the basis for the recommendation provided for in this section.

(e) The Secretary shall conduct a referendum by October 15 of the sixth year following the effective date of this section and no later than October 15 every sixth year thereafter to find whether, in accordance with paragraph (c) of this section, continuance of the order is favored by producers.

(f) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

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

Signed at Washington, D.C., on January 8, 1985 to become effective January 11, 1985.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–934 Filed 1–10–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 928

Papayas Grown in Hawaii; District Redefinition and Committee Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which redefined the districts into which the production area is divided, and reapportioned the membership of the Papaya Administrative Committee. The rule recognizes recent shifts in papaya production within the production area, and is necessary to assure equitable representation of grower members on the committee based on the relative amounts of papayas produced.

EFFECTIVE DATE: February 11, 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, Acting Administrator, Agricultural

Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rule was issued on October 31, 1984, and published in the **Federal Register** (49 FR 44199) on November 5, 1984. The rule added §§ 928.111 and 928.120 which combined Districts 2 and 3 to form a new district to be designated as District 2, and provides that new District 2 shall be represented by two grower members, with the stipulation that at least one alternate member shall be from either Maui of Kalawao County. Under the change, current District 4 would be redesignated as District 3.

The rule provided that interested persons could file public comments through December 5, 1984, none of which were received.

The district redefinition and committee reapportionment was based upon the recommendation of the Papaya Administrative Committee comprised of Hawaiian papaya producers and handlers, and was issued under the marketing agreement, as amended, and Order No. 928, as amended (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Secretary finds that this action will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 928

Marketing agreement and orders, Papayas, Hawaii.

PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the interim final rule published in the **Federal Register** (49 FR 44199) amending §§ 928.111 and 928.120 is adopted as a final rule.

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

Dated: January 8, 1985.

Thomas R. Clark,

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

[FR Doc. 85–904 Filed 1–10–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 928

Papayas Grown in Hawaii; Grade Requirement Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of an amended interim final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an amended interim final rule which established grade requirements for intrastate shipments of Hawaiian papayas. The previous regulation covered only those papayas shipped to points outside of Hawaii. The minimum grade established for fresh papaya shipments is Hawaii No. 1. The amendment is necessary to promote orderly marketing in the interest of producers and consumers.

EFFECTIVE DATE: February 11, 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 action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major rule. William T. Manley, Acting Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The amended interim final rule was issued on October 15, 1984, and published in the **Federal Register** (49 FR 40559) on October 17, 1984. The rule further amended § 928.313 (Hawaiian Papaya Regulation) under Marketing Order 928 effective July 1, 1984, by establishing regulations applicable to intrastate shipments of Hawaiian papayas to alleviate the price-depressing effects on sales of good quality fruit that is occurring because of substantial quantities of lesser quality fruit which are being diverted to the local markets.

The rule provided that interested persons could file public comments through November 6, 1984, none of which were received.

The amendment of the Hawaiian papaya grade regulation was based upon the recommendation of the Papaya Administrative Committee comprised of papaya producers and handlers, and was issued under the marketing agreement, as amended, and Order No. 928, as amended (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Secretary finds that this action will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 928

Marketing agreements and orders, Papayas, Hawaii.

PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the amended interim final rule published in the **Federal Register** (49 FR 40559) amending § 928.313 is adopted as a final rule.

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

Dated: January 8, 1985.

Thomas R. Clark,

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

[FR Doc. 85–908 Filed 1–10–85; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 5

[Docket No. 85–1]

Rules, Policies and Procedures for Corporate Activities, Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Office of the Comptroller of the Currency (Office) procedures for determining fees for processing corporate filings under 12 CFR Part 5, and eliminates reference to specific fee amounts appearing in different sections of Part 5. The Office will publish a single schedule of all processing fees annually, and upon request, will provide copies of the analysis that underlies the fee schedule to interested parties. The rule eliminates confusion that may result from annually amending different sections of Part 5.

DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, (202) 447–1184, Bank Organization and Structure, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 1984, the Office published in the **Federal Register** (49 FR 38954) notice of a proposed rulemaking that codified its procedures for determining the fees for corporate filings made under 12 CFR Part 5. The proposed policy was based on the view that the cost incurred by the Office when processing corporate filings should be borne by the banks or others making the filings. Hence, the proposal set forth procedures that would base individual

corporate filing fees on the projected average cost of processing each type of corporate filing. The Office also proposed that all corporate filing fees be published annually in a "Notice of Comptroller of the Currency Fees." The annual notice for fees to be charged during 1985 will be published no later than January 31, 1985. Thereafter, the notice will be published no later than the first day in December for fees to be charged during the upcoming year. References to the filing fees that currently appear in different sections of 12 CFR Part 5 would be eliminated.

Summary of Public Comments

The Office received five comments on the proposed rule. Two commenters indicated their support for the proposal. The three remaining commenters did not comment directly on the proposed rule, but offered some observations on the hypothetical 1984 fee schedule that was included in the proposed rulemaking to illustrate the fees that could have resulted in 1984 if the rule had been in effect. Their comments will be considered at the time the first fee schedule is issued pursuant to this final rulemaking.

Basis and Purpose

This rule will eliminate reference to specific fee amounts appearing in different sections of Part 5. The Office will no longer need to update those sections as fees change. This will be less confusing to the public. Finally, the Notice of the Comptroller of the Currency Fees will provide the public with a single, convenient listing of all fees associated with corporate filings.

Executive Order 12291

This rule is not classified as a "major rule" and therefore does not require a regulatory impact analysis.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 et seq.), the Comptroller finds that the final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 5

National banks, Fees.

Authority and Issuance

For the reasons set out in the preamble 12 CFR Part 5 is amended to read as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5—Rules, Policies, and Procedures for Corporate Activities reads as follows:

Authority: 12 U.S.C. 1 et seq.

2. Section 5.5 is revised to read as follows:

§ 5.5 Fees.

(a) Fees must accompany certain filings before they will be accepted by the Office. Filing fees will be set at an amount necessary to recover the Office's projected total cost of processing corporate filings during the ensuing 12 months. Individual fees will be established by first apportioning the projected total cost of processing corporate filings among the different types of corporate filings according to the projected proportion of Office staff time spent processing the different types. A projected average processing cost will then be determined by dividing the projected total cost of processing the different types of corporate filings by the projected number of filings of each type. The projected average processing cost will form the basis of the new fee schedule. Each year, the Office will prepare a report on the determination of the projected average processing costs and the new filing fee schedule. The Office will make the report available to interested parties upon request. The fees to be charged during 1985 will be published in the Office's Notice of the Comptroller of the Currency Fees no later than January 31, 1985. Thereafter, the notice will be published annually no later than the first day in December for fees to be charged during each upcoming year.

(b) Investigation fees may be charged at the rates established in 12 CFR 8.6 if the Office determines that special investigations or examinations are necessary to reach an informed decision on a given filing.

(c) Fees must be paid by check payable to the Comptroller of the Currency.

§ 5.20 [Amended]

3. Section 5.20 is revised by eliminating paragraphs (f) and (g), and redesignating paragraphs (h) through (j) as (f) through (h).

§ 5.21 [Amended]

4. Section 5.21 is revised by removing paragraph (e) and redesignating paragraphs (f) through (k) as (e) through (j).

§ 5.22 [Amended]

5. Section 5.22 is revised by removing paragraph (c) and (d), and redesignating paragraphs (e) through (g) as (c) through (e).

§ 5.23 [Amended]

6. Section 5.23 is revised by removing paragraph (d) and redesignating paragraphs (e) through (g) as (d) through (f).

§ 5.24 [Amended]

7. Section 5.24 is revised by removing paragraph (c)(5).

§ 5.25 [Amended]

8. Section 5.25 is revised by removing paragraph (d) and redesignating paragraphs (e) through (g) as (d) through (f).

§ 5.26 [Amended]

9. Section 5.26 is revised by removing paragraph (i) and redesignating paragraph (j) as (i).

§ 5.30 [Amended]

10. Section 5.30 is revised by removing paragraph (e) and redesignating paragraphs (f) through (i) as (e) through (h).

§ 5.31 [Amended]

11. Section 5.31 is revised by removing paragraph (f) and redesignating paragraphs (g) through (l) as (f) through (k).

§ 5.32 [Amended]

12. Section 5.32 is revised by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

§ 5.33 [Amended]

13. Section 5.33 is revised by removing paragraph (f) and redesignating paragraphs (g) through (j) as (f) through (i).

§ 5.34 [Amended]

14. Section 5.34 is revised by removing paragraph (e) and redesignating paragraph (f) as paragraph (e).

§ 5.40 [Amended]

15. Section 5.40 is revised by removing paragraph (g) and redesignating paragraphs (h) through (k) as (g) through (j).

§ 5.41 [Amended]

16. Section 5.41 is revised by removing paragraph (d) and redesignating paragraphs (e) through (g) as (d) through (f).

§ 5.42 [Amended]

17. Section 5.42 is revised by removing paragraph (f) and redesignating paragraph (g) as (f).

§ 5.43 [Amended]

18. Section 5.43 is revised by removing paragraph (d) and redesignating

paragraphs (e) through (g) as (d) through (f).

§ 5.46 [Amended]

19. Section 5.46 is revised by removing paragraph (c) and redesignating paragraphs (d) through (j) as (c) through (i).

§ 5.47 [Amended]

20. Section 5.47 is revised by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e).

§ 5.48 [Amended]

21. Section 5.48 is revised by removing paragraph (c) and redesignating paragraphs (d) through (h) as (c) through (g).

§ 5.49 [Amended]

22. Section 5.49 is revised by removing paragraph (c) and redesignating paragraphs (d) and (e) as (c) and (d).

§ 5.50 [Amended]

23. Section 5.50 is revised by removing paragraph (c) and redesignating paragraphs (d) through (i) as (c) through (h).

Dated: December 13, 1984.

C.T. Conover,

Comptroller of the Currency.

[FR Doc. 85-923 Filed 1-10-85; 8:45 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 112

[Amdt. 8]

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Title VI of the Civil Rights Act of 1964

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: It is necessary to add to our regulations the definition of "Federal financial assistance" as it appears at 28 CFR 42.102(c) in order to include coverage of all nonfinancial programs under this part. Further, in accordance with the requirements of 28 CFR 42.403(d), Appendix A is amended to update the listing of financial programs, and a listing of nonfinancial assistance programs which are provided by the Agency is being added.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Adelino Sánchez, Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street, NW., Room 501, Washington, D.C. 20416, (202) 653-6054.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1954 ("Act") provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Small Business Administration. This Part 112 of Title 13 of the Code of Federal Regulations effectuates such provision. Section 42.102(c) of Title 28 of the Code of Federal Regulations defines Federal financial assistance. This amendment will adopt the definition of Federal financial assistance as used in 28 CFR 42.102(c) by adding a new subsection 112.2(b). This definition will be consistent with that used by the Department of Justice and other agencies which enforce Title VI.

In accordance with the requirements of 28 CFR 42.403(d) published by the Department of Justice on December 1, 1976, there was published in the **Federal Register** (49 FR 4948-49) on February 9, 1984, a notice that the Small Business Administration proposed the amendment of Appendix A by revising the listing of financial assistance programs and by adding a listing of nonfinancial assistance programs which are provided by the Agency. Interested parties were given until March 12, 1984, to submit comments, suggestions or objections concerning this proposed rule. No comments were received.

SBA hereby certifies that this rule will not constitute a major rule for the purposes of Executive Order 12291. In addition, for purposes of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. The rule constitutes a nonsubstantive procedural change, and by its terms will not significantly affect the administration of any of SBA's financial assistance programs. This amendment contains no recordkeeping or reporting requirements.

List of Subjects in 13 CFR Part 112

Civil rights, Small businesses.

PART 112—[AMENDED]

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), Part 112, Chapter 1, Title 13 of the Code of Federal Regulations, is amended as follows:

1. Paragraphs (b) and (c) of § 112.2 are redesignated as paragraphs (c) and (d), respectively, and a new § 112.2(b) would be added to read as follows:

§ 112.2 Application of this part.

* * * * *

(b) The term "Federal financial assistance" includes: (1) Grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration, or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has one of its purposes the provision of assistance.

* * * * *

2. Appendix A of Part 112 of Title 13 of the Code of Federal Regulations is revised to read as follows:

APPENDIX A

Name of program	Authority
Financial Programs	
Regular business loans	Small Business Act, sec. 7(a) and 7(a)(11).
Handicapped assistance loans	Small Business Act, sec. 7(a)(10).
Small business energy loans	Small Business Act, sec. 7(a)(12).
Small general contractors	Small Business Act, sec. 7(a)(9).
Vietnam-era and Disabled Veterans Loan Program	Pub. L. 97-72.
Debtor State development company loans (501) and their small business concerns	Small Business Investment Act, title V, and Small Business Act, sec. 7(a)(13).
Debtor small business investment companies and their small business concerns	Small Business Investment Act, title III.
Disaster Loans	
Physical	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal action—economic injury	Small Business Act, sec. 7(b)(3).
Currency fluctuation—economic injury	Small Business Act, sec. 7(b)(4).
Nonfinancial Programs	
Women's business enterprise	Executive Order 12138.
Small business innovation and research	Small Business Act, sec. 9.
Procurement automated source system	Small Business Act, sec. 8 and Pub. L. 96-302.
Business Development Program	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Small Business Institute Program	Small Business Act, sec. 8(b)(1) and Pub. L. 85-536.
Certificate of competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95-89.
Subcontracting Assistance Program	Small Business Act, sec. 8(d) and Pub. L. 95-507.
Technology Assistance Program	Small Business Act, sec. 9.

Nonfinancial Programs	
Small business development centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program.	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95-510.
Veterans affairs programs.	Pub. L. 93-237.
Private sector initiatives.	Small Business Act, sec. 8(b)(1).

Note.—All programs listed above are also covered by Part 113 of Title 13 of the Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Programs No. 59.001 through 59.031)

Dated: January 2, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-791 Filed 1-10-85; 8:45 am]

BILLING CODE 8025-01-M

13 CFR Part 113

[Amdt. 4]

Nondiscrimination in Federally Assisted Programs of SBA; Effectuation of Policies of Federal Government and SBA

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: In accordance with the requirement of 28 CFR 42.403(d) and in effectuation of Federal government and Small Business Administration policies against discrimination, the Small Business Administration is revising Appendix A of Part 113 by updating its listing of programs.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Adelino Sanchez, Chief, Office of Civil Rights Compliance, Small Business Administration, 1441 L Street, NW., Room 501, Washington, D.C. 20416 (202) 653-6054.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of 28 CFR 42.403(d), published December 1, 1976, the Small Business Administration is updating its listing of programs which are subject to the nondiscrimination provisions of this part.

SBA hereby certifies that this rule will not constitute a major rule for the purposes of Executive Order 12291. In addition, for purposes of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities. The rule constitutes a nonsubstantive procedural change, and by its terms will not significantly affect the administration of any of SBA's financial assistance programs. This amendment contains no recordkeeping or reporting requirements.

List of Subjects in 13 CFR Part 113

Aged, Civil rights, Handicapped, Loan programs—business, Marital status discrimination, Religious discrimination, Sex discrimination, Small businesses.

PART 113—[AMENDED]

Accordingly, pursuant to the authority contained in 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), Part 113, Chapter I, Title 13 of the Code of Federal Regulations, is amended as follows:

Appendix A of Part 113 of Title 13 of the Code of Federal Regulations is revised to read as follows:

APPENDIX A

Name of program	Authority
Financial Programs	
Regular business loans	Small Business Act, sec. 7(a).
Handicapped assistance loans.	Small Business Act, sec. 7(a)(10).
Small business energy loans	Small Business Act, sec. 7(a)(12).
Small general contractors loans.	Small Business Act, sec. 7(a)(9).
Export revolving line of credit	Small Business Act, sec. 7(a)(14).
Vietnam-era and Disabled Veterans Loan Program.	Pub. L. 97-72.
Debtor State development company loans (501) and their small business concerns.	Small Business Investment Act, title V and Small Business Act, sec. 7(a)(13).
Debtor State and local development company loans (502) and their small business concerns.	Small Business Investment Act, title V and Small Business Act, sec. 7(a)(13).
Debtor certified development companies (503) and their small business concerns.	Small Business Investment Act, title V and Small Business Act, sec. 7(a)(13).
Debtor small business investment companies and their small business concerns.	Small Business Investment Act, title III.
Pollution Control	Small Business Investment Act, title IV, Part A.
Surety bond guarantees	Small Business Investment Act, title IV, Part B.
Lease guarantees (not funded) disaster loans	Small Business Investment Act, title IV.
Physical	Small Business Act, sec. 7(b)(1).
Economic injury (EIDL)	Small Business Act, sec. 7(b)(2).
Federal action—economic injury.	Small Business Act, sec. 7(b)(3).
Currency fluctuation—economic injury.	Small Business Act, sec 7(b)(4).
Nonfinancial Programs	
Women's business enterprise	Executive Order 12138.
Small business innovation and research.	Small Business Act, sec. 9.
Procurement automated source system.	Small Business Act, sec. 8 and Pub. L. 96-302.
Business Development Program.	Small Business Act, sec. 8(a) and Pub. L. 95-507, as amended by Pub. L. 96-481.
Small Business Institute	Small Business Act, sec. 8(b)(1).
Certificate of competency	Small Business Act, sec. 8(b)(7) and Pub. L. 95-89.
Subcontracting Assistance Program.	Small Business Act, sec. 8(d) and Pub. L. 95-507.

APPENDIX A—Continued

Name of program	Authority
Technology Assistance Program.	Small Business Act, sec. 9.
Small business development centers.	Small Business Act, sec. 21 and Pub. L. 96-302.
International Trade Program	Small Business Act, sec. 22 and Pub. L. 96-481.
Service Corps of Retired Executives and Active Corps of Executives.	Small Business Act, secs. 101 and 8(b)(1) and Pub. L. 95-510.
Veterans Affairs Programs	Pub. L. 93-237.
Private sector initiatives	Small Business Act, sec. 8(b)(1).

(Catalog of Federal Domestic Assistance Programs No. 59.001 through 59.031)

Dated: January 2, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-790 Filed 1-10-85; 8:45 am]

BILLING CODE 8025-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240, 249, 270, and 274

[Release No. 34-21633; IC-14299; S7-1-85]

Semi-Annual Report Form for Registered Investment Companies; Temporary Suspension of Quarterly Reporting Obligations of Certain Registered Investment Companies Pending Receipt of Comments on Proposed Final Action

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form, rules and rule revisions; withdrawal of forms and rescission of rules; temporary adoption of rules and certain form items with solicitation of comment on final action.

SUMMARY: The Commission is adopting a semi-annual reporting form under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 that registered investment companies will be required to file with the Commission. The new form contains sections to be completed by different types of investment companies and replaces five separate annual reporting forms now used by most registered investment companies. The Commission is also adopting temporary rules to suspend the quarterly reporting obligations of registered management investment companies and issuers of periodic payment plans. Comment is requested on permanent withdrawal of the quarterly report forms for those types of registered investment companies and incorporation of their contents in the new semi-annual report.

DATES: The new rules and rule revisions and the withdrawal of forms and rescission of rules will be effective April 30, 1985. The new form will be required to be filed for fiscal periods ending on or after that date. Registrants will have the option of filing reports on the new semi-annual form or on the old annual reporting forms for fiscal periods ending before that date. The temporary rules will be effective January 11, 1985. Comments with respect to the temporary rules and form items must be received on or before March 5, 1985.

ADDRESS: Comments with respect to the temporary rules should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7–1–85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: With respect to the new form, Gene A. Gohlke, Chief Financial Analyst, or Carolyn Uberman, Senior Financial Analyst, (202) 272–2024, Office of Financial Analysis and Inspections, and with respect to the new, amended and temporary rules, Elizabeth K. Norsworthy, Chief, Office of Regulatory Policy, (202) 272–2048 or John Banks-Brooks, Esq., Office of Disclosure Policy and Investment Adviser Regulation (202) 272–7313, Division of Investment Management, Securities and Exchange Commission.

SUPPLEMENTARY INFORMATION: The Commission is adopting form N–SAR, a semi-annual reporting form for registered investment companies pursuant to sections 13 (15 U.S.C. 78m), 15(d) (15 U.S.C. 78o(d)), and 23(a) (15 U.S.C. 78w(a)) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("1934 Act") and sections 8 (15 U.S.C. 80a–8), 30 (15 U.S.C. 80a–29), and 38 (15 U.S.C. 80a–37) of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act"). Forms N–1R (17 CFR 274.101), N–30A–2 (17 CFR 274.102), N–30A–3 (17 CFR 274.103), N–5R (17 CFR 274.105), and 2–MD (17 CFR 249.402), the annual reporting forms now used by most registered investment companies, are withdrawn.[1] In order to implement the new form, a number of corresponding rule changes are also adopted. These changes include revision of rules 8b–16 (17 CFR 270.8b–16) and 30a–1 (17 CFR 270.30a–1), addition of new rules 30b1–3 and 30b1–4 and rescission of rules 30a–2 (17 CFR 270.30a–2) and 30a–3 (17 CFR 270.30a–3) under the 1940 Act and amendment of rule 12b–25 (17 CFR 240.12b–25) under the 1934 Act. These new rules and rule amendments set forth the requirements for filing the new form and eliminate references to the annual reporting forms that are withdrawn.

The Commission is also adopting temporary rule 30b1–5(T) to suspend the obligation of registered management investment companies of tile form N1–Q (17 CFR 274.106) on a quarterly basis and temporary rule 27d–4(T) to suspend the obligation of issuers of periodic payment plan certificates to file form N–27D–2 (17 CFR 274.127d–2) on a quarterly basis. The contents of form N1–Q are temporarily incorporated in the new semi-annual report form as items 77 and 102. Comment is requested on whether forms N–1Q and N–27D–2 should be withdrawn and the contents of form N–1Q incorporated in form N–SAR on a permanent basis.

Appendix A to this release sets forth the text of form N–SAR and its instructions. Appendix B shows which items of the annual and quarterly report forms have been eliminated from the new form, carried over to it unchanged, or carried over with modifications.

Background

The Commission proposed form N–SAR and related rules and rule revisions on August 6, 1984.[2] As stated in the proposing release, the new form was proposed in response to changes that have been made in the Commission's procedures for reviewing disclosure documents filed by investment companies and for performing routine inspections of those companies. The new form was also proposed in response to changes that have occurred in the investment company industry and the desire to develop a computerized data base of information with respect to that industry.

The Commission received twenty comment letters on the proposal. The commentators strongly endorsed the new form and made a number of substantive and technical suggestions with respect to its use and contents. As discussed in more detail below, the substantive comments related to: (a) Whether the Commission has the statutory authority to adopt the form under the 1940 Act; (b) the types of investment companies that should be required or permitted to use the new form; (c) when investment companies should be required or permitted to begin using the form; (d) how much time a registrant should have to file the form after the close of each reporting period and whether extensions should be granted; (e) whether the proposed filing fee is too high for unit investment trusts; (f) whether year-end information should be reported on a twelve-month basis; (g) whether form N1–Q should be withdrawn; (h) how the format of the form could be improved; and (i) whether specific items of the proposed form and the instructions to those items should be modified or deleted. The final version of the form and its instructions incorporate a number of the suggestions made by the commentators. This release discusses in detail, however, only those items and instructions on which the commentators primarily focused and certain tiems which have been added to the final version of the form.

Discussion

(a) Whether the Commission Has the Statutory Authority To Adopt Form N–SAR Under the 1940 Act

The Commission is adopting form N–SAR pursuant to its authority under section 13, 15(d) and 23(a) of the 1934 Act and sections 8, 30 and 38 of the 1940 Act. As in the proposal, registered management investment companies will be required to file the form pursuant to new rule 30b1–3 under section 30(b)(1) of the 1940 Act. Section 30(b)(1) requires every registered investment company to file with the Commission "such information and documents (other than financial statements) as the Commission may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the registration statement(s) of such (registrants)."

One commentator questioned the Commission's authority to require registered investment companies to file the proposed semi-annual report under section 30(b)(1). According to that commentator, the proposed form would require general reporting and Congress authorized the Commission to require general reporting only on an annual basis under section 30(a). Section 30(b)(1) allows the Commission to require semi-annual or quarterly reports only to update a company's registration statement. The commentator observed that form N1–Q was already prescribed for that purpose and the Commission

[1] Form N–1R was the annual report used by most registered management investment companies. A separate form of annual report was required for unincorporated management companies currently issuing periodic payment plan certificates (form N–30A–3), small business investment companies ("SBICs") (form N–5R), unit investment trusts currently issuing securities (form N–30A–2) and unit investment trusts not currently issuing securities (form 2–MD).

[2] *See* Investment Company Act Release No. 14080, dated August 6, 1984 (49 FR 32370).

had not proposed to withdraw that form. In addition, the commentator argued that the Commission could not be intending to use the new form to update a registrant's registration statement because the new form required a registrant to furnish information which differed significantly from the information that must be disclosed in the registration statement forms. In support of this theory, the commentator cited as an example proposed item 64, which would require a registrant to identify its portfolio manager. Such information is not required in form N–1A, the recently adopted registration statement form for open-end investment companies.

The Commission has concluded that it does have the statutory authority to require registrants to file form N–SAR pursuant to section 30(b)(1). While the Commission did not propose to withdraw form N1–Q at the time that it proposed form N–SAR, it is proposing to do so now and is adopting a temporary rule to suspend the obligation of management companies to file form N1–Q pending final action on this proposal. Moreover, only two types of questions in the proposed form arguably did not relate to registration statement form requirements—proposed item 64 which would have required a registrant to identify its portfolio manager and proposed items 55 through 60 which would have required a registrant to furnish certain information with respect to its insurance coverage. Item 64 is deleted from the final form. Although the form still contains items relating to a registrant's insurance[3] the instructions to those items require a registrant to answer them only in a supplement to its year-end report.[4] These changes moot any possible questions about the Commission's authority to require semi-annual reporting on form N–SAR.

(b) The Types of Investment Companies Which Should Be Required or Permitted To Use the New Form

With the exception of face-amount certificate companies,[5] all registered investment companies are required to file the new form. Unit investment trusts ("UITs"), however, will be required to file the form only once a year—after the close of the calendar year. UITs with series will be required to file one report for all series, irrespective of whether the earlier series have a separate 1940 Act reporting number.

One commenter pointed out that the proposed instructions to the new form could be read to require companies currently in the process of registering their securities for the first time under the Securities Act of 1933 (15 U.S.C. 77 et seq.) ("1933 Act") to file the form. The final versions of rules 30a–1 and 30b1–3 provide that a company does not have to file form N–SAR while it is still in the process of registering its securities for the first time under the 1933 Act. The company must start filing the form, however, for each reporting period (or portion of a reporting period) that elapses after the date when the registration statement under the 1933 Act becomes effective or is withdrawn.[6]

Several commenters requested that UITs be relieved of any periodic reporting obligation on the theory that sufficient information with respect to a UIT is already publicly available in its registration statement, the trustee's annual report to unitholders and published financial manuals. In the alternative, those commentators urged the Commission to allow UITs to file form N–SAR only at the calendar year-end because a UIT trustee calculates distributions and expenses only once a year—usually as of December 31st. These commentators believed that if the trustee were required to make the calculation twice a year, a significant and unnecessary additional expense would be created for this type of registrant. The commentator also noted that information filed in semi-annual reports would probably be distorted anyway because UITs do not incur uniform costs throughout the year. In view of the unique nature of UITs described by the commentator, the Commission has revised rule 30a–1, proposed rule 30b1–3 and the instructions to the form to require this type of registrant to file form N–SAR only once a year, after the close of the calendar year.[7]

Several commentators also requested that the final form and its instructions make clear that a UIT only has to file one report for all of its series. These commentators pointed out that prior to 1972, each series was required to register under the 1940 Act and received a separate reporting ("811") number. The instruction to item 1B of the final form instructs UITs with pre-1972 series to use the last 811 number assigned to their series, so that the trust will be filing only one report with respect to all of its series.[8]

(c) When Investment Companies Should Be Required or Permitted To Begin Using the Form.

Investment companies will be required to use the form to report on all fiscal reporting periods ending on or after April 30, 1985. Registrants will have the option of filing reports on the new form or on the old annual reporting forms for fiscal periods ending before April 30th.

In the release proposing the new form, the Commission stated that it hoped to have the form in place so that it could be used for all fiscal semi-annual periods ending in 1985. Several commentators urged the Commission to allow for a one-year transition period during which registrants would have the option of filing of the new semi-annual form or on the old annual report forms. Those commentators stated that a transition period would be needed because registrants would have to make "extensive modifications" in their computer systems to generate the data called for in the new form. Other commentators urged the Commission to allow early voluntary reports on the

[3] *See* items 80 through 85; *see also* items 105 through 110 with respect to SBICs.

[4] *See* instructions to items 80 through 85; *see also* instructions to items 105 through 110 with respect to SBICs.

[5] A face amount certificate company is defined in section 4(1) of the 1940 Act to mean "an investment company which is engaged in or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such business and has any such certificate outstanding." Only a handful of such companies still exist and they will be required to continue to file their periodic reports on forms prescribed under the 1934 Act.

[6] Another commentator urged the Commission to permit certain insurance company separate accounts exempted from the 1940 Act and that currently file their periodic reports on forms prescribed under the 1934 Act to file the new semi-annual reporting form instead. The Commission has not acted on this request because a primary purpose of the new form is to collect data on the investment company industry. Entities that are not considered investment companies should, therefore, be excluded from this data base.

[7] One commentator asked the Commission to revise the form and its instructions to allow a UIT to designate the reporting period for its series, because a UIT could have series with different fiscal years. The Commission believes that a uniform reporting period should be designated for all UIT registrants to provide comparable information with respect to this type of registrant. Since UIT trustees usually calculate distributions and expenses as of the close of the calendar year, general instruction A has been revised to provide that all UITS are required to file the form for the twelve-month period ending December 31.

[8] One commentator asked that separate reports be required of each set of series with a different trustee because one trustee cannot be expected to prepare a report based on information in another trustee's control. The Commission believes, however, that the sponsor of the UIT can and should be responsible for preparing any reports required to be filed by the trust. Moreover, if a separate report were required to be filed by each trustee, the information-gathering objective of the UIT items of the new form would be frustrated because the primary purpose of those items is to collect information with respect to *all* of the series of a UIT in the same report.

new form. One commentator pointed out that such an optional early compliance provision would save new investment companies the considerable expense that would be involved if they were required to file an initial report on one of the old annual reporting forms. That commentator asked, however, that early users be given 120 days, instead of sixty days, to make their first filing.

The Commission believes that in view of the adjustments which registrants must make in their data-gathering facilities to convert to the new form, some transition or phase-in period is appropriate. However, because of the Commission's pressing need to assemble a comprehensive and accurate industry data base as soon as possible, that transition period is limited to six months. The Commission has also concluded that registrants should be free to use the new form as soon as it is made publicly available. The due date for early users, however, is the same as it is for other registrants, *i.e.*, the report must be filed within sixty days of the end of the reporting period. The Commission feels that the benefits of giving a special extension of time to early users are outweighed by the problems that would be created by having disparate filing requirements.

(d) How Much Time a Registrant Should Have To File the Form After the Close of Each Reporting Period; Whether Extensions Should Be Granted

The instructions to the final form give each registrant sixty calendar days to file after the close of the reporting period. Technical amendments to rule 12b–25 under the 1934 Act are adopted, however, to allow fifteen additional calendar days in which to file the report or a portion of the report, provided that the registrant notifies the Commission of its inability to file pursuant to that rule.

In the proposing release, the Commission stated that reporting companies would be required to file form N-SAR within sixty days after the end of each reporting period, but that no extensions would be given. Several commentators asked the Commission to lengthen the time to file to ninety or 120 days and to allow extensions of time to file in extenuating circumstances, such as national emergencies, archive catastrophes or major computer malfunctions. One commentator requested that registrants be permitted to rely on the automatic extension of fifteen calendar days which rule 12b–25 under the 1934 Act gives reporting companies when they notify the Commission of their inability to file. Another commentator requested that the Commission adopt a rule similar to rule 30a–1 under the 1940 Act which allows investment companies to apply to the Commission for an extension of sixty calendar days to file their annual reports.

The Commission has decided to retain a sixty day filing period in the final rule because receipt of current information is essential to building a current industry data base. The Commission has also decided, as noted above, to allow for limited automatic extensions of time under rule 12b–25 in order to give registrants the flexibility to deal with unforeseen circumstances.

(e) Whether the Proposed Filing Fee is Too High for Unit Investment Trusts

The final version of rule 30b1–3 requires every management investment company to pay a $125 fee to file its semi-annual report. Revised rule 30a–1 requires every UIT filing its annual report to pay a $125 fee. As proposed, rule 30b1–3 would have required every registrant to pay a $125 fee to file its semi-annual report. One commentator objected to UITs being charged the same filing fee as management companies because the proposed form asked UITs fewer questions than were asked of management companies. While it is true that UITs will in general be required to answer fewer questions than management companies, the Commission's processing costs are not a function solely of the number of questions answered by a particular reporting company. Filing fee costs incurred by UITs annually, however, will be less than the costs incurred by management companies because revised rule 30a–1 requires UITs to file only one report a year.

(f) Whether Year-End Information Should Be Reported on a Twelve-Month Basis

The final version of the form requires a registrant to report twelve-month or cumulative information in its year-end report.[9] As proposed, the form would have required a registrant to report only on the latter half of its fiscal year in its year-end report.

A number of commentators urged the Commission to revise the proposal to require twelve-month data at year-end. They pointed out that investment companies and their auditors normally compute data for six-month and twelve-month periods. If required to report six-month data at the fiscal year-end, these companies would have to keep a separate set of books and records. Those commentators also believed that twelve-month cumulative information would be more meaningful. The proposal was revised to reflect these comments.

(g) Whether Form N–1Q Should Be Withdrawn

As stated above, the Commission is adopting rule 30b1–5(T) which temporarily suspends the obligation of management investment companies to file quarterly reports on form N–1Q. The questions contained in form N1–Q have been transferred to items 77 and 102 of form N–SAR.[10] In addition, the Commission is adopting rule 27d–4(T) which temporarily suspends the obligation of issuers of periodic payment plan certificates to file quarterly reports on form N–27D–2.

Although the release proposing form N–SAR did not address the status of form N–1Q, one commentator urged the Commission to take the opportunity to withdraw the form which it described as "unwieldy", "expensive" and "time consuming." The commentator suggested that the Commission incorporate in form N–SAR whatever items from form N1–Q that it feels must be retained. In a separate letter, the same commentator asked the Commission to withdraw form N–27D–2 because the form has not been needed since 1975.

The Commission agrees that these quarterly reports should be withdrawn. However, the Commission believes that if form N–1Q is withdrawn, the information required by that form should be furnished on a semi-annual basis in form N–SAR. Since the release proposing form N–SAR did not propose the withdrawal of the quarterly reporting forms, the Commission is proposing withdrawal now and is temporarily suspending quarterly filing obligations pending receipt of comments and final action on the proposal.

(h) How the Format of the Form Could Be Improved

As suggested by one commentator, the final form gives applicants additional space to answer the form items by attaching an extra page or pages to the page on which that item appears.[11]

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[9] The only exception to this general principle appears in items 28 which requires the registrant to report on monthly and semi-annual sales and repurchases of its shares.

[10] Item 77 is addressed to all open-end and closed-end management investment companies except SBICs; item 102 is addressed to SBICs.

[11] The same commentator suggested that the instructions to the final form should stand alone, without any references to statutory provisions, rules, forms or interpretive releases so that persons preparing the form would not have to consult

Continued

The form's format may be modified further to enable the Commission to receive filings on the new form by electronic transmissions and to make those filings publicly available electronically. As soon as the Commission is in a position to receive filings electronically, a follow-up release will be issued.[12]

(i) Whether Specific Instructions and Items Should Be Modified or Deleted

General instruction E: definition of "family of investment companies". The term "family of investment companies" is defined in general instruction E to the final form to mean, with the exception of insurance company separate accounts, "two or more registered investment companies that share the same investment adviser or principal underwriter and hold themselves out to investors as related persons for purposes of investment and investor services." Under the final definition, insurance company separate accounts would be considered members of the same family if they share the same investment adviser or principal underwriter and either hold themselves out to investors as related companies for purposes of investment and investor services or function under operational, accounting or control systems which are substantially similar.

As proposed, an investment company family would have included investment companies which either retain the same investment adviser or principal underwriter (or an affiliated person thereof) or hold themselves out as related companies for purposes of investment and investor services. Two commentators requested that the definition be revised to include investment companies in the same family only if they retain the same investment adviser or principal underwriter *and* hold themselves out to investors as related companies. These commentators pointed out that the proposed definition would cause certain registrants to obtain and report data about generally unrelated entities because an increasing number of unrelated companies use the same adviser or underwriter. Another commentator suggested that the definition distinguish between insurance company separate accounts and other types of registrants, because the proposed definition could exclude related separate accounts. The Commission agrees with these comments and has revised the definition as suggested.

Report of independent public accountant. The instructions to item 77 of the final form require a registrant to furnish a report of its independent public accountant on the registrant's system of internal accounting controls.[13] The instruction states that the report must be "based on the review, study and evaluation of the accounting system, internal accounting controls and procedures for safeguarding securities made during the audit of the financial statements." The instruction also makes clear that although the report of the independent public accountant is to be attached as an exhibit to the form, the accountant will not be considered to have reported on, or otherwise been associated with, the preparation of that form.

As proposed, the instructions to the form would have required a registrant's accountant to furnish a report on any material weaknesses that may have existed in the registrant's internal accounting control system during its fiscal year. A number of commentators opposed the proposed instruction because of what they viewed as unwarranted changes in existing requirements. They recommended that the proposed instruction be reworded to continue the current requirement of reporting on weaknesses that exist at year-end and that are material to the financial statements as a whole.

These commentators argued that the costs that would be imposed by the proposed instructions would exceed the benefits because the scope of the audit examination and related audit costs would increase significantly. One commentator estimated that audit costs incurred by small investment companies could increase 75% in the first year and 50% in succeeding years; another estimated the increase would be 25% or more. These commentators questioned the benefits of an increase in the scope of the audit report, stating that they were not aware of any problems which could be uncovered if an expanded audit had been conducted.

Another commentator requested a clear acknowledgement that although the accountant's report on a registrant's internal accounting controls may be attached as an exhibit to the registrant's semi-annual report, the accountant is not reporting on, and has not otherwise been associated with, the preparation of that semi-annual report. The instructions to the final form incorporate these suggestions.

Registrant's acquisition of securities of its regular brokers or dealers. Item 24 of the final form requires a registrant to report on whether it holds any securities of its regular brokers or dealers (or the parents of such brokers or dealers that derive more than 15% of their gross revenues from securities related activities) as of the end of the reporting period. Item 25 requires a registrant to supply the following information concerning its aggregate holdings of the securities of such issuers as of the end of the reporting period: the name of the issuer, the issuer's IRS number, the type of securities owned (equity or debt), and the value of those securities.

As proposed, the form would have required a registrant to report on the value of its aggregate holdings and the percentage of each issuer's outstanding debt or equity securities that those holdings represented at the end of the reporting period. Two commentators urged that these proposed items be revised, because they believed that the proposal did not conform to rule 12d3-1 under the 1940 Act (17 CFR 270.12d3.1). They protested that the rule requires an investment company to be aware of an issuer's revenues from securities-related activities and the percentage of the issuer's outstanding debt and equity securities owned by the registrant only at the time that the registrant acquires, or contemplates acquiring, securities in reliance on the rule. However, these commentators read the proposed items to require a registrant to monitor an issuer's revenues from securities-related activities and the percentage of the issuer's outstanding debt or equity securities that the registrant owns. They urged the Commission to revise the items to require information only with respect to a registrant's acquisitions during the reporting period and to require that information only as of the time of acquisition. One commentator asked that at a minimum, a sentence should be added to the instructions to make clear that the reporting requirement is not intended to affect the operation of, or conditions for compliance with, the rule.

The Commission feels that data with respect to a registrant's aggregate holdings of the securities of its regular brokers or dealers (or their parents) should be obtained. Investment

numerous references. The Commission believes that if the instructions were revised to include the text of all applicable statutory provisions, rules, forms or interpretive releases, the instructions could be hundreds of pages. Moreover, the Commission believes that any attempt made to summarize these references might not help registrants, but could cause confusion.

[12] *See, e.g.*, Securities Act Release No. 6539, dated June 27, 1984 [49 FR 28044], adopting temporary rules and forms to facilitate the operation of the pilot EDGAR disclosure system for filings processed by the Division of Corporation Finance.

[13] Item 77 requires all open-end and closed-end management companies except SBICs to furnish the report.

companies have only recently been permitted under the 1940 Act to acquire the securities of issuers engaged in securities-related activities [14] and, at least for the time being, the Commission wants to be aware of the extent to which investment companies are making such acquisitions. In consideration of the concerns expressed by the commentators, however, the final form does not require registrants to report on the percentage of the issuer's outstanding debt or equity securities that the registrant's aggregate holdings represents. Also as requested, an instruction has been added to assure registrants that the operation of rule 12d3-1 is not affected by this reporting requirement.

Front-end loads on sales of registrant's shares. Although proposed, the final form does not ask registrants to report the total net asset value of shares sold at each sales load break-point. This item has been deleted from the final form because several commentators stated that most registrants lack the ability to generate this type of information. Instead, item 30 asks registrants to report only the maximum and minimum sales load rates charged on sales made during the reporting period.

Senior securities. Item 55 of the final form asks open-end and closed-end companies to state whether they had any overdrafts or bank loans outstanding during the reporting period which exceeded 1% of their aggregate net assets. Item 88 requires a closed-end company to state also whether it had any notes or bonds, uncovered options or futures positions, margin loans or preferred stock outstanding during the reporting period which exceeded 1% of its aggregate net assets. The instructions to item 88 direct closed-end companies to report only debt that is not covered by a segregated account or by other means.[15]

As proposed, item 61 would have required open-end and closed-end management companies to report on whether they had overdrafts, bank loans, notes or bonds, uncovered options positions, margin loans or other debt outstanding during the reporting period. The instructions to that item would have required the registrant to respond in the affirmative only if the debt was not adequately covered in a segregated account or by other means.[16] Commentators objected to this item on the grounds that it was designed to elicit a self-incriminating response from open-end companies which are not permitted to issue senior securities under section 18 of the 1940 Act (15 U.S.C. 80a-18).[17] They also objected to the proposed item's characterization of overdrafts and bank loans as senior securities, because borrowing from a bank is expressly excepted from section 18.[18]

As redrafted, item 55 of the final form requests information on the extent to which open-end and closed-end companies had overdrafts or bank loans outstanding during the reporting period, without characterizing those overdrafts and bank loans as senior securities.[19] Item 88 still requires closed-end companies to report on whether they had senior securities outstanding during the reporting period, but an affirmative response to this item would not necessarily be self-incriminating: closed-end companies, unlike open-end companies, are permitted to issue a limited amount of senior securities under the 1940 Act.[20]

Identification of portfolio manager. Proposed item 64, which would have required a registrant to identify its portfolio manager(s), is deleted from the final form. Several commentators requested that this item be deleted, stating that a listing of portfolio managers would only be misleading and would misstate the complexity of portfolio decision-making. Another commentator pointed out that most registrants would prefer to keep this kind of information confidential. The commentators appeared to object particularly to the inclusion of this item because the Commission recently decided to exclude a similar item from recently adopted form N-1A, the new registration statement for open-end investment companies. In view of the exclusion of this item from form N-1A, the Commission has decided to delete the item from form N-SAR as well.

Portfolio turnover rate. The instructions to item 71 of the final form direct a registrant to calculate its portfolio turnover rate by dividing the lesser of purchases or sales of portfolio securities for the reporting period by the monthly average of the value of the portfolio securities owned by the registrant during that period. All securities that have maturities at the time of acquisition of twelve months or less should be excluded from both the numerator and denominator. All other securities, including U.S. Government securities, should be included.[21]

As proposed, the instructions would have required a registrant to calculate its portfolio turnover rate by including all short-term as well as long-term securities in the numerator and denominator. A number of commentators requested that these instructions be revised in the final form, because the calculation should conform to the method used to calculate portfolio turnover rate in forms N-1A and N-2 (17 CFR 274.11a-1), the registration statement forms for open-end and closed-end investment companies, respectively. The commentators pointed out that the instructions to those registration statement form items instruct the registrant to *exclude* all short-term securities and all U.S. Government securities. According to the commentators, the registration statement items produce a far more meaningful ratio than would the proposed N-SAR item. Those commentators believed that the inclusion of short-term securities would only produce rates that are inflated and misleading and would cause registrants to maintain an extra set of books to make the new calculation. One commentator recommended, however, that long-term U.S. Government securities should be included in the calculation.

In view of these comments, the Commission has decided to revise the proposed instruction to exclude all short-term securities from the calculation. However, in the belief that there is no reason to distinguish between long-term U.S. Government securities and other types of long-term debt securities for purposes of the calculation, the instruction directs registrants to include *all* long-term debt securities. The Commission agrees that

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[14] *See* Investment Company Act Release No. 14030, dated July 13, 1984 [49 FR 29363], adopting rule 12d3-1.

[15] The Commission considers such debt to be a senior security only where the outstanding indebtedness is not adequately covered by a segregated account or otherwise. *See* Guide 9 to form N-1A (17 CFR 274.11A). *See also* Investment Company Act Release Nos. 7220 and 7221 (June 9, 1972) [37 FR 12790].

[16] *Id.*

[17] Section 18(f) (15 U.S.C. 80a-18(f)) prohibits any registered open-end management company from issuing any class of senior securities except that such companies can borrow from a bank with sufficient asset coverage. *Cf.* section 18(a) (15 U.S.C. 80a-18(a)) which allows a registered closed-end company to issue senior securities with, *inter alia*, sufficient asset coverage.

[18] *See* section 18(f) with respect to open-end companies and section 18(g) [15 U.S.C. 80a-18(g)] with respect to closed-end companies.

[19] *Id.*

[20] *See supra* note 17.

[21] The instructions explain that in the case of put or call options expiring more than one year from the date of acquisition, the premiums paid to purchase such options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of such options should be included in the value of the portfolio securities which the registrant sold during the period.

a registrant should disclose the same portfolio turnover rate in its registration statement and in its semi-annual report. For that reason, amendments to forms N-1A and N-2 are being proposed simultaneously in Securities Act Release No. 33-6563, dated January 4, 1985, to conform the method of calculating portfolio turnover rate described in those forms to the method described in the final version of form N-SAR.

(h) Additional Items Which Have Been Added to the Final Form

Items 64, 65, 128, 129 and 130 have been added to the final form to request information concerning a registrant's holdings of debt securities that have been insured or guaranteed by an entity other than the issuer.[21] These items were not included in the proposed form because the Commission was not aware, at that time, of the extent to which investment companies have been acquiring such insured or guaranteed securities. Information with respect to these acquisitions is needed to construct a complete data base on registrant portfolios. The new items ask whether the registrant has any insured or guaranteed securities in its portfolio and if so, whether the issuer of any of those securities is delinquent or in default as to payment of principal or interest at the end of the reporting period. In the case of insured or guaranteed securities on which there have been delinquencies or defaults, the new items ask the registrant to state whether any part of the value attributed to those securities in the computation of its net asset value per share has been derived from insurance or guarantees.

Rule amendments

Implementation of new form N-SAR requires several corresponding rule changes, principally to set forth the requirements for filing the new form and to eliminate references to annual report forms that are being withdrawn. Section 30(a) of the 1940 Act requires every registered investment company to file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the 1934 Act and the rules and regulations thereunder. Rule 30a-1 currently requires every registered investment company to file an annual report on the appropriate form prescribed by the Commission not more than 120 days after the close of each of the company's fiscal years ending on or after the date the company files its 1940 Act registration statement. That rule also prescribes a $250 filing fee and a procedure whereby registrants may request a sixty day extension of time to file. Rule 30a-2 prescribes the annual report forms which should be used by various types of registered investment companies. Rule 30a-3 permits a wholly owned subsidiary of a management investment company to file a summary statement in lieu of a complete form N-1R. Since all annual report forms unique to investment companies are being replaced by one semi-annual report, rule 30a-1 is revised to provide that the filing of semi-annual reports on form N-SAR by management investment companies and the filing of annual reports on form N-SAR by UITs satisfies the annual report requirement of section 30(a). The rule requires UITs to fill an annual report on form N-SAR sixty calendar days after the close of each calendar year and to pay a $125 filing fee at that time. A UIT that is in the process of registering its securities for the first time under the 1933 Act is relieved of this filing obligation until its registration statement becomes effective or is withdrawn. Rules 30a-2 and 30a-3 are rescinded.

Section 30(b)(1) of the 1940 Act requires every registered investment company to file with the Commission "such information and documents (other than financial statements) as the Commission may require, on a semi-annual or quarterly basis, to keep reasonably current the information and documents contained in the registration statement[s] of such [registrants]". Two new rules are adopted under this section: rules 30b1-3 and 30b1-4. Rule 30b1-3 designates form N-SAR as the semi-annual report form for all registered management investment companies, specifying that each company should file the report within sixty calendar days after the close of each of its semi-annual accounting periods and pay a $125 filing fee at that time. A management company that is in the process of registering its securities for the first time under the 1933 Act is relieved of this filing obligation until its registration statement becomes effective or is withdrawn.[22] Rule 30b1-4 permits financial information with respect to a management company's wholly owned subsidiaries to be incorporated in the registrant's report on form N-SAR.[23] Rule 12b-25 under the 1934 Act is amended to permit investment companies, as well as other registrants filing periodic reports under the 1934 Act, to rely on that rule to obtain an automatic extension of time to file.

Temporary Rules

As discussed above, rules 30b1-5(T) and 27d-4(T) are adopted to suspend temporarily the quarterly reported obligations of management investment companies and issuers of periodic payment plans. The contents of form N-1Q, the quarterly report for management investment companies, are transferred to temporary items 77 and 10Z of form N-SAR. The Commission is soliciting comments on whether these changes in the quarterly reporting obligations of management investment companies and issuers of periodic payment plans should be made on a permanent basis. If the Commission decides, based on the comments received, to rescind permanently these quarterly reporting obligations and to incorporate form N1-Q in form N-SAR, the following actions will be taken: (i) forms N-1Q and N-27D-2 will be withdrawn; (ii) rules 13a-12 [17 CFR 240.13a-12] and 15d-12 [17 CFR 240.15d-12] under the 1934 Act and rules 27d-3 [17 CFR 270.27d-3], 30b1-1 [17 CFR 270.30b1-1] and 30b1-2 [17 CFR 270.30b1-2] under the 1940 Act will be rescinded; and [iii] rules 13a-13 [17 CFR 240.13a-1], 13a-16 [17 CFR 240.13a-16], 15d-13 [17 CFR 240.15d-13] and 15d-16 [17 CFR 240.15d-16] under the 1934 Act will be revised to eliminate references to the withdrawn reporting forms.

Adoption of Temporary Rules Without Prior Notice or Delay

The Administrative Procedure Act [5 U.S.C. 551 et seq.] ["APA"] generally requires that any agency publish a notice of proposed rulemaking that provides adequate opportunity for comment by interested persons. Section 553(b)(B) of the APA provides an exception from this requirement in situations where the agency for good cause finds that prior notice and comment are "impractical, unnecessary, or contrary to the public interest." These standards are incorporated in rule 4(b) of the Commission's Rules of Practice [17 CFR 201.4(b)], which requires

[21] Items 64 and 65 are to be answered by all management investment companies except SBICs; Items 128, 129, and 130 are to be answered by all UITs.

[22] Rule 8b-16, which relates to a registered management investment company's obligation to amend its 1940 Act registration statement, is technically amended to refer to rule 30b1-3 instead of rule 30a-2.

[23] See item 78 of the final form. As proposed, rule 30b1-4 would have permitted a wholly owned subsidiary of a registered investment company to file a summary statement in lieu of form N-SAR.

publication and prior notice of proposed rules "[e]xcept where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."

The purpose of temporary rules 27d-4[T] and 30b1-5(T) is to suspend temporarily the quarterly reporting obligations of issuers of periodic payment plans and management investment companies. The Commission believes that these temporary rules will have no detrimental impact on the rights of companies subject to the quarterly reporting requirements that are suspended. In addition, the Commission believes that there is little, if any, likelihood that any interested person would have reason to object to the withdrawal of these quarterly reports on a permanent basis. Accordingly, the Commission has determined that prior notice and comment are unnecessary. Further, the Commission finds, pursuant to section 553(d)(1) of the APA, that a 30-day delay in effectiveness is not required because these temporary rules suspend existing reporting requirements. Therefore, these temporary rules will become effective (upon publication in the **Federal Register**).

List of Subjects in 17 CFR Parts 240, 249, 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Form and Rule Amendments

Parts 240, 249, 270 and 274 of Chapter II, Title 17 of the Code of Federal Regulations are amended as set forth below:

PART 240—RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. By revising the heading, paragraphs (a), (b)(2)(ii), and (f) of § 240.12b-25 to read as follows:

§ 240.12b-25 Notification of inability to timely file all or any required portion of a form 10-K, 20-F, 11-K, N-SAR or 10-Q.

(a) If all or any required portion of an annual report on form 10-K, 20-F, 11-K or a quarterly report on form 10-Q required to be filed pursuant to section 13 or 15(d) of the Act and the rules thereunder or if all or any portion of a semi-annual or annual report on form N-SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) * * *

(2) * * *

(ii) Either the subject annual report or semi-annual report/portion thereof will be filed no late than that fifteenth calendar day following the prescribed due date or the subject report/portion thereof will be filed no later than the fifth calendar day following the prescribed due date; and

* * * * *

(f) The provisions of this section shall not apply to financial statements to be filed by amendment to a form 10-K as provided for by paragraph (a) of § 210.3-09 or schedules to be filed by amendment in accordance with General Instruction A to form 10-K.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

* * * * *

2. By revising § 249.322 and revising the heading, paragraph (b) of Part II, Part III, and Paragraph (2) of Part IV of Form 12b-25 to read as follows:

§ 249.322 Form 12b-25—Notification of late filing.

This form shall be filed pursuant to § 240.12b-25 of this chapter by issuers who are unable to timely file all or any required portion of an annual report on form 10-K, 20-F, or 11-K or a quarterly report on form 10-Q required by section 13 or 15(d) of the Act of a semi-annual or annual report on form N-SAR required by section 30 of the Investment Company Act of 1940. The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, D.C. 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from "Publications", Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

* * * * *

Attachment A: Notification of Late Filing

(Check One):

[ ] Form 10-K [ ] Form 11-K [ ] Form 20-F [ ] Form 10-Q [ ] Form N-SAR

* * * * *

Part II—Rule 12b-25 (b) and (c)

* * * * *

[ ] (b) The subject annual report or semi-annual report/portion thereof will be filed on or before the fifteenth calendar day following the prescribed due date; or the subject quarterly report/portion thereof will be filed on or before the fifth calendar day following the prescribed due date; and

* * * * *

Part III—Narrative

State below in reasonable detail the reasons why the form 10-K, 11-K, 20-F, 10-Q or N-SAR or portion thereof could not be filed within the prescribed time period.

* * * * *

Part IV—Other Information

* * * * *

(2) Have all other periodic reports required under section 13 or 15(d) of the Securities Exchange Act of 1934 or section 30 of the Investment Company Act of 1940 during the preceding [ ] Yes [ ] No
12 months or for such shorter period that the registrant was required to file such report(s) been filed? If the answer is no, identify report(s).

* * * * *

3. By revising § 249.330 to read as follows:

§ 249.330 Form N-SAR, semi-annual report of registered investment companies.

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a-1 (17 CFR 270.30a-1) or 30b1-3 (17 CFR 270.30b.1-3) in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 274.101 of this chapter).

§ 249.332 [Removed]

4. By removing § 249.332.

§ 249.402 [Removed]

5. By removing § 249.402.

§ 249.442 [Removed]

6. By removing § 249.442.

§ 249.443 [Removed]

7. By removing § 249.443.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

8. By revising § 270.8b-16 to read as follows:

§ 270.8b-16 Amendments to registration statement.

Every registered management investment company which is required to file a semi-annual report on form N-SAR, as prescribed by rule 30b1-3 (17

CFR 270.30b1–3) shall amend the registration statement required pursuant to section 8(b) by filing, not more than 120 days after the close of each fiscal year ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

9. By adding § 270.27d–4(T) to read as follows:

§ 270.27d–4(T) Temporary suspension of quarterly reporting obligation of issuers of periodic payment plan certificates subject to the surrender rights of section 27(d) of the Act.

The obligation of issuers of periodic payment plan certificates subject to the surrender rights of section 27(d) of the Act to file quarterly reports on form N–27D–2 (17 CFR 274.127d–2 of this chapter) pursuant to sections 27(d), 27(f), 30(b) and 38 of the Act and the rules and regulations thereunder is suspended until December 31, 1985, or such earlier date as the Commission takes further action.

10. By revising § 270.30a–1 to read as follows:

§ 270.30a–1 Annual report.

A registered management investment company required to file an annual report pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 and section 30(a) of the Investment Company Act of 1940 shall be deemed to have satisfied its requirement to file an annual report by the filing of semi-annual reports on form N–SAR in accordance with the rules and procedures specified thereof. Every registered unit investment trust shall file an annual report on form N–SAR with respect to each calendar year not more than sixty calendar days after the close of each year. At the time of filing such annual report, the registered unit investment trust shall pay to the Commission a fee of $125, no part of which shall be refunded. A registered unit investment trust that has filed a registration statement with the Commission registered its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

§ 270.30a–2 [Removed]

11. By removing § 270.30a–2.

§ 270.30a–3 [Removed]

12. By removing § 270.30a–3.

13. By adding § 270.30b1–3 to read as follows:

§ 270.30b1–3 Semi-annual report.

Every registered management investment company shall file a semi-annual report on form N–SAR, not more than sixty calendar days after the close of each fiscal year and fiscal second quarter. At the time of filing such semi-annual report on form N–SAR, the registered management company shall pay to the Commission a fee of $125, no part of which shall be refunded. A registered management company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

14. By adding § 270.30b1–4 to read as follows:

§ 270.30b1–4 Semi-annual report for totally-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of rules 30a–1 and 30b1–3, a registered investment company that is a totally-owned subsidiary or a registered management investment company need not file a semi-annual report on form N–SAR if financial information with respect to that subsidiary is reported in the parent's semi-annual report on form N–SAR.

15. By adding § 270.30b1–5(T) to read as follows:

§ 270.30b1–5(T) Temporary suspension of quarterly reporting obligation of management investment companies.

The obligation of all management investment companies to file quarterly reports on form N–1Q (17 CFR 274.106) pursuant to section 30(b)(1) of the Act or section 13(a) or 15(d) of the Securities Exchange Act of 1934 and the rules and regulations thereunder is suspended until December 31, 1985, or such earlier date as the Commission takes further action.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

16. By revising § 274.101 to read as follows:

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a–1 (17 CFR 270.30a–1) or 30b1–3 (17 CFR 270.30b1–3) in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 249.330 of this chapter).

§ 274.102 [Removed]

17. By removing § 274.102.

§ 274.103 [Removed]

18. By removing § 274.103.

§ 274.105 [Removed]

19. By removing § 274.105.

Statutory Basis

Form N–SAR, rules 27d–4(T), 30b1–3, 30b1–4 and 30b1–5(T) are adopted, forms N–1R, N–5R, N–30A–2, N–30A–3 and 2-MD withdrawn, rule 30a–1 revised and rules 30a–2 and 30a–3 rescinded pursuant to the authority granted the Commission in sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d), and 78w(a)) and sections 8, 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8, 80a–29 and 80a–37). Rule 12b–25 is revised pursuant to the authority granted the Commission in sections 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d), and 78w(a)).

Summary of Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 604 regarding the adoption of form N–SAR and the adoption of related rules and rule amendments. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the release proposing the new form at 49 FR 32370.

The Commission has also prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding the adoption of rules 27b–4(T) and 30b1–5(T), temporarily suspending the quarterly reporting obligations of issuers of periodic payment plan certificates and management investment companies, respectively. The analysis states that the temporary rules will have a significant

beneficial economic impact on small issuers of periodic payment plan certificates and small management investment companies by relieving those entities temporarily of their quarterly filing obligations. Copies of the Final Regulatory Flexibility Analysis concerning the adoption of form N-SAR and the Initial Regulatory Flexibility Analysis concerning the adoption of the temporary rules may be obtained by contacting Carolyn Uberman in the manner specified above.

Dated: January 4, 1985.

By the Commission.

John Wheeler,

Secretary.

BILLING CODE 8010-01-M

Appendix A

FORM N-SAR

SEMI-ANNUAL REPORT
FOR REGISTERED INVESTMENT COMPANIES

FORM N-SAR
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FORM N-SAR
FOR REGISTERED INVESTMENT COMPANIES
FOR THE FISCAL SIX MONTH PERIOD ENDING (a)____
OR FISCAL YEAR ENDING (b)_____

OMB Approval
OMB 3235-0330
Expires October 31, 1986

For period ending (a) _____
File number (c) 811- _____

If filing more than one Page 2, "X" box .....(e) ☐

GENERAL INFORMATION

Those items or sub-items with a box "☐" after the item number should be completed only if the answer has changed from the previous filing on this form.

1. A. REGISTRANT NAME: _____

B. File Number: 8 1 1 - _____

C. ☐ Telephone Number: ____ - _____ - _____

D. ☐ Address: (i) _____
Number and P.O. Box if any

(ii) _____, (iii) _____ (iv) _____
City State Zip Code

2. SUMMARY OF THIS FILING:

[Place an "X" next to each item being answered in whole or in part in this filing]

1X	12	23	34	45	56	67	78	89	100	111	122
2X	13	24	35	46	57	68	79	90	101	112	123
3	14	25	36	47	58	69	80	91	102	113	124
4	15	26	37	48	59	70	81	92	103	114	125
5	16	27	38	49	60	71	82	93	104	115	126
6	17	28	39	50	61	72	83	94	105	116	127
7	18	29	40	51	62	73	84	95	106	117	128
8	19	30	41	52	63	74	85	96	107	118	129
9	20	31	42	53	64	75	86	97	108	119	130
10	21	32	43	54	65	76	87	98	109	120	131
11	22	33	44	55	66	77	88	99	110	121	132

3. ☐ Is this the first filing on this form by Registrant? ..... ☐ Yes ☐ No

4. ☐ Is this the last filing on this form by Registrant? ..... ☐ Yes ☐ No

5. ☐ Is Registrant a small business investment company ("SBIC")? ..... ☐ Yes ☐ No

[If answer is "No," go to item 6. If answer is "Yes," complete only items 89 through 110.]

6. ☐ Is Registrant a unit investment trust? ..... ☐ Yes ☐ No

[If answer is "No," go to item 7. If answer is "Yes," complete only items 111 through 132.]

7. A. ☐ Is Registrant a series or multiple portfolio company? ..... ☐ Yes ☐ No

[If answer is "No", go to item 8. If answer is "Yes", answer sub-items 7B and 7C.]

B. ☐ How many separate series or portfolios did Registrant have at the end of the period? ..... _____

C. ☐ List the name of each series or portfolio and give a consecutive number to each series or portfolio starting with the number 1. USE THIS SAME NUMERICAL DESIGNATION FOR EACH SERIES OR PORTFOLIO IN THE SERIES INFORMATION BLOCK IN THE TOP RIGHT CORNER OF THE PAGES SUBMITTED IN THIS FILING AND IN ALL SUBSEQUENT FILINGS ON THIS FORM.

(i) Series Number	(ii) Series Name (The name of each series should be preceded and ended with an asterisk)	(iii) Is this the last filing for this series?
1.	* *	☐ Yes

(Note: See item D(12) of the general instructions to the form for information on how to complete the form for series companies.)

PAGE 3

For period ending (a) _____
File number (c) 811- _____

Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d) _____

If filing more than one Page 3, "X" box .....(e) ☐

8. A. ☐ Investment adviser name (If any): _____

B. ☐ File Number: 801- _____

C. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

9. A. ☐ Sub-adviser name (If any): _____

B. ☐ File Number: 801- _____

C. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

10. A. ☐ Administrator name (If any): _____

B. ☐ File Number (If any): ____- _____

C. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

11. A. ☐ Principal underwriter name (If any): _____

B. ☐ File Number: 8- _____

C. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

12. A. ☐ Shareholder servicing agent name (If any): _____

B. ☐ File Number (If any): ____- _____

C. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

13. A. ☐ Independent public accountant name: _____

B. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

PAGE 4

For period ending (a) _____
File number (c) 811- _____

Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d) _____

If filing more than one Page 4, "X" box .....(e) ☐

14. A. ☐ Name of broker or dealer who is an affiliated person (If any): _____

B. ☐ File Number: 8- _____

C. ☐ Name of second broker or dealer who is an affiliated person (If any): _____

D. ☐ File Number: 8- _____

(Note: If registrant has more than two such brokers or dealers, insert additional copies of this page in accordance with item D(6) of the General Instructions.)

15. A. ☑ Custodian name: _____

B. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

C. ☑ Country if other than United States: _____

	Type of Custody ("X" as appropriate)				
	Bank Sec.17(f)(1)	Member Nat'l Sec. Exchg. Rule 17f-1	Self Rule 17f-2	Foreign Custodian Rule 17f-5	Insurance Co. Sponsor Rule 26a-2
D. ☐	(i) _	(ii) _	(iii) _	(iv) _	(v) _

(Note: If self-custody, provide name of safekeeping depository and location of assets in sub-items 15A and 15B.)

16. A. ☐ Second custodian name (If any): _____

B. ☐ Location: (i) _____ (ii) _____ (iii) _____
City State Zip Code

C. ☑ Country if other than United States: _____

	Type of Custody ("X" as appropriate)				
	Bank Sec.17(f)(1)	Member Nat'l Sec. Exchg. Rule 17f-1	Self Rule 17f-2	Foreign Bank Rule 17f-5	Insurance Co. Sponsor Rule 26a-2
D. ☐	(i) _	(ii) _	(iii) _	(iv) _	(v) _

(Note: If registrant has more than two custodians, insert additional copies of this page in accordance with item D(6) of the General Instructions.)

For period ending (a)
File number (c) 811-

Series Information Block
This page is being filed for:
All Series .....(b) [ ]
Series(d)

If filing more than one Page 5, "X" box .....(e) [ ]

17. A. [/] Sub-custodian name (If any):

B. [/] Location: (i) City (ii) State (iii) Zip Code

C. [/] Country if other than United States:

Type of Custody ("X" as appropriate)

	Bank Sec.17(f)(1)	Member Nat'l Sec. Exchg. Rule 17f-1	Self Rule 17f-2	Foreign Custodian Rule 17f-5	Insurance Co. Sponsor Rule 26a-2
D. [/]	(i)	(ii)	(iii)	(iv)	(v)

18. [/] Does Registrant's/Series' custodian(s) maintain some or all of Registrant's/Series' securities in a central depository or book-entry system pursuant to Rule 17f-4? ..... [ ] Yes [ ] No

19. Family of investment companies information:

A. [/] Is Registrant part of a family of investment companies? ..... [ ] Yes [ ] No

B. [/] If "Yes," state the number of registered management investment companies in the family .....
(Note: count as a separate company each series of a series company and each portfolio of a multiple portfolio company; exclude all series of unit investment trusts from this number.)

C. [/] Identify the family using 10 letters ..... * _____ *
(Note: In filing this form, use this identification consistently for all investment companies in the family including any unit investment trusts. This designation is for purposes of this form only.)

For period ending (a) _____
File number (c) 811- _____

If filing more than one Page 6, "X" box .....(e) [ ]

PORTFOLIO TRANSACTIONS

20. Brokerage commissions paid on portfolio transactions of Registrant:

List below the ten brokers which received the largest amount of brokerage commissions (excluding dealer concessions in underwritings) by virtue of direct or indirect participation in Registrant's portfolio transactions, set forth in order of size of gross commissions during the current reporting period:

[FOR A SERIES COMPANY, ITEMS 20 AND 21 ARE TO BE ANSWERED ONLY IN TOTAL FOR ALL SERIES]

A. Name of Broker (Put an asterisk before the name of each entity listed below)	B. IRS Number (Each number should start with a #)	C. Gross Commissions Received from Registrant ($000's omitted)
*	#	$

(Note: each dollar amount in the table should start with a $)

21. Aggregate brokerage commissions paid by Registrant during current reporting period ($000's omitted) ..... $_____

PAGE 7

For period ending (a) _____
File number (c) 811- _____

If filing more than one Page 7, "X" box .....(e) ☐

22. Registrant's portfolio transactions with entities acting as principals:

List the ten dealers or other entities acting as principals with whom Registrant did the largest amount of portfolio transactions (including all short-term obligations, and U.S. Government and tax-free securities) in both the secondary market and in underwritten offerings set forth in order of size based upon total value of principal transactions during the current reporting period:

[FOR A SERIES COMPANY ITEMS 22 AND 23 ARE TO BE ANSWERED ONLY IN TOTAL FOR ALL SERIES]

A. Name of Entity (Put an asterisk before the name of each entity listed below)	B. IRS Number (Each number should start with a #)	C. Purchases by Registrant ($000,000's omitted)	D. Sales by Registrant (excl. maturing securities) ($000,000's omitted)
*	#	$	$

(Note: each dollar amount in the table should start with a $)

23. Aggregate principal purchase transactions and sale transactions of the Registrant during the current reporting period ($000,000 omitted) ..... $_____ (C. Total Purchases) $_____ (D. Total Sales)

PAGE 8

For period ending (a) _____
File number (c) 811- _____

Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)

If filing more than one Page 8, "X" box .....(e) ☐

24. ☑ At the end of the current period, did the Registrant/Series hold any securities of its regular brokers or dealers or of the parents of such brokers or dealers that derive more than 15% of gross revenue from securities-related activities? .... ☐ Yes ☐ No

[If answer is "No," go to item 26.
If answer is "Yes," go to item 25.]

25. ☑ List below the information requested about Registrant's/Series' holdings of the securities of its regular brokers or dealers or of their parents that derive more than 15% of gross revenues from securities-related activities:

A. Name of Regular Broker or Dealer or Parent (Issuer) (Put an asterisk before the name of each entity listed below)	B. IRS Number (Each number should start with a #)	C. Type of Security Owned D=debt E=equity	D. Value of any Securities owned By Registrant/ Series at end of current period ($000's omitted)
*	#		$

(Note: each dollar amount in the table should start with a $)

For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)_____

If filing more than one Page 9, "X" box .....(e) ☐

26. ☑ Considerations which affected the participation of brokers or dealers or other entities in commissions or other compensation paid on portfolio transactions of Registrant:

[FOR SERIES COMPANIES THIS ITEM IS TO BE ANSWERED ONLY IN TOTAL FOR ALL SERIES]

Place "X's" on the appropriate lines.

	YES
A. Sales of Registrant's/Series's shares	–
B. Receipt of investment research and statistical information	–
C. Receipt of quotations for portfolio valuations	–
D. Ability to execute portfolio transactions to obtain best price and execution	–
E. Receipt of telephone line and wire services	–
F. Broker or dealer which is an affiliated person	–
G. Arrangement to return or credit part or all of commissions or profits thereon:	
(i) To investment adviser, principal underwriter, or an affiliated person of either	–
(ii) To Registrant	–
H. Other	–

SALES AND REPURCHASES OF REGISTRANT'S SHARES

27. ☑ Is Registrant/Series an open-end investment company? ..... ☐ Yes ☐ No

[If answer is "No," go to item 45.
If answer is "Yes," go to item 28.]

For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for:
Series(d)_____

If filing more than one Page 10, "X" box ....(e) ☐

28. Monthly sales and repurchases of Registrant's/Series' shares:

Month of Current Period	(i) Total NAV of Shares Sold: New Sales (Incl. Exchanges) ($000's omitted)	(ii) Total NAV of Shares Sold: Reinv. of Dividends & Distributions ($000's omitted)	(iii) Total NAV of Shares Sold: Other ($000's omitted)	(iv) Total NAV of Shares Redeemed and Repurchased (Incl. Exchanges) ($000's omitted)
A. First or seventh	$	$	$	$
B. Second or eighth	$	$	$	$
C. Third or ninth	$	$	$	$
D. Fourth or tenth	$	$	$	$
E. Fifth or eleventh	$	$	$	$
F. Sixth or twelfth	$	$	$	$
G. Total	$	$	$	$

H. Total NAV of Registrant's/Series' share sales during the period subject to a sales load ($000's omitted) ..... $_____

29. ☑ Does Registrant/Series deduct a front-end sales load? ..... ☐ Yes ☐ No

[If answer is "No," go to item 34.
If answer is "Yes," go to item 30.]

30. A. Total front-end sales loads collected from sales (including exchanges) by principal underwriter or by any underwriter which is an affiliated person of the principal underwriter, of Registrant's/Series' shares during the current period ($000's omitted) ..... $_____

B. What is the maximum sales load rate in effect at the end of the period as a percentage of the offering price? ..... _____%

C. What is the minimum sales load rate in effect at the end of the period as a percentage of the offering price? ..... _____%

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For period ending (a)_____
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Series Information Block
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All Series .....(b) ☐
Series(d)_____

If filing more than one Page 10, "X" box .....(e) ☐

31. Net amount retained by Registrant's/Series' principal underwriter or by any underwriter which is an affiliated person of the principal underwriter thereof from front-end sales loads collected from sales of Registrant's/Series' shares during the current period ($000's omitted) ..... $_____

32. Net amount Registrant's/Series' principal underwriter and any underwriters which are affiliated persons of the principal underwriter paid from front-end sales loads to dealers which are not affiliated persons of the principal underwriter for selling Registrant's/Series' shares during current period ($000's omitted) ..... $_____

33. Net amount paid to a captive retail sales force of Registrant's/Series' principal underwriter or of any underwriter which is an affiliated person of the principal underwriter from front-end sales loads for selling Registrant's shares during current period ($000's omitted) ..... $_____

34. ☐ Does Registrant/Series impose a deferred or contingent deferred sales load? ..... ☐ Yes ☐ No

[If answer is "No," go to item 37.
If answer is "Yes," go to item 35.]

35. Total deferred or contingent deferred sales loads collected during current period from redemptions and repurchases of Registrant's/Series' shares ($000's omitted) ..... $_____

36. A. ☐ Does Registrant/Series retain all monies collected from the deferred or contingent deferred sales load? ... ☐ Yes ☐ No

B. If answer to sub-item 36A is "No," state the net amount Registrant/Series retained from deferred or contingent deferred sales loads ($000's omitted) ..... $_____

37. ☐ Does Registrant/Series impose a redemption fee other than a deferred or contingent sales load? ..... ☐ Yes ☐ No

[If answer is "No," go to item 39.
If answer is "Yes," go to item 38.]

38. Total amount of redemption fees other than deferred or contingent deferred sales loads collected from redemptions and repurchases of Registrant's/Series' shares during the current period ($000's omitted) ..... $_____

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For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)_____

If filing more than one Page 12, "X" box .....(e) ☐

39. ☐ Are any account maintenance fees or other administrative fees imposed directly on shareholders? ..... ☐ Yes ☐ No

40. ☐ Does the Registrant/Series have a plan of distribution adopted pursuant to Rule 12b-1? ..... ☐ Yes ☐ No

[If answer is "No," go to item 45.
If answer is "Yes," go to item 41.]

41. ☐ Does Registrant/Series use its assets directly to make payments under the 12b-1 plan? ..... ☐ Yes ☐ No

[If answer is "No," go to item 44.
If answer is "Yes," go to item 42.]

42. For the current period, indicate the percentage of total dollars paid directly by the Registrant/Series under the 12b-1 plan for each of the following (round answers to the nearest whole percent):

	%
A. Advertising	___
B. Printing and mailing of prospectuses to other than current shareholders	___
C. Payments to underwriters	___
D Payments to brokers or dealers	___
E. Direct payments to sales personnel	___
F. Payments to banks and savings and loans	___
G. Other uses, including payments to the investment adviser separate from the advisory fee	___
H. Unallocated payments made for a combination of such services	___

43. Total amount paid directly by Registrant/Series pursuant to its 12b-1 plan ($000's omitted) ..... $_____

44. If an investment adviser or other affiliated person of Registrant/Series made payments pursuant to Registrant's/Series' 12b-1 plan, state the total amount of such payments ($000's omitted) ..... $_____

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For period ending (a) _____
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Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)

If filing more than one Page 13, "X" box .....(e) ☐

CONTRACTS

45. ☐ If Registrant/Series does not have an advisory contract, place an "X" in the box and go to item 55 ..... ☐

46. ☐ Does Registrant/Series pay more than one investment adviser directly for investment advice? ..... ☐ Yes ☐ No
[If answer is "Yes," answer items 47 to 52 in the aggregate for all such investment advisers.]

47. ☐ Is Registrant's/Series' advisory fee based solely on a percentage of its assets? ..... ☐ Yes ☐ No

48. ☐ If answer to item 47 is "Yes," fill in the following table based upon the terms in the advisory contract(s):

	STEP:	(i) ASSET VALUE ($000,000's omitted)	(ii) ANNUAL FEE RATE
A.	first -	$_____	_____%
B.	of next -	$_____	_____%
C.	of next -	$_____	_____%
D.	of next -	$_____	_____%
E.	of next -	$_____	_____%
F.	of next -	$_____	_____%
G.	of next -	$_____	_____%
H.	over -	$_____	_____%

49. ☐ Is Registrant's/Series' advisory fee based solely on a percentage of its income? ..... ☐ Yes ☐ No

50. ☐ Is Registrant's/Series' advisory fee based on some combined percentage of its income and assets? ..... ☐ Yes ☐ No

51. ☐ Is Registrant's/Series' advisory fee based in whole or in part on its investment performance? ..... ☐ Yes ☐ No

52. ☐ Is Registrant's/Series' advisory fee based in whole or in part upon the assets, income or performance of other registrants? ..... ☐ Yes ☐ No

For period ending (a) _____
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Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)

If filing more than one Page 14, "X" box .....(e) ☐

53. A. ☐ Were the expenses of the Registrant/Series limited or reduced at any time during the period by some agreement or understanding other than by blue sky laws? ..... ☐ Yes ☐ No

[If answer to sub-item 53A is "Yes," was limitation that applied during the current period based upon:]

	Yes
B. ☐ Assets	–
C. ☐ Income	–

54. ☐ Indicate below services which were supplied or paid for wholly or in substantial part by investment adviser(s) or administrator(s) in connection with the advisory or administrative contract(s) but for which the adviser(s) or administrator(s) are not reimbursed by the Registrant: [place an "X" on the appropriate lines]

	Yes
A. Occupancy and office rental	–
B. Clerical and bookkeeping services	–
C. Accounting services	–
D. Services of independent auditors	–
E. Services of outside counsel	–
F. Registration and filing fees	–
G. Stationery, supplies and printing	–
H. Salaries and compensation of Registant's interested directors	–
I. Salaries and compensation of Registrant's disinterested directors	–
J. Salaries and compensation of Registrant's officers who are not directors	–
K. Reports to current shareholders	–
L. Determination of offering and redemption prices	–
M. Trading department	–
N. Prospectus preparation and printing for current shareholders	–
O. Other (do not specify)	–

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For period ending (a)_____
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Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)

If filing more than one
Page 15, "X" box .....(e) ☐

MISCELLANEOUS INFORMATION

55. Did Registrant/Series have any of the following outstanding at any time during the current period which exceeded 1% of aggregate net assets? [Place an "X" after the appropriate descriptions]

		Yes
A.	☐ Overdrafts	_
B.	☐ Bank loans	_

		Yes	No
56.	☐ Does the Registrant's/Series' investment adviser(s) have advisory clients other than investment companies?	☐	☐
57.	☐ Has the Registrant/Series adjusted the number of its shares outstanding by means of a stock split or stock dividend?	☐	☐

CLASSIFICATION

		Yes	No
58. A.	☐ Is Registrant/Series a separate account of an insurance company?	☐	☐
	If answer to sub-item 58A is "Yes," are any of the following types of contracts funded by the Registrant:		
B.	☐ Variable annuity contracts?	☐	☐
C.	☐ Scheduled premium variable life contracts?	☐	☐
D.	☐ Flexible premium variable life contracts?	☐	☐
E.	☐ Other types of insurance products registered under the Securities Act of 1933?	☐	☐
59.	☐ Is Registrant/Series a management investment company? ...	☐	☐

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For period ending (a)_____
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Series Information Block
This page is being filed for:
Series(d)

If filing more than one
Page 16, "X" box .....(e) ☐

		Yes	No
60.	☐ Is the Registrant/Series a diversified investment company?	☐	☐

61. ☐ What is the lowest minimum initial investment required by a Registrant/Series from an investor that is not an employee or otherwise affiliated with the Registrant/Series, its adviser, principal underwriter or other affiliated entity? ... $_____

		Yes	No
62. A.	Does Registrant/Series usually invest in debt securities, including convertible debt securities, options and futures on debt securities or indices of debt securities?	☐	☐

[If answer to sub-item 62A is "No," go to item 66.]

If answer is "Yes," state the percentage of the portfolio investment in each type at the end of the current period:

	Short-term maturities	
B.	U.S. Treasury	_____%
C.	U.S. Government Agency	_____%
D.	Repurchase agreements	_____%
E.	State and municipal tax-free	_____%
F.	Bank certificates of deposit - domestic	_____%
G.	Bank certificates of deposit - foreign	_____%
H.	Bankers acceptances	_____%
I.	Commercial paper taxable	_____%
J.	Time deposits	_____%
K.	Options	_____%
L.	All other	_____%
	Intermediate and long-term maturities	
M.	U.S. Treasury	_____%
N.	U.S. Government Agency	_____%
O.	State and municipal tax-free	_____%
P.	Corporate	_____%
Q.	All other	_____%

63. For registrant answering "Yes" to item 62, state the dollar weighted average portfolio maturity at the end of the period covered by this report in days or, if longer than 1 year, in years to one decimal place:

A.	.....	_____ days
B.	.....	_____ years

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PAGE 18

Series Information Block
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For period ending (a) _____
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Series Information Block
This page is being filed for: Series(d)

If filing more than one Page 17, "X" box .....(e) ☐

64. A. ☐ Is the timely payment of principal and interest on any of the instruments listed in item 62 insured or guaranteed by an entity other than the issuer? ..... ☐ Yes ☐ No

[If answer to sub-item 64A is "No," go to item 66. If answer is "Yes," go to sub-item 64B.]

B. ☐ Is the issuer of any instrument covered in item 62 delinquent or in default as to payment of principal or interest at the end of the current period? ..... ☐ Yes ☐ No

[If answer to sub-item 64B is "No," go to item 66. If answer is "Yes," go to item 65.]

65. ☐ In computations of NAV per share, is any part of the value attributed to instruments identified in sub-item 64B derived from insurance or guarantees? ..... ☐ Yes ☐ No

66. A. Is the Registrant/Series a fund that usually invests in equity securities, options and futures on equity securities, indices of equity securities or securities convertible into equity securities? ..... ☐ Yes ☐ No

[If answer to sub-item 66A is "No," go to item 67.]

If answer is "Yes," place an "X" on the one line below that best describes its primary investment objective:

B. ☐ Aggressive capital appreciation ..... ___

C. ☐ Capital appreciation ..... ___

D. ☐ Growth ..... ___

E. ☐ Growth and income ..... ___

F. ☐ Income ..... ___

G. ☐ Total return ..... ___

67. ☐ Is the Registrant/Series a balanced fund? ..... ☐ Yes ☐ No

68. Does the Registrant/Series have more than 50% of its net assets at the end of the current period invested in:

A. ☐ The securities of issuers engaged primarily in the production or distribution of precious metals? ..... ☐ Yes ☐ No

For period ending (a) _____
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Series Information Block
This page is being filed for: Series(d)

If filing more than one Page 18, "X" box .....(e) ☐

B. ☐ The securities of issuers located primarily in countries other than the United States? ..... ☐ Yes ☐ No

69. ☐ Is the Registrant/Series an index fund? ..... ☐ Yes ☐ No

70. ☐ Investment practices. Place an "X" in the appropriate columns and lines in the table below:

Activity	(i) Permitted by investment policies — Yes	(ii) If permitted by investment policies, did Registrant/Series engage in this activity during the reporting period? — Yes
A. Investments in repurchase agreements	_	_
B. Investments in options on equities	_	_
C. Investments in options on debt securities	_	_
D. Investments in options on stock indices	_	_
E. Investments in interest rate futures	_	_
F. Investments in stock index futures	_	_
G. Investments in options on futures	_	_
H. Investments in options on stock index futures	_	_
I. Investments in other commodity futures	_	_
J. Investments in restricted securities	_	_
K. Investments in shares of other investment companies	_	_
L. Investments in securities of foreign issuers	_	_
M. Currency exchange transactions	_	_
N. Loaning portfolio securities	_	_
O. Borrowing of money	_	_
P. Purchases or sales by certain exempted affiliated persons	_	_
Q. Margin purchases	_	_
R. Short selling	_	_

71. Portfolio turnover rate for the current reporting period:

A. Purchases ($000,000's omitted) ..... $_____
B. Sales [including all maturities] ($000,000's omitted) .... $_____
C. Monthly average value of portfolio ($000,000's omitted) .. $_____
D. Percent turnover (Use the lesser of sub-item 71A or 71B and divide result by sub-item 71C) ..... _____%

(Note: The number shown in sub-item 71D should be a whole number. For example, if the percentage calculated is 210.45, it should be shown as 210%.)

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For period ending (a)_____
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If filing more than one Page 19, "X" box .....(e) [ ]

FINANCIAL INFORMATION

72. A. How many months do the answers to items 72 and 73 cover? .... _____ Months

	For the six month or twelve month period covered by this form ($000's omitted)
Income	
B. Net interest income	$ _____
C. Net dividend income	$ _____
D. Account maintenance fees	$ _____
E. Net other income	$ _____
Expenses	
F. Gross advisory fees	$ _____
G. Gross administrator(s) fees	$ _____
H. Salaries and other compensation	$ _____
I. Shareholder servicing agent fees	$ _____
J. Custodian fees	$ _____
K. Postage	$ _____
L. Printing expenses	$ _____
M. Directors' fees	$ _____
N. Registration fees	$ _____
O. Taxes	$ _____
P. Interest	$ _____
Q. Bookkeeping fees paid to anyone performing this service	$ _____
R. Auditing fees	$ _____
S. Legal fees	$ _____

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For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for: Series(d)

If filing more than one Page 20, "X" box .....(e) [ ]

	For the six month or twelve month period covered by this form ($000's omitted)
T. Marketing/distribution payments including payments pursuant to a Rule 12b-1 plan	$ _____
U. Amortization of organization expenses	$ _____
V. Shareholder meeting expenses	$ _____
W. Other expenses	$ _____
X. Total expenses	$ _____
Y. Expense reimbursements	$ _____
Z. Net investment income	$ _____
AA. Realized capital gains	$ _____
BB. Realized capital losses	$ _____
CC. Change in net unrealized appreciation (depreciation)	$ _____
DD. Total income dividends declared	$ _____
EE. Total capital gains distributions declared	$ _____
73. Payments per share outstanding during the entire current period:	
A. Dividends from net investment income	$ _____
(Note: show in fractions of a cent if so declared)	
B. Distributions of capital gains	$ _____
(Note: show in fractions of a cent if so declared)	

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For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for: Series(d)

If filing more than one Page 21, "X" box .....(e) ☐

74. Assets, liabilities, net assets:	As of the end of current reporting period ($000's omitted except for per share amounts)
A. Cash	$
B. Repurchase agreements	$
C. Short-term debt securities other than repurchase agreements	$
D. Long-term debt securities including convertible debt	$
E. Preferred, convertible preferred and adjustable rate preferred stock	$
F. Common stock	$
G. Options on equities	$
H. Options on all futures	$
I. Other investments	$
J. Receivables from portfolio instruments sold	$
K. Receivables from affiliated persons	$
L. Other receivables	$
M. All other assets	$
N. Total assets	$

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For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for: Series(d)

If filing more than one Page 22, "X" box .....(e) ☐

	As of the end of current reporting period ($000's omitted except for per share amounts)
O. Payables for portfolio instruments purchased	$
P. Amounts owed to affiliated persons	$
Q. Senior long-term debt	$
R. All other liabilities	$
S. Senior equity	$
T. Net assets of common shareholders	$
U. Number of shares outstanding	
V. Net asset value per share (to nearest cent)	$
W. Mark-to-market net asset value per share for money market funds only (show to four decimal places)	$
X. Total number of shareholder accounts	
Y. Total value of assets in segregated accounts	$
75. Daily (money market funds) or monthly (all other funds) average net assets during current reporting period ($000's omitted)	$
76. Market price per share at end of period (closed-end funds only)	$

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For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 23, "X" box .....(e) ☐

77. A. Is the Registrant filing any of the following attachments with the current filing of Form N-SAR? ..... ☐ Yes ☐ No
[FOR SERIES COMPANIES, THIS ITEM IS TO BE ANSWERED ONLY FOR ALL SERIES AS A GROUP]

[If answer to item 77A is "Yes," place an "X" in the appropriate boxes to indicate that the item is either being filed as an attachment to this form or incorporated by reference.]

B. Accountant's report on internal control ..... ☐
C. Matters submitted to a vote of security holders ..... ☐
D. Policies with respect to security investments ..... ☐
E. Legal proceedings ..... ☐
F. Changes in security for debt ..... ☐
G. Defaults and arrears on senior securities ..... ☐
H. Changes in control of Registrant ..... ☐
I. Terms of new or amended securities ..... ☐
J. Revaluation of assets or restatement of capital share account ..... ☐
K. Changes in Registrant's certifying accountant ..... ☐
L. Changes in accounting principles and practices ..... ☐
M. Mergers ..... ☐
N. Exhibits ..... ☐

78. ☐ Does the Registrant have any wholly-owned investment company subsidiaries whose operating and financial data are consolidated with that of Registrant in this report? ..... ☐ Yes ☐ No

[If answer to item 78 is "No," go to item 80.
If answer is "Yes," go to item 79.]

79. ☐ List the "811" numbers and names of Registrant's wholly-owned investment company subsidiaries consolidated in this report.

811 Numbers	Names (put an asterisk before each name listed)
*	

PAGE 24

For period ending (a)_____
File number (c) 811-_____

Series Information Block
This page is being filed for:
All Series .....(b) ☐
Series(d)

If filing more than one Page 24, "X" box .....(e) ☐

ANNUAL SUPPLEMENT

The items on this page are to be answered and this page is to be filed only once each year with Form N-SAR filed in connection with the end of each Registrant's/Series' fiscal year.

80. Fidelity bond(s) in effect at the end of the period:

A. ☐ Name of insurer:_____
B. ☐ Name of second insurer:_____
C. ☐ Aggregate face amount of coverage for Registrant/Series on all bonds on which it is named as an insured ($000's omitted) ..... $_____

81. A. ☐ Is the bond part of a joint fidelity bond(s) shared with other investment companies? ..... ☐ Yes ☐ No
B. ☐ If the answer to sub-item 81A is "Yes," how many other investment companies are covered by the bond? (Note: count each series of a series company as a separate investment company) .....

82. A. ☐ Does the mandatory coverage of the fidelity bond have a deductible? ..... ☐ Yes ☐ No
B. ☐ If the answer to sub-item 82A is "Yes," what is the amount of the deductible? ..... $_____

83. A. ☐ Were any claims with respect to this Registrant/Series filed under the bond during the period? ..... ☐ Yes ☐ No
B. ☐ If the answer to sub-item 83A was "Yes," what was the total amount of such claim(s)? ..... $_____

84. A. ☐ Were any losses incurred with respect to this Registrant/Series that could have been filed as a claim under the fidelity bond but were not? ..... ☐ Yes ☐ No
B. ☐ If the answer to sub-item 84A is "Yes," what was the total amount of such losses? ..... $_____

85. A. ☐ Are Registrant's/Series' officers and directors covered as officers and directors of Registrant/Series under any errors and omissions insurance policy owned by the Registrant/Series or anyone else? ..... ☐ Yes ☐ No
B. ☐ Were any claims filed under such policy during the period with respect to Registrant/Series? ..... ☐ Yes ☐ No

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 25, "X" box .....(e) ☐

CLOSED-END INVESTMENT COMPANIES

86. Sales, repurchases, and redemptions of Registrant's securities:

Class	(i) Number of Shares or Principal Amount of Debt ($000's omitted)	(ii) Net Consideration Received or Paid ($000's omitted)
Common Stock:		
A. ☐ Sales	_____	$_____
B. ☐ Repurchases	_____	$_____
Preferred Stock:		
C. ☐ Sales	_____	$_____
D. ☐ Repurchases and redemptions	_____	$_____
Debt Securities:		
E. ☐ Sales	$_____	$_____
F. ☐ Repurchases and redemptions	$_____	$_____

87. Securities of Registrant registered on a national securities exchange or listed on NASDAQ:

	(i) Title of each class of securities	(ii) CUSIP or NASDAQ No.	(iii) Ticker Symbol
A. ☐	_____	_____	_____
B. ☐	_____	_____	_____
C. ☐	_____	_____	_____

88. Did Registrant have any of the following outstanding which exceeded 1% of aggregate net assets at any time during the period? [Place an "X" on the appropriate line(s)]

	Yes
A. ☐ Notes or bonds	_
B. ☐ Uncovered options or futures positions	_
C. ☐ Margin loans	_
D. ☐ Preferred stock	_

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 26, "X" box .....(e) ☐

SMALL BUSINESS INVESTMENT COMPANIES

89. A. ☐ Investment adviser name (If any): _____

B. ☐ File Number: 8 0 1 - _____

C. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

90. A. ☐ Transfer agent name (If any): _____

B. ☐ File Number: ____ - _____

C. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

91. A. ☐ Independent public accountant name: _____

B. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

92. A. ☐ Custodian name: _____

B. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

C. ☐ Country if other than United States: _____

	Type of Custody ("X" as appropriate)				
	Bank Sec.17(f)(1)	Member Nat'l Sec. Exchg. Rule 17f-1	Self Rule 17f-2	Foreign Bank Rule 17f-5	Insurance Co. Sponsor Rule 26a-2
D. ☐	(i) _	(ii) _	(iii) _	(iv) _	(v) _

(Note: If self-custody, give name of safekeeping depository and location of assets in sub-items 92A and 92B.)

E. ☐ Does Registrant's custodian maintain some or all of registrant's securities in a central depository or book-entry system pursuant to Rule 17f-4? ..... ☐ Yes ☐ No

93. ☐ Does Registrant's adviser(s) have advisory clients other than investment companies? ..... ☐ Yes ☐ No

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For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 27, "X" box .....(e) ☐

94. Family of investment companies information:

A. ☑ Is Registrant part of a family of investment companies? .. ☐ Yes ☐ No

B. ☑ If "Yes," state the number of management investment companies in the family ..... _____
(Note: count as a separate company each series of a series company and each portfolio of a multiple portfolio company; exclude all series of unit investment trusts from this number)

C. ☑ Identify the family using 10 letters .....* _ _ _ _ _ _ _ _ _ _ *
(Note: In filing this form, use this identification consistently for all investment companies in the family, including any UITs. This designation is for purposes of this form only.)

D. ☑ Is Registrant a wholly-owned subsidiary of a business development company ("BDC")? ..... ☐ Yes ☐ No

E. ☑ If "Yes," identify the BDC as follows:

BDC name: (i) _____

File Number: (ii) 2-_____

95. Sales, repurchases, and redemptions of Registrant's securities during the period:

(i) Class of Security	(ii) Number of Shares or Principal Amount of Debt ($000's omitted)	(iii) Net Consideration Received or Paid ($000's omitted)
Common Stock:		
A. ☑ Sales	_____	$_____
B. ☑ Repurchases	_____	$_____
Preferred Stock:		
C. ☑ Sales	_____	$_____
D. ☑ Repurchases and redemptions	_____	$_____
Debt Securities:		
E. ☑ Sales	$_____	$_____
F. ☑ Repurchases and redemptions	$_____	$_____

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For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 28, "X" box .....(e) ☐

96. Securities of Registrant registered on a National Securities Exchange or listed on NASDAQ:

(i) Title of each class of securities	(ii) CUSIP or NASDAQ No.	(iii) Ticker Symbol
A. ☑ _____	_____	_____
B. ☑ _____	_____	_____
C. ☑ _____	_____	_____

FINANCIAL INFORMATION

97. A. How many months do the answers to items 97 and 98 cover? .... ___ Months

	For the six month or twelve month period covered by this form ($000's omitted)
Income	
B. Net interest income	$_____
C. Net dividend income	$_____
D. Account maintenance fees	$_____
E. Net other income	$_____
Expenses	
F. Gross advisory fees	$_____
G. Gross administrator(s) fees	$_____
H. Salaries and other compensation	$_____
I. Shareholder servicing agent fees	$_____
J. Custodian fees	$_____
K. Postage	$_____
L. Printing expenses	$_____
M. Directors' fees	$_____
N. Registration fees	$_____
O. Taxes	$_____

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PAGE 30

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 29, "X" box .....(e) ☐

	For the six month or twelve month period covered by this form ($000's omitted)
P. Interest	$
Q. Bookkeeping fees paid to anyone performing this service	$
R. Auditing fees	$
S. Legal fees	$
T. Marketing/distribution expenses	$
U. Amortization of organization expenses	$
V. Shareholder meeting expense	$
W. Other expenses	$
X. Total expenses	$
Y. Expense reimbursements	$
Z. Net investment income	$
AA. Realized capital gains	$
BB. Realized capital losses	$
CC. Change in net unrealized appreciation (depreciation)	$
DD. Total income dividends declared	$
EE. Total capital gains distributions declared	$
98. Payments per share outstanding during the entire current period:	
A. Dividends from net investment income	$
(Note: show in fractions of a cent if so declared)	
B. Distributions of capital gains	$
(Note: show in fractions of a cent if so declared)	

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 30, "X" box .....(e) ☐

99. Assets, liabilities, shareholders' equity	As of the end of current reporting period ($000's omitted except for per share amounts)
A. Cash	$
B. Repurchase agreements	$
C. Short-term debt securities other than repurchase agreements	$
D. Long-term debt securities including convertible debt	$
E. Preferred, convertible preferred and adjustable rate preferred stock	$
F. Common stock	$
G. Options on equities	$
H. Options on all futures	$
I. Other investments	$
J. Receivables from portfolio instruments sold	$
K. Receivables from affiliated persons	$
L. Other receivables	$
M. All other assets	$
N. Total assets	$

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For period ending (a)_____
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If filing more than one Page 31, "X" box .....(e) ☐

As of the end of current reporting period ($000's omitted except for per share amounts)

O. Payables for portfolio instruments purchased . $_____

P. Amounts owed to affiliated persons ..... $_____

Q. SBA notes payable ..... $_____

R. All other long-term debt ..... $_____

S. All other liabilities ..... $_____

T. Total liabilities ..... $_____

U. Senior equity securities ..... $_____

V. Common shareholders's equity ..... $_____

W. Number of shares of common stock outstanding . _____

X. Net asset value per share (to nearest cent) of the common stock ..... $_____

Y. Total number of shareholder accounts ..... _____

Z. Total value of assets in segregated accounts . $_____

100. Monthly average net assets during current reporting period ($000's omitted) ..... $_____

101. Market price per share at end of period ..... $_____

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For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 32, "X" box .....(e) ☐

102. A. Is the Registrant filing any of the following attachments with the current filing of Form N-SAR? ..... ☐ Yes ☐ No

[If answer to item 102A is "Yes," place an "X" in the appropriate boxes if the indicated item is being filed as an attachment to this form.]

B. Matters submitted to a vote of security holders ..... ☐

C. Policies with respect to security investments ..... ☐

D. Legal proceedings ..... ☐

E. Changes in security for debt ..... ☐

F. Defaults and arrears on senior securities ..... ☐

G. Changes in control of Registrant ..... ☐

H. Terms of new or amended securities ..... ☐

I. Revaluation of assets or restatement of capital share account ..... ☐

J. Changes in Registrant's certifying accountant ..... ☐

K. Changes in accounting principles and practices ..... ☐

L. Mergers ..... ☐

M. Exhibits ..... ☐

103. ☐ Does the Registrant have any wholly-owned investment company subsidiaries whose operating and financial data are consolidated with that of Registrant in this report? ..... ☐ Yes ☐ No

[If answer to item 103 is "No," go to item 105. If answer is "Yes," go to item 104.]

104. ☑ List the "811" numbers and names of Registrant's wholly-owned investment company subsidiaries consolidated in this report.

811 Numbers | Names (put an asterisk before each name listed)

*

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 33, "X" box .....(e) ☐

ANNUAL SUPPLEMENT

The items on this page are to be answered and this page is to be filed only once each year with Form N-SAR filed in connection with the end of each Registrant's fiscal year.

105. Fidelity bond(s) in effect at the end of the period:

A. ☐ Name of insurer:_____

B. ☐ Name of second insurer:_____

C. ☐ Aggregate face amount of coverage for Registrant on all bonds on which it is named as an insured ($000's omitted) ..... $_____

106. A. ☐ Is the bond part of a joint fidelity bond(s) shared with other investment companies? ..... ☐ Yes ☐ No

B. ☐ If the answer to sub-item 106A is "Yes," how many other investment companies are covered by the bond? (Note: count each series of a series company as a separate investment company) .....

107. A. ☐ Does the mandatory coverage of the fidelity bond have a deductible? ..... ☐ Yes ☐ No

B. ☐ If the answer to sub-item 107A is "Yes," what is the amount of the deductible? ..... $_____

108. A. ☐ Were any claims with respect to this Registrant filed under the bond during the period? ..... ☐ Yes ☐ No

B. ☐ If the answer to sub-item 108A was "Yes," what was the total amount of such claim(s)? ..... $_____

109. A. ☐ Were any losses incurred with respect to this Registrant that could have been filed as a claim under the fidelity bond but were not? ..... ☐ Yes ☐ No

B. ☐ If the answer to sub-item 109A is "Yes," what was the total amount of such losses? ..... $_____

110. A. ☐ Are Registrant's officers and directors covered as officers and directors of Registrant under any errors and omissions insurance policy owned by the Registrant or anyone else? ..... ☐ Yes ☐ No

B. ☐ Were any claims filed under such policy during the period with respect to Registrant? ..... ☐ Yes ☐ No

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 34, "X" box .....(e) ☐

UNIT INVESTMENT TRUSTS

111. A. ☐ Depositor name:_____

B. ☐ SEC File Number (If any): ____-_____

C. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

112. A. ☐ Sponsor name:_____

B. ☐ SEC File Number (If any): ____-_____

C. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

113. A. ☐ Trustee name:_____

B. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

114. A. ☐ Principal underwriter name:_____

B. ☐ File Number: 8-_____

C. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

115. A. ☐ Independent public accountant name:_____

B. ☐ Location: (i)_____ (ii)_____ (iii)_____
City State Zip Code

116. Family of investment companies information

A. ☐ Is Registrant part of a family of investment companies? ..... ☐ Yes ☐ No

B. ☐ Identify the family in 10 letters .....* _____ *
(Note: In filing this form, use this identification consistently for all investment companies in family. This designation is for purposes of this form only.)

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For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 35, "X" box .....(e) ☐

117. A. ☒ Is the Registrant a separate account of an insurance company? ..... ☐ Yes ☐ No

If the answer to sub-item 117A is "Yes," are any of the following types of contracts funded by the Registrant:

B. ☒ Variable annuity contracts? ..... ☐ Yes ☐ No

C. ☒ Scheduled premium variable life contracts? ..... ☐ Yes ☐ No

D. ☒ Flexible premium variable life contracts? ..... ☐ Yes ☐ No

E. ☒ Other types of insurance products registered under the Securities Act of 1933? ..... ☐ Yes ☐ No

118. ☒ State the number of series existing at the end of the period that had securities registered under the Securities Act of 1933 .....

119. ☒ State the number of new series for which registration statements under the Securities Act of 1933 became effective during the period .....

120. ☒ State the total value of the portfolio securities on the date of deposit for the new series included in item 119, ($000's omitted) ..... $_____

121. ☒ State the number of series for which a current prospectus was in existence at the end of the period .....

122. ☒ State the number of existing series for which additional units were registered under the Securities Act of 1933 during the current period .....

123. ☒ State the total value of the additional units considered in answering item 122 ($000's omitted) ..... $_____

124. ☒ State the total value of units of prior series that were placed in the portfolios of subsequent series during the current period (the value of these units is to be measured on the date they were placed in the subsequent series) ($000's omitted) ..... $_____

PAGE 36

For period ending (a)
File number (c) 811-

If filing more than one Page 36, "X" box .....(e) ☐

125. ☒ State the total dollar amount of sales loads collected (before reallowances to other brokers or dealers) by Registrant's principal underwriter and any underwriter which is an affiliated person of the principal underwriter during the current period solely from the sale of units of all series of Registrant ($000's omitted) ..... $

126. Of the amount shown in item 125, state the total dollar amount of sales loads collected from secondary market operations in Registrant's units (include the sales loads, if any, collected on units of a prior series placed in the portfolio of a subsequent series.) ($000's omitted) ..... $

127. List opposite the appropriate description below the number of series whose portfolios are invested primarily (based upon a percentage of NAV) in each type of security shown, the aggregate total assets at market value as of a date at or near the end of the current period of each such group of series and the total income distributions made by each such group of series during the current period (excluding distributions of realized gains, if any):

	(i) Number of Series Investing	(ii) Total Assets ($000,000 omitted)	(iii) Total Income Distributions ($000's omitted)
A. U.S. Treasury direct issue		$	$
B. U.S.Government agency		$	$
C. State and municipal tax-free		$	$
D. Public utility debt		$	$
E. Brokers or dealers debt or debt of brokers' or dealers' parent		$	$
F. All other corporate intermed. & long-term debt		$	$
G. All other corporate short-term debt		$	$
H. Equity securities of brokers or dealers or parents of brokers or dealers		$	$
I. Investment company equity securities		$	$
J. All other equity securities		$	$
K. Other securities		$	$
L. Total assets of all series of Registrant		$	

128. ☒ Is the timely payment of principal and interest on any of the portfolio securities held by any of Registrant's series at the end of the current period insured or guaranteed by an entity other than the issuer? ..... ☐ Yes ☐ No

[If answer to item 128 is "No," go to item 131.
If answer is "Yes," go to item 129.]

GENERAL INSTRUCTIONS

For period ending (a)_____
File number (c) 811-_____

If filing more than one Page 37, "X" box .....(e) ☐

129. ☐ Is the issuer of any instrument identified in item 128 delinquent or in default as to payment of principal or interest at the end of the current period? ..... ☐ Yes ☐ No

[If answer to item 129 is "No," go to item 131.
If answer is "Yes," go to item 130.]

130. ☐ In computations of NAV or offering price per unit, is any part of the value attributed to instruments identified in item 129 derived from insurance or guarantees? ..... ☐ Yes ☐ No

131. Total expenses incurred by all series of Registrant during the current reporting period ($000's omitted) ..... $_____

132. ☐ List the "811" (Investment Company Act of 1940) registration number for all Series of Registrant that are being included in this filing:

811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____
811-_____	811-_____	811-_____	811-_____	811-_____

A. Rule as to Use of Form N-SAR

Form N-SAR is a combined reporting form that is to be used for semi-annual and annual reports by all registered investment companies which have filed a registration statement which has become effective pursuant to the Securities Act of 1933 ("1933 Act") with the exception of face amount certificate companies. Face amount certificate companies should continue to file periodic reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 ("1934 Act"). The form is divided into four sections and only certain investment companies are to complete each section. The first or cover page is to be completed by all companies filing the form. This page provides certain general information about each registrant and indicates which items in the form are being answered in the current filing.

Management investment companies except small business investment companies: The first section of the form, which follows the cover page and contains items 7 through 85, is to be used by all open-end management companies and by all closed-end management companies except small business investment companies ("SBICs"). Each such open and closed-end management company is required to complete appropriate items in this section twice a year, except items 80 through 85 which concern certain insurance which the registrant may have. Items 80 through 85 are to be completed, as appropriate, only once each year as an annual supplement to the form filed after the end of a registrant's fiscal year. The information contained in each filing should be year-to-date. The answers to the items in the form filed to report on the first six months of a registrant's fiscal year should reflect activities occurring and conditions that existed only during that six-month period. The answers to the items in the form filed after the end of a registrant's fiscal year should, except where otherwise indicated, reflect activities occurring and conditions that existed during the entire fiscal year.

The second section of the form, which contains items 86 through 88, is to be completed only by closed-end management companies except SBICs. These items are to be completed and filed twice a year and, like other items in the form, will contain year-to-date information.

Small business investment companies: The third section of the form, which contains items 89 through 110, is to be completed only by all SBICs. Each SBIC is required to complete all of the items in this section twice a year, with the exception of items 105 through 110. Those items, which concern certain insurance which the registrant may have, are to be completed only once each year as an annual supplement to the form filed after the close of a registrant's fiscal year. The information supplied in answer to all other items should be on a year-to-date basis.

Unit investment trusts: The fourth section of the form, which contains items 111 through 132, is to be completed only by all unit investment trusts ("UITs"). Each UIT is required to complete appropriate items in this section once a year for the 12-month period ending December 31 and to include information for all of its series.

Under Section 30(b) of the Investment Company Act of 1940 (the "Act"), Sections 13 and 15(d) of the 1934 Act, and the rules and regulations thereunder, the Commission is authorized to solicit the information required by Form N-SAR from registered investment companies. Disclosure of the information specified on Form N-SAR is mandatory. Information supplied on Form N-SAR will be included routinely in the public files of the Commission and will be available for inspection by any interested persons.

B. Application of General Rules and Regulations

(1) The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form. These general requirements should be carefully read and observed in the preparation and filing of reports on Form N-SAR, except that any provision in the form or in these instructions shall be controlling.

(2) The original and three complete copies of Form N-SAR shall be filed with the Commission. At least one additional copy shall be filed with each exchange, if any, on which a security of the registrant is registered. At least one of the copies filed with the Commission and one filed with each such exchange shall be signed manually. Unsigned copies shall be conformed.

C. Filing the Report

Rule 30b1-3 under the Act requires a $125 fee to be paid to the Commission at the time of filing each semi-annual report by open and closed-end management companies and a $125 fee to be paid to the Commission at the time of filing each annual report by a UIT.

Each filing shall consist of the first or cover page, the information required by the items of the form, and the required signature[s]. The initial filing by a registrant shall include answers to all items that are applicable to the registrant. In subsequent filings, a registrant must answer all applicable items or sub-items that do not have a slashed box "|/|" immediately following the item number or sub-item letter. Those items and sub-items that have a slashed box "|/|" must be answered in a subsequent filing only if the answers have changed from the previous filing. If all of the items and sub-items on a page are designated with a slashed box and the answers to none of these items or sub-items have changed since the previous filing, then none of the items need to be answered and the page on which these items are located need not be included in the filing. For example, since all of the items on page 3 of the form have a slashed box, this page need not be included in a filing if a registrant's answers to all of these items have not changed from the previous filing. In total, there are 17 pages on which all items have slashed boxes, and which, depending on the circumstances, may not have to be included in other than the initial filing. Other pages have a mixture of items that have slashed boxes and those that do not. For such pages, answers should be provided for

all applicable items that do not have a slashed box and for slashed box items where the answers have changed from the previous filing. If an item or sub-item with a slashed box on such a page has not changed from the previous filing, the place for the answer to the item should be left blank.

Item 2 on the cover page serves as a summary and cross check for each N-SAR filed and must be completed each time the form is filed. Registrants are required, opposite the number for each item, to place an "X" if the item is being answered in whole or in part in the current filing. Items 1 and 2 have a prepositioned "X" because these items must be answered each time the form is filed. If an item is not being answered in the current filing, either because it is inapplicable or because it is designated with a slashed box and the answer has not changed from the previous filing, the line next to the item number should be left blank.

D. Preparation of Form N-SAR

(1) Form N-SAR is to be used as a blank form to be filled in by the registrant. Exact copies may be duplicated by the registrant for this purpose, or copies will be furnished by the Commission upon request. Copies duplicated shall be on good quality unglazed white paper, 8 1/2 x 11 inches in size, with approximately a 5/8 inch lefthand margin.

(2) At the time that the Commission accepts filings made in an electronic format, additional instructions will be issued.

(3) The report shall be filed with the Commission no later than the sixtieth day after the end of the fiscal period for which the report is being prepared. All registered management investment companies shall file the form semi-annually. All registered UITs shall file the form annually. An extension of time of up to 15 days for filing the form may be obtained by following the procedures specified in Rule 12b-25 under the 1934 Act.

(4) Because information contained in the form will be computerized, certain procedures must be followed in completing the form. These requirements are as follows:

(a) In answering items that have boxes for the answer, e.g. "Yes" and "No" items, use only a capital letter "X". Such boxes should not be checked or marked other than with an "X".

(b) All dollar amounts entered in the form should be preceded by a dollar sign, "$". If a dollar sign is not preprinted in the space for the answer to an item (such as in item 20), the registrant should put a dollar sign before each dollar amount entered.

(c) In item 7C, the name of each series listed should be preceded and followed by an asterisk, "*". In items 20, 22, 25, 79 and 104, the name of each entity listed should be preceded by an asterisk.

(5) No item of the form except items 77 and 102 shall be answered by incorporating any information by reference.

(6) Every item must be answered in the space provided on the form. No exhibits or supplemental information are required or permitted, except in response to items 77 and 102. For those items requiring a list, such as item 7C or for which not enough space is provided for the answer (e.g., in the case where a registrant has more than one principal underwriter under sub-item 11A), fill out the block located at the top right of the page to indicate that more than one copy of that page is being filed. Continue the answer or listing on a second page, and include that second page in the filing directly following the original page containing that item.

(7) Numerical answers, except per share amounts, shall be rounded to the nearest thousands or millions, as specified in the item requesting the data. Wherever an item says "000's omitted", round to the nearest thousand and drop the last 3 zeros (e.g. 143,902 should be reported as 144). Whenever an item says "000,000's omitted", round to the nearest million and drop the last six zeroes (e.g., 232,675,432 should be reported as 233). Calculated percentages shall be carried to two decimal places unless the item specifies otherwise.

(8) Wherever a date is required, use six numbers, not letters, to fill in the space (e.g. January 2, 1985 should be reported as 01-02-85.) Use only hyphens to separate month, day and year.

(9) One or more items in this form may not apply to a registrant. If this is the case, leave such items completely unanswered. Do not use "not applicable", "NA" or any other indication that the item does not apply. Also, some items, such as the sub-items of item 26, have only "Yes" answers; if the answer for this type of item is "No," do not make any mark to indicate a negative answer.

(10) Each page of the form that is filed must contain the date of the end of the period and the registrant's "811" number. This information is necessary in order to accurately process and file the form. The date should be entered as explained in Instruction D(8).

(11) The answer to items or sub-items that require the registrant to show the state in which an entity is located should be the two-letter abbreviation used by the U.S. Postal Service for that state.

(12) The form has been designed to obtain information from companies registered as series or multiple portfolio companies without requiring each series or portfolio to file a separate form. The form recognizes that some information about the separate series or portfolios of a series company may be the same for all series, while other information may be different for each series. The "Series Information Block," found in the top right-hand corner of each relevant page, is designed to obtain information about series that are different without requiring the registrant to repeat answers where the information about each series is the same.

Each "Series Information Block" requests two types of information. This information should be given only by series or multiple portfolio companies (those companies that have answered "Yes" to item 7A). If the answers to all items on the page are the same for all series, an "X" should be placed in the box of the Series Information Block after the phrase "All Series." The other item in the Series Information Block should be left blank. For example, if a registrant is a series company and the answers to all items on page 3 are the same for all series, then all applicable items on page 3 should be answered and an "X" placed only in the box after the phrase "All Series."

If, however, the answers to all items on a page are not the same for all series, the following steps should be followed:

(a) Determine if the answers to the items on a page are the same for some of the series.

(b) If the answers are the same for some but not all series:

(i) complete the items on the page for those series for which the answers are the same and indicate in the Series Information Block in the space after the word "Series(d)" the numbers given in item 7C to those series having the same answers. Separate the series numbers with commas.

(ii) in the block located directly beneath the Series Information Block on the top right side of the page, place an "X" in the box after the phrase "If filing more than one page __, 'X' box. . . (e)."

(iii) complete the items on a second copy of the page for those other series that have different answers and indicate in the Series Information Block on this second page on the line after the word "Series(d)" the number(s) given in item 7C to these series.

(c) If the answers to the items on a page are different for all series, a separate page must be submitted for each series. In the "Series Information Block" on each such page, indicate on the line after the word "Series(d)" the number given in item 7C to this series. In the block directly beneath the Series Information Block, place an "X" in the box after the phrase "If filing more than one page ___, 'X' box . . . (e)."

(d) On several pages of the form, e.g. pages 10 and 16, the Series Information Block provides room for indicating only the series number. The block to be checked for all series has been omitted because the answers to all items would not be the same for all series.

An example may help to illustrate the use of the Series Information Block. Assume there are five series in a fund and all five have the same answers to the questions on page 3 except that series 5 also has a sub-adviser. To complete page 3 on the initial filing of the form, items 8, 10, 11, 12, and 13 would be completed for Series 1 through 4. The Series Information Block would be completed as follows:

Series Information Block

This page is being filed for
All Series .....(b) ☐
Series(d)1, 2, 3, 4

The box used to indicate that more than one of the same numbered page is being filed would also be completed as follows:

If filing more than one Page 3, "X" box .....(e)[X]

A second page 3 would be completed for series 5. All items must be completed, including the additional information about the sub-adviser and the items previously completed for the other four series. The Series Information Block and the block used to indicate filing of more than one page on this second page 3 would be completed as follows:

Series Information Block

This page is being filed for
All Series .....(b) ☐
Series(d)5

If filing more than one Page 3, "X" box.....(e) [X]

For certain items, such as 20 and 21, the form requests information in the aggregate for all series or portfolios of a series fund or multiple portfolio company though the information for each series or portfolio may be different.

F. Definitions

Unless the context clearly indicates the contrary, terms used in Form N-SAR have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are to sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

Family of Investment Companies: The term "family of investment companies," except for insurance company separate accounts, means any two or more registered investment companies which share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services. A single registrant that is a series fund would not be considered to be a family of funds simply by reason of having multiple series. A series fund is part of a family only if there are other entities in the family that are separately registered under the Act. Insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar.

Fiscal Year: The term "fiscal year" means the fiscal year of the registrant.

Money Market Fund: The term "money market fund" means any open-end management investment company that maintains a stable price per share and that invests at least 80% of its net assets in securities maturing in 12 months or less.

Officer: The term "officer" means a president, vice-president, treasurer, secretary, comptroller, or any other person who performs for an organization, whether incorporated or unincorporated, functions of a policy-making nature.

Registrant: The term "registrant" means the investment company filing this report or on whose behalf the report is filed.

Series or multiple portfolio company: The term "series or multiple portfolio company" means an open-end investment company that has outstanding more than one class or series of shares, each of which meets the requirements of Section 18(f)(2) of the Act; or any other registrant that has outstanding more than one class, account, series, fund, or portfolio each of which, in essence, should be considered to be a separate reporting entity for purposes of certain items in this form. [See "series companies" in Regulation S-X, Rule 6-03(j) under the 1934 Act].

Instructions to Specific Items

NOTE: Not every item in the form has a separate instruction because the nature of the information requested by such items is self-explanatory.

ITEM 1B: File number

For any UIT that registered more than one series under the Act and the 1933 Act prior to September 1972 and received a separate "811" number for each such series, the "811" number to be shown in this item should be the last such "811" number received. Such last "811" presumably is also the "811" number under which any series of the same trust were registered subsequent to September 1972. Item 132 requests registrants to list all other "811" numbers that were received by series in the trust. NOTE: For further information about this instruction, contact Office of Financial Analysis and Inspections, Division of Investment Management, (202) 272-2024.

ITEM 1C: Telephone number

The reply to this item may be either the registrant's official telephone number or the direct dial telephone number at registrant's office[s] of an individual knowledgeable about the registrant's filing. Registrant should not provide 800 numbers which are intended to provide general information to investors.

ITEM 4: Final filing of Form N-SAR

This item is to be answered "Yes" only if the registrant knows that the current filing of the form will be its last because it has been deregistered as an investment company.

ITEM 5: Small business investment company

A small business investment company ("SBIC") is a company licensed under the Small Business Investment Act of 1958.

ITEM 7: Series or multiple portfolio company

See Part E of the General Instructions for the definition of a series company. The intent of item 7 is to have each registrant identify itself as a series company if it meets the definition. It is important that sub-item 7A be answered correctly because answering much of the remainder of the form depends upon whether a registrant has series or separate portfolios.

Sub-item 7B asks registrants that are series or multiple portfolio companies to indicate the number of separate series or portfolios that existed at the end of the period.

Sub-item 7C asks registrants to give a number to each series or portfolio starting with the number 1 and to state the name of each series or portfolio. It is very important that once a number has been given to a particular series or portfolio, the same number be used for that series or portfolio in all subsequent filings on the form. If the name of a series or portfolio should change, continue to use the number originally given to it and indicate the new name in the next filing on the form after the name was changed. If additional series or portfolios are created after the registrant's initial filing on the form, the numbers assigned to these new series or portfolios, as well as their names, should be shown in sub-item 7C in the next filing of the form. It is not necessary to list all series or portfolios again at that time, only the additional series need be listed. If a series is liquidated or merged or otherwise ceases to exist during a period, this change should be noted in sub-item 7C of the form filed for that period by listing the assigned number and name of such series and by placing an "X" in the box in the column labeled "Is this the last filing for this series?" If more than one series ceased to exist during a period, the registrant should insert additional boxes under sub-item 7C and follow the instructions above for these additional series. The number assigned to such terminated series should not be used for any new series that might be formed in the future. Such terminated series should not be considered in preparing any filings on Form N-SAR after the period in which such series were liquidated or merged.

If a new series is created or an existing series is terminated during the first six months of a registrant's fiscal year, this action must be reported in the filing made for this six-month period. This same information should not be repeated in the filing made at the end of the registrant's fiscal year even though most other information reported in this second filing is year-to-date information.

ITEM 10: Administrator

The term "administrator" means any person who performs services necessary for the operation of the registrant other than services provided by the entities identified in items 8, 9, 11, 12, 13, 14, 15, 16 or 17.

ITEM 12: Shareholder servicing agent

A "shareholder servicing agent" is also known as a transfer agent. If the registrant uses the services of more than one such agent, provide the information requested by this item for the registrant's principal or primary agent.

ITEM 14: Broker or dealer which is an affiliated person

A broker or dealer which is an affiliated person of the registrant as defined in Section 2(a)(3) of the Act should be listed in this item.

ITEM 15: Custodian arrangements

Sub-item 15C requires the registrant to indicate the type of custodianship it uses. Clearing agency and depository trust custody arrangements should be reported separately in item 18 because these arrangements can only be made through banks or member firms which have been entrusted with the registrant's assets. The note following sub-item 15C indicates that any registrant acting as self-custodian should provide the name of the safekeeping depository required by Rule 17f-2 under the Act and its location in sub-items 15A and 15B.

ITEM 19: Family of investment companies

See Part E of the General Instructions for the definition of "family of investment companies".

This item requires a family of investment companies to be identified using ten consecutive letters (omitting spaces). This requirement is only for purposes of automating this form. A registrant may, for example, choose the first ten letters of the name of the registrant, adviser, principal underwriter, sponsor or a combination of these names. The letters used may also be selected randomly. If the identification is not unique, the Commission staff will contact the registrants to work out a suitable change.

ITEMS 20, 21, 22 and 23: Brokerage commissions and principal transactions

Items 20 and 21 request information about the amount of brokerage commissions paid directly or indirectly by the registrant to the ten entities which received the greatest amount of brokerage commissions during the period and the total amount of brokerage commissions paid to all brokerage entities during the period. Items 22 and 23 request information about the value of principal transactions done with the ten entities with which the registrant did the greatest amount of principal transactions (purchases and sales combined) and the total value of all principal transactions during the period. Because portfolio securities can be acquired in a variety of transactions, it may not always be possible to identify clearly when a transaction should be reported in items 22 and 23. To help registrants distinguish between agency and principal transactions, and to promote consistent reporting of the information required by these items, the following criteria should be used:

(a) If a security is purchased or sold in a transaction for which the confirmation specifies the amount of the commission to be paid by the registrant, the transaction should be considered an agency transaction and should be included in determining the answers to items 20 and 21.

(b) If a security is purchased or sold in a transaction for which the confirmation specifies only the net amount to be paid or received by the registrant and such net amount is equal to the market value of the security at the time of the transaction, the transaction should be considered a principal transaction and should be included in determining the amounts in items 22 and 23.

(c) If a security is purchased by a registrant in an underwritten offering, the acquisition should be considered a principal transaction and included in answering items 22 and 23 even though the registrant has knowledge of the amount the underwriters are receiving from the issuer.

(d) If a security is sold by a registrant in a tender offer, the sale should be considered a principal transaction and included in answering items 22 and 23 even though the registrant has knowledge of the amount the offeror is paying to soliciting brokers or dealers.

(e) If a security is purchased directly from the issuer (such as a bank CD), the purchase should be considered a principal transaction and included in answering items 22 and 23.

(f) The value of maturing securities should not be counted as either an agency or principal transaction and should not be included in determining the amounts shown in items 20 through 23.

(g) The purchase or sale of securities in transactions not described in paragraphs "(a)" through "(f)" above should be evaluated by the registrant based upon the guidelines established in those paragraphs and classified accordingly. The agents considered in items 20 and 21 may be persons or companies not registered under the 1934 Act as securities brokers. The persons or companies from whom the investment company purchased or to whom it sold portfolio instruments on a principal basis may be persons or entities not registered under the 1934 Act as securities dealers. The IRS employer number of any entity listed in response to these items should be included. The NASD directory of brokers and dealers contains these IRS numbers for NASD members. Registrants should make a reasonable effort to obtain these numbers when completing the form.

ITEMS 24 and 25: Acquisition of securities of registrant's regular brokers or dealers

These two items are included in the form to obtain information required to be provided by registrant/series that invest, pursuant to Rule 12d3-1 under the Act, in the securities of their regular brokers or dealers, or the parents of such brokers or dealers, that derive more than 15% of their gross revenues from securities-related activities. See Rule 12d3-1 and Investment Company Act Release No. 14036, dated July 13, 1984, adopting Rule 12d3-1. The term "regular broker or dealer" is defined in Rule 10b-1 under the Act. See Investment Company Act Release No. 14193, dated October 12, 1984, adopting Rule 10b-1.

In column A of item 25, the registrant/series should list the name of any of its regular brokers or dealers or the parents of such brokers or dealers (if such parents derived more than 15% of their gross revenues from securities-related activities) whose securities the registrant owned at the end of the current period.

In column B, list the IRS employer identification number for the issuer of the securities reported in column A. Registrant/series should make a reasonable effort to obtain these numbers.

In column C, indicate by using a D for debt and an E for equity the type of security of each issuer which the registrant/series owned at the end of the current period.

In column D, list the value of any securities of issuers listed in column A as of the end of the current period.

ITEM 26: Participation of brokers or dealers in compensation paid on portfolio transactions of registrant

Under sub-item F, the registrant should list brokers or dealers which are affiliated persons of the registrant, its investment adviser or principal underwriter, or of an affiliated person of any of the foregoing.

ITEM 28: Monthly sales and repurchases of registrant's/series' shares

If the filing covers a period of less than six months, fill in information only for those months after the registrant has filed a registration statement which has become effective pursuant to the 1933 Act. For example, if the registrant's fiscal half-year runs from January 1 to June 30, but the registrant's 1933 Act registration statement did not become effective until April 10, fill in only the lines for the fourth, fifth, and sixth months.

This item requires information on a month-by-month basis. The filing made for the second half of a fiscal year should contain sales and redemption data for only months seven through twelve.

The amounts to be reported under this item should be after any front-end sales load has been deducted and before any deferred or contingent deferred sales load or charge has been deducted.

The number of shares should be adjusted to reflect any stock split or stock dividend that occured during the period.

Shares sold shall include shares sold by the registrant to a registered unit investment trust which is either the issuer of plan certificates or a separate account of an insurance company.

Include as shares sold in new sales (column i) any transaction in which the registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares.

Exchanges are defined as the redemption or repurchase of shares of one fund or series and the investment of all or part of the proceeds in shares of another fund or series in the same family of investment companies. Exchanges should be included irrespective of whether a sales load is imposed.

Entries in "Total NAV of Shares Sold: Other" (column iii) should reflect only those sales of registrant's shares that are not more appropriately included in columns i and ii concerning sales of shares.

ITEM 29: Registrant/Series imposing a front-end sales load

The term "sales load" is defined in Section 2(a)(35) of the Act. As defined, the term includes only front-end sales loads, or that money which is deducted from the share price before investment of the proceeds.

ITEM 30: Total front-end sales load collected by underwriters

Include only gross initial sales loads and other underwriting discounts or commissions collected by the registrant's principal underwriter or any underwriter which is an affiliated person of the principal underwriter in its capacity as underwriter of registrant's shares.

ITEM 31: Net sales loads retained by underwriters

Include only underwriting discounts or commissions, and exclude dealer discounts, retained by the principal underwriter or any underwriter which is an affiliated person of the principal underwriter. If the underwriter paid out more to entities selling registrant's shares than it received (i.e., if it had a negative payout), indicate the amount of the negative payout by enclosing the amount of the payout in parenthesis ( ). Amounts reported in this item should exclude amounts reported in items 32 and 33.

ITEM 33: Net amount paid to retail sales force

Include only amounts paid to the underwriter's own sales force.

ITEM 34: Deferred or contingent deferred sales loads

A deferred or contingent deferred sales load is any sales load deducted from the proceeds of the redemption or repurchase of registrant's securities.

ITEM 37: Redemption fees

Include as redemption fees any fees, other than deferred or contingent deferred sales loads, that the registrant imposes on shareholders at the time shares are redeemed or repurchased. Registrants should exclude any other fees imposed on shareholders making exchanges and any reimbursement for out-of-pocket expenses, such as wire fees charged by custodian banks.

ITEM 39: Account maintenance fees

These are fees that are imposed directly on all or most of registrant's shareholders on a periodic basis, such as monthly or quarterly. The amounts reported should include maintenance or administrative fees imposed on variable annuity and variable life insurance contracts funded by separate accounts.

ITEM 40: Registrant/Series using its assets directly to make payments under a 12b-1 plan

A "12b-1 plan" is a written plan described by Rule 12b-1(b) under the Act pursuant to which a registrant/series directly or indirectly finances certain distribution activities including, but not limited to, advertising, compensation of underwriters, dealers and sales personnel, the printing and mailing of prospectuses to other than current shareholders and the printing and mailing of sales literature.

ITEM 41: Direct use of assets under 12b-1 plan

In answering this item, direct payments by the registrant/series under a 12b-1 plan would not include situations where a registrant/series has a so-called prophylactic plan to cover payments its adviser makes to pay for distribution activities. This item should be answered "Yes" only if the registrant makes direct payments for distribution activities.

ITEM 42: Percentage of payments under the 12b-1 plan

Item 42 asks each registrant/series to indicate the percentage of its total direct payments under the 12b-1 plan which were made for a variety of services or functions. Under sub-item 42A, the registrant/series should include all payments it has made directly for advertising. Advertising done by other entities, such as a dealer in fund shares which the dealer pays for with money it receives under the 12b-1 plan should not be included under sub-item 42A. Under sub-items 42C and 42D, the registrant/series should include all payments made under the 12b-1 plan to brokers, dealers and underwriters regardless of how these monies are ultimately used by these entities. Under sub-item 42E, the registrant/series should include all payments under the 12b-1 plan which it has made directly to persons who have sold fund shares. Indirect payments to sales personnel, such as payments to account executives of brokers or dealers selling fund shares which are made by such brokers or dealers with money they receive from the registrant/series under the 12b-1 plan, should not be included in this sub-item. Under sub-item 42F, the registrant/series should include all payments made under the 12b-1 plan to banks and savings and loans regardless of how this money is ultimately used by the bank or savings and loan. But cf. Release No. 34-20357, dated November 14, 1983.

ITEM 51: Registrant/Series having a performance based advisory fee

"Investment performance" is defined in Rule 205-1(a) under the Investment Advisers Act of 1940.

ITEM 53: Expense limitations or reductions

This item seeks information concerning any limitations or reductions, other than those imposed by state blue sky laws, on the level of expenses incurred by the registrant/series during the period. The limitation may be scaled, it may be applied indirectly (such as when the adviser agrees to

accept a reduced fee pursuant to a voluntary fee waiver) or it may apply only for a temporary period such as for a new fund in its start-up phase. If there was any direct or indirect limitation in effect at any time during the period, indicate in sub-items 53B or 53C the basis on which the limitation was applied during the period. If the limitation was based upon both assets and income, answer both sub-items 53B and 53C.

ITEM 55: Overdrafts and bank loans

This item seeks information on the extent to which a registrant/series had overdrafts or bank loans outstanding at any time during the period. In order to avoid having to identify and report small amounts, a 1% of aggregate net assets threshold should be followed. Thus, sub-item A must be answered "Yes" only if the registrant/series had overdrafts that exceeded 1% of net assets at any one time during the period. Sub-item B must be answered "Yes" only if the registrant/series had bank loans outstanding that exceeded 1% of net assets at any one time during the period.

ITEM 61: Minimum required investment

In answering this item, the registrant should give the lowest minimum initial investment that it requires of an investor to open an account. This minimum amount does not have to be received in a lump sum if the registrant/series permits investors to reach this minimum level over a period of time. Minimum investments required to open IRA, KEOGH, qualified corporate retirement plans and other similiar tax-advantaged accounts should not be considered in answering this item.

ITEM 62: Percentage of portfolio in various debt securities

Short-term maturities are defined for purposes of this form as securities with maturities of 12 months or less. Securities having variable or floating interest rates or subject to a demand feature should be considered short-term if the interest rate adjustment period or the demand period is 12 months or less. Intermediate and long-term maturities include all other debt securities. For information on how to determine the maturity of such instruments, registrants should refer to Rule 2a-7(b)(5)-(6) under the Act.

Include as a U.S. Government Agency security any security guaranteed by an agency of the U.S. Government.

The percentages required by this item should conform to the way in which these portfolio instruments and their values are shown in reports to shareholders.

ITEM 63: Dollar weighted average maturity

Except for money market funds, the dollar weighted average maturity of a registrant's portfolio at the end of the period is to be calculated by multiplying the market value of each portfolio security by the time remaining to its maturity (in days or in years to one decimal place), adding these calculations and then dividing the total by the market value of the portfolio. The result should be stated in days for any average maturity of one year or less and in years (to one decimal place) for any average maturity over one year. The maturity of an instrument should be its ultimate maturity date, except that if a security is callable, the maturity date used in this calculation should be the first call date. A money market fund may make this calculation in the same manner as it would in monitoring compliance with the average portfolio maturity provisions of Rule 2a-7 under the Act.

ITEMS 64 and 65: Insured or guaranteed securities

These two items request information about registrant's/series' securities for which the principal amount or interest thereon is insured or guaranteed by an entity other than the issuer. The insurance or guarantee may apply either to individual securities in the portfolio or to the portfolio itself. The entity providing the insurance or guarantee may be either a governmental or nongovernmental entity. The form of the insurance or guarantee may be an insurance policy, a letter of credit, a collateralization agreement, a put or repurchase agreement or a similar mechanism. If any of the securities owned by the registrant/series are insured or guaranteed, the answer to sub-item 64A should be "Yes." If the issuer of any such insured or guaranteed security is delinquent or in default as to payment of principal or interest at the end of the reporting period, the answer to sub-item 64B should be "Yes." Item 65 requires information concerning only whether the insurance or guarantee is being used in any way to value securities for which the issuer is delinquent or in default as to payment of principal or interest. This item is not concerned with whether the value of securities not delinquent or in default may in part be based upon some insurance or guarantee.

ITEM 66: Classification of funds investing in equity securities

A registrant/series with an investment objective of aggressive capital appreciation is one that primarily and regularly seeks short-term appreciation through high-risk investment, with little or no concern for receipt of income.

A registrant/series with an investment objective of capital appreciation is one that primarily and regularly invests for an intermediate-term return by investing in moderate to high-risk securities, with little or no concern for receipt of income.

A registrant/series with an investment objective of growth is one that seeks long-term growth, with a moderate degree of risk. Receipt of income may be considered to some degree in selecting investments.

A registrant/series should "X" sub-item 66E, growth and income, if it primarily and regularly makes low-risk investments with the objective of capital growth and income production.

A registrant/series should "X" sub-item 66F, income, if the receipt of income is the primary reason for selecting portfolio securities.

A registrant/series whose portfolio includes a varying mix of equity and debt securities should "X" sub-item 66G, total return.

ITEM 67: Registrant/Series investing primarily and regularly in a balanced portfolio of debt and equity securities

A balanced fund for purposes of this form is one that has the multiple objectives of providing income, stability of capital, and possible increases in capital. At least 25% of the value of the assets of a registrant/series calling itself a balanced fund should be invested in either debt securities, preferred stock, or some combination of both. If convertible senior securities are included in the required 25%, only that portion of their value attributable to their fixed income characteristics may be used in calculating the 25% figure. See Guide 4 to Form N-1A, (CCH) Fed. Sec. L. ¶ 60,503 at 60,097-29.

ITEM 69: Registrant/Series as an index fund

An index fund is one that seeks to provide investment results corresponding to the movements of a specified index.

ITEM 70: Investment practices

Sub-item 70N, purchases or sales by certain exempted affiliated persons, refers to those purchase and sale transactions which are exempted by Rule 17a-7 under the Act.

ITEM 71: Portfolio turnover rate

The rate of portfolio turnover shall be calculated by dividing (a) the lesser of purchases or sales of portfolio securities for the reporting period by (b) the monthly average of the value of the portfolio securities owned by the registrant during the reporting period. Such monthly average shall be calculated by totaling the market values of the portfolio securities as of the beginning and end of the first month of the reporting period and as of the end of each of the succeeding months in the period and dividing the sum by the number of months in the period plus 1.

For purposes of this item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturity or expiration date at the time of acquisition were one year or less. All long-term securities, including long-term U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased.

Sales shall include the net proceeds from the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

If, during the reporting period, the registrant acquired the assets of another investment company or of a personal holding company in exchange for its own shares, it shall exclude from purchases the value of securities so acquired and from sales, all sales of such securities made following a purchase-of-assets transaction to realign the registrant's portfolio. In such event, the registrant shall also make appropriate adjustment in the denominator of the portfolio turnover computation.

Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition should be included in purchases and sales for purposes of this item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

ITEM 72: Income and expenses

The amounts to be shown in sub-items 72B through 72EE should be based upon the semi-annual or annual financial statements as of the same date contained in reports to shareholders. The amounts shown on the form filed for the fiscal year-end period should include year-to-date information and not amounts for only the last six months of the fiscal year.

Each series of a series company should report its financial information separately. Therefore, the "All series" line in the "Series Information Block" on pages 18-22 has been deleted. The only exception to this requirement is where several series (single investor portfolios) have similar investment objectives and invest in similar securities. For example, money market funds may create single investor portfolios to accommodate the needs of institutional investors. These portfolios may have similar investment objectives and invest in similar securities. To the extent these similarities exist, the financial information requested in item 72 may be combined for such similar portfolios. To the extent this is done, the numbers given such portfolios in sub-item 7C of the form should be shown in the "Series Information Block."

If a sub-item listed under item 72 is not shown in the financial statements in shareholder reports covering the same time period and such amount(s) is not readily available from the registrant's/series' accounting records, then the amount(s) used in shareholder reports should be used. For example, sub-item 72K asks for postage expense. This expense category may be part of other categories such as shareholder servicing agent fees and advisory fees, and the registrant/series may have no easy way to determine the amount. In

such situations, the registrant/series should report only those expense items that are readily available and should not attempt to break out more detailed expenses from a larger expense category. However, if such expense breakdowns are available in records kept pursuant to section 31 of the Act, they should be reported even though these categories may differ from the line items of financial statements included in shareholder reports, except that sub-item 72B, net investment income, should be reported in the form the same way it is included in shareholder reports regardless of the expense breakdowns used.

ITEM 73: Dividends and distributions

The amounts shown for per-share dividends and distributions paid during the current period should be shown to fractions of a cent if the declaration of the dividend or distribution was also to a fraction of a cent. Any fractional amount shown should be carried to three decimal places. If the declarations were in whole cents, the amounts shown should be in whole cents.

ITEM 74: Assets, liabilities, net assets

Amounts shown in sub-items 74A through 74Y should be based upon the semi-annual or annual financial statements as of the same date contained in shareholder reports.

Each series of a series company should report its financial information separately. Therefore, the "All series" line in the "Series Information Block" on pages 18-22 has been deleted. The only exception to this requirement is where several series (single investor portfolios) have similar investment objectives and invest in similar securities. For example, money market funds may create single investor portfolios to accommodate the needs of institutional investors. These portfolios may have similar investment objectives and invest in similar securities. To the extent these similarities exist, the financial information requested in this item may be combined for such similar portfolios. To the extent this is done, the numbers given such portfolios in sub-item 7C of the form should be shown in the "Series Information Block."

If a sub-item listed under this item is not shown in the financial statements in the shareholder report covering the same time period and such amount(s) is not readily available from the registrant's/series' accounting records, then the amount(s) used in shareholder reports should be used.

The instruments listed in sub-items 74B - 74I should be reported in the same way in which these instruments are shown in shareholder reports. That is, if such an instrument was acquired in a transaction that also resulted in the recording of a related liability (e.g. a straddle) and the registrant shows only the net effect of such transactions in reports to shareholders,

then only the net effect should be shown in the form. If reports to shareholders show the gross effect of such transactions, then only the gross effect should be shown in the form. The answer to item 74Y should be the total value of assets that have been segregated to cover short sales, forward commitments, sales of options, purchases or sales of futures, and similar transactions.

ITEM 75: Computation of average net assets

The amount to be shown in this item is the daily average net assets for money market funds and the monthly average net assets for all other companies during the current reporting period. For the latter companies, the average net assets for the period should be calculated by adding the net assets of the registrant/series on the first day of the period and on the last day of each month during the period and then dividing this sum by the number of months in the period plus one. For example, if the computation period is 1/1/85 through 6/30/85, and the registrant is not a money market fund, the registrant should add its net assets on 1/1/85 and on the last day of January, February, March, April, May and June and then divide this total by seven to obtain the average net assets for the period.

ITEM 77: Attachments

The general instructions require that no schedules or supplements be attached to this form except in response to this item. Item 77 requires a registrant that is filing any of the materials listed to mark an "X" in the appropriate boxes to indicate the nature of the attachment. Only materials relating to the documents or circumstances enumerated in this item are to be filed with the form. The following instructions relate to the sub-items of this item:

SUB-ITEM 77B: Accountant's report on internal control

Except as provided below, a management investment company shall furnish a report of its independent public accountant on the company's system of internal accounting controls. The accountant's report shall be based on the review, study and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements. The report should disclose material weaknesses in the accounting system, system of internal accounting control and procedures for safeguarding securities which exist as of the end of the registrant's fiscal year. Disclosure of a material weakness should include an indication of any corrective action taken or proposed.

The accountant's report shall be furnished as an exhibit to the form filed for the company's fiscal year and shall: (1) be addressed to the company's shareholders and board of directors; (2) be dated; (3) be signed manually; and (4) indicate the city and state where issued.

The fact that an accountant's report is attached to this form shall not to be regarded as acknowledging any review of this form by the independent public accountant.

These provisions do not apply to SBICs, or to management investment companies, not required by either the Investment Company Act, any other Federal or state law or rule or regulation thereunder, to have an audit of their financial statements.

SUB-ITEM 77C: Submission of matters to a vote of security holders

If any matter has been submitted to a vote of security holders, furnish the following information:

(a) The date of the meeting and whether it was an annual or special meeting.

(b) If the meeting involved the election of directors, state the name of each director elected at the meeting and of each other director now in office.

(c) Describe each other matter voted upon at the meeting and state the number of affirmative votes and the number of negative votes cast with respect to each such matter.

(d) Describe the terms of any settlement between the registrant and any other participant (as defined in Rule 14a-11 of Regulation 14A under the 1934 Act) terminating any solicitation subject to Rule 14a-11, including the cost or anticipated cost to the registrant.

Instructions. 1. If any matter has been submitted to a vote of security holders otherwise than at a meeting of such security holders, corresponding information with respect to such submission shall be furnished. The solicitation of any authorization or consent (other than a proxy to vote at a stockholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of security holders within the meaning of this item.

2. This sub-item need not be answered as to (i) procedural matters, (ii) the selection or approval of auditors, (iii) the continuation of the current advisory contract, or (iv) the election of directors or officers in cases where there was no solicitation in opposition to the management's nominee, as listed in a proxy statement pursuant to rule 20a-1 under the Act and Regulation 14A under the 1934 Act, and all of such nominees were elected. This sub-item may be omitted if action at the meeting was limited to the foregoing. In cases where the registrant does not solicit proxies and the board of directors as previously reported to the Commission was re-elected in its entirety, a statement to that effect will suffice.

3. If the issuer has published a report containing all of the information required by this item, the item may be answered by a reference to the information contained in such report, provided copies of such report are filed as an exhibit to this form.

4. If the registrant has furnished to its security holders proxy soliciting material containing the information required by paragraph (d) above, the paragraph may be answered by reference to the information contained in such material.

SUB-ITEM 77D: Policies with respect to security investments

Describe any material change which has occurred in the investment policy of the registrant with respect to each of the following matters that has not been approved by shareholders.

(a) The type of securities (e.g., bonds, preferred stocks, common stocks) in which it may invest, indicating the proportion of the assets which may be invested in each such type of security.

(b) The percentage of assets which it may invest in the securities of any one issuer.

(c) The percentage of voting securities of any one issuer which it may acquire.

(d) Investment in companies for the purpose of exercising control or management.

(e) Investment in securities of other investment companies.

(f) The policy with respect to portfolio turnover.

(g) Any other investment policy which is set forth in the registrant's charter, by-laws or prospectus.

SUB-ITEM 77E: Legal Proceedings

(a) Briefly describe any material legal proceedings, other than routine litigation incidental to the business, to which the registrant or any of its subsidiaries has become a party or of which any of their property has become the subject. Include the name of the court in which the proceedings were instituted, the date instituted and the principal parties thereto.

(b) If any such proceeding previously reported has been terminated, identify the proceeding, give the date of termination and state the disposition thereof with respect to the registrant and its subsidiaries.

Instruction. Any bankruptcy, receivership or similar proceeding with respect to the registrant or any of its significant subsidiaries shall be described. Any proceeding to which any director, officer or other affiliated person of the registrant is a party adverse to the registrant or any of its subsidiaries shall also be described. Any proceeding involving the other affiliated person of the registrant as a party adverse to the registrant or any of its subsidiaries shall also be described. Any proceeding involving the revocation or suspension of the right of the registrant to sell securities shall also be described.

SUB-ITEM 77F: Changes in security for debt

If there has been a material withdrawal or substitution of assets securing any class of the registrant's debt, furnish the following information:

(a) The title of the securities.

(b) A brief description of the assets involved in the withdrawal or substitution.

(c) The provision in the underlying indenture, if any, authorizing the withdrawal or substitution.

Instruction. This sub-item does not apply to short-term paper. This sub-item need not be answered where the withdrawal or substitution is made pursuant to the terms of an indenture which has been qualified under the Trust Indenture Act of 1939.

SUB-ITEM 77G: Defaults and arrears on senior securities

(a) State as to each issue of long-term debt of the registrant which is in default at the close of the fiscal semi-annual period with respect to the payment of principal, interest or amortization: (1) Nature of default; (2) date of default; (3) amount of default per $1,000 face amount; and (4) total amount of default.

(b) State as to each issue of capital stock of the registrant on which any accumulated dividend is in arrears at the close of the fiscal semi-annual period: (1) title of issue; (2) amount per share in arrears.

SUB-ITEM 77H: Changes in control of registrant

(a) If any person has become a parent of the registrant, give the name of such person, the date and a brief description of the transaction or transactions by which the person became such a parent and the percentage of voting securities of the registrant owned by the parent or other basis of control by the parent over the registrant.

(b) If any person has ceased to be a parent of the registrant, give the name of such person and the date and a brief description of the transaction or transactions by which the person ceased to be such a parent.

SUB-ITEM 77I: Terms of new or amended securities

(a) If the constituent instruments defining the rights of the holders of any class of the registrant's securities have been materially modified, give the title of the class involved and state briefly the general effect of such modification upon the rights of the holders of such securities.

(b) If the registrant has issued a new class of securities, furnish the description of such class called for by the applicable item of Form N-8B-1.

Instruction. This sub-item does not apply to short-term paper.

SUB-ITEM 77J: Revaluation of assets or restatement of capital share account

(a) If there has been a material change in the method of valuation of the registrant's assets during the semi-annual period, state the date of the change and explain the change, the accounts involved and the statutory or regulatory basis, if any.

(b) If there has been a material restatement of the registrant's capital share account during the semi-annual period, resulting in a transfer from capital share liability to surplus or reserves, or vice versa, state the date, purpose and amount of the restatement and give a brief explanation of all related entries in connection with the restatement.

SUB-ITEM 77K: Changes in registrant's certifying accountant

If an independent accountant has been engaged as the principal accountant to audit the registrant's financial statements who was not the principal accountant for the registrant's most recently filed certified financial statements, state the date when such independent accountant was engaged. The registrant shall also furnish the Commission with a separate letter stating whether in the eighteen months preceding such engagement there were any disagreements with the former principal accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his opinion to the subject matter of the disagreement. The registrant shall also request the former principal accountant to furnish the registrant with a letter addressed to the Commission stating whether he agrees with the statements contained in the letter of the registrant and, if not, stating the respects in which he does not agree; and the registrant shall furnish such letter to the Commission together with its own.

SUB-ITEM 77L: Changes in accounting principles and practices

Describe any change in accounting principles or practices followed by the registrant, or any change in the method of applying any such accounting

principles or practices, which will materially affect the financial statements filed or to be filed for the current year with the Commission and which has not been previously reported hereunder. State the date of the change and the reasons therefor. A letter from the registrant's independent accountants, approving or otherwise commenting on the change, shall accompany the report.

SUB-ITEM 77M: Mergers

If, during the fiscal semi-annual period, registrant became the surviving corporation of a merger or consolidation with one or more other registered investment companies, furnish the following information:

(a) The name of each such other registered company.

(b) The circumstances and details of such merger or consolidation, including the date and terms thereof, any action taken by the board of directors or shareholders approving or ratifying the merger or consolidation, and other actions taken pursuant to state law. Also include any other facts relevant to a Commission consideration of whether such other registered investment company has ceased to be an investment company as defined in the Act.

SUB-ITEM 77N: Exhibits

In addition to the materials provided pursuant to sub-items 77C through 77M, if any, and subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the following exhibits shall be filed as part of this form, if not previously filed:

(a) Copies of any material amendments to the registrant's charter or by-laws.

(b) Copies of the text of any proposal described in answer to sub-item 77O.

(c) Copies of the amendments to all constituent instruments and other documents described in answer to sub-item 77G.

(d) Copies of all constituent instruments defining the rights of the holders of any new class of securities and of any amendments to constituent instruments referred to in answer to sub-item 77J.

(e) Copies of any new or amended investment advisory contract of registrant.

(f) Letters from the registrant and the independent accountants furnished pursuant to sub-items 77K and 77L.

(g) Copies of any merger or consolidation agreement, and other documents relevant to the information sought in sub-item 77M, above.

ITEM 86: Sales, repurchases, and redemptions of securities

This item does not apply to short-term paper, ordinary sinking fund operations or similar periodic decreases made pursuant to the terms of governing instruments, or payment of indebtedness at maturity.

The number of shares reported should be adjusted to reflect any stock dividend or stock split during the period covered by the report.

For purposes of line E, the extension of the maturity date of indebtedness shall be deemed the issuance of new indebtedness.

"Redemption," as used in lines D and F, means redemption at the option of the issuer.

ITEM 88: Senior securities

In addition to the usual type of senior security such as bonds or preferred stocks, certain transactions a registrant may engage in could create a senior security. Examples of such transactions include short sales, uncovered options, purchases of securities on margin and the entering into of firm commitments to purchase securities at a future date. Investment companies may engage in these other transactions and not create a senior security if a segregated account has been established and appropriately funded. In answering this item, a registrant should answer "Yes" only if it had a senior security that was not adequately covered by a segregated account or by other means.

ITEM 94: Family of investment companies

See instructions for item 19.

ITEM 95: Sales, repurchases, and redemptions of securities

See instructions for item 86.

ITEM 97: Income and expenses

See instructions for item 72.

ITEM 98: Dividends and distributions

See instructions for item 73.

ITEM 99: Assets, liabilities and shareholders' equity

See instructions for item 74.

ITEM 100: Computation of average net assets

See instructions for item 76.

ITEM 102: Attachments

See instructions for item 77.

SUB-ITEM 102B: Submission of matters to a vote of security holders

See instructions for sub-item 77C.

SUB-ITEM 102C: Policies with respect to security investments

See instructions for sub-item 77D.

SUB-ITEM 102D: Legal Proceedings

See instructions for sub-item 77E.

SUB-ITEM 102E: Changes in security for debt

See instructions for sub-item 77F.

SUB-ITEM 102F: Defaults and arrears on senior securities

See instructions for sub-item 77G.

SUB-ITEM 102G: Changes in control of registrant

See instructions for sub-item 77H.

SUB-ITEM 102H: Terms of new or amended securities

See instructions for sub-item 77I.

SUB-ITEM 102I: Revaluation of assets or restatement of capital share account

See instructions for sub-item 77J.

SUB-ITEM 102J: Changes in registrant's certifying accountant

See instructions for sub-item 77K.

SUB-ITEM 102K: Changes in accounting principles and practices

See instructions for sub-item 77L.

SUB-ITEM 102L: Mergers

See instructions for sub-item 77M.

SUB-ITEM 102M: Exhibits

In addition to the materials provided pursuant to sub-items 102B through 102L, if any, and subject to Rule 201.24 of the General Rules of Practice regarding incorporation by reference, the following exhibits shall be filed as part of Form N-SAR, if not previously filed:

(a) Copies of any material amendments to the registrant's charter or by-laws.

(b) Copies of the text of any proposal described in answer to sub-item 102C.

(c) Copies of the amendments to all constituent instruments and other documents described in answer to sub-item 102F.

(d) Copies of all constituent instruments defining the rights of the holders of any new class of securities and of any amendments to constituent instruments referred to in answer to sub-item 102I.

(e) Copies of any new or amended investment advisory contract of registrant.

(f) Letters from the registrant and the independent accountants furnished pursuant to sub-items 102J and 102K.

(g) Copies of any merger or consolidation agreement, and other documents relevant to the information sought in sub-item 102L, above.

ITEM 116: Family of investment companies

See instructions for item 19.

ITEM 117: The registrant is a separate account of an insurance company

If the registrant is an insurance company separate account registered as a UIT, it should answer items 117-132 only as they apply to the UIT, and should not include in such answers any information about management investment companies underlying the UIT.

ITEM 118: Series having effective registration statements

The answer to this item should state the total number of series of securities the registrant is offering as of the close of the reporting period

and that at any time in the past were the subject of effective registration statements under the 1933 Act. Include in this number all series of registrant having such effective registration statements regardless of whether there is a secondary market in the series' units. If there is a single separate account UIT that invests in several underlying management investment companies, the answer to this item would be "1".

ITEM 119: New series having effective registration statements

If no new series were created during the period, the answer should be the numeral "0" (zero).

ITEM 120: Value of new series that became effective

This amount should be the total of the aggregate net asset value for each series whose registration statement became effective during the period. Such aggregate net asset value should be the market value of the series' (trust's) portfolio based upon the offer side evaluation on the date of deposit (this amount may in some instances also be called the aggregate offering price of the underlying securities in the portfolio). If the portfolio of a series consists of equity securities, use the market value of the trust's portfolio securities on the date of deposit.

ITEM 121: Series for which a current prospectus existed at the end of the period

"Prospectus" is defined in Section 2(10) of the 1933 Act. A current prospectus is one meeting the requirements of Section 10 of the 1933 Act. If a current prospectus did not exist for any series at the end of the period, the answer to this item should be "0" (zero).

ITEM 122: New units of old series

State the number of existing series which meet the following conditions:

The sponsor, depositor or some other entity deposited additional securities in the portfolio of an existing series of the registrant. Before selling additional units, such entity obtained an effective registration statement or a post-effective amendment under the 1933 Act for the additional units created to reflect the additional securities deposited. If no additional securities were deposited in an existing series, the answer to the item should be "0" (zero). The substitution of one or more new securities for one or more old securities in the portfolio should not be reported in response to this item.

ITEM 123: Value of new securities deposited in existing series

The answer to this item should be the aggregate value of the additional securities that were placed into the portfolio of the existing series identified

in item 122. Such value should be the market value of these additional securities based upon the offer side evaluation on the date of deposit (this amount may in some instances also be called the aggregate offering price of the new securities in the portfolio). If the additional securities added to the portfolio are equity securities, use their market value on the date of deposit in determining the answer to this item.

ITEM 124: Value of units of prior series placed in portfolio of subsequent series

The value of units of a prior series that were placed into the portfolio of a subsequent series should be measured on the day such units were deposited in the subsequent series and should be the value assigned to such units in the portfolio of the subsequent series.

ITEM 125: Amount of sales loads collected

The answer to this item should reflect the total sales loads collected by the registrant's principal underwriter and all affiliated underwriters thereof from the sale of units in all series of registrant during the current period. Inventory gains and losses incurred by underwriters while holding units for sale after they have been acquired from the trust should not be considered in calculating total sales loads collected. Sales loads collected during both the initial public offering of units and in secondary market operations should be included in making these calculations. The number reported for this item should be the gross amount collected by such underwriters before any reallowances to other brokers or dealers.

ITEM 127: Classification of series and assets

Other corporate short-term debt securities referred to in sub-item 127G are securities with maturities of 12 months or less.

For an explanation of broker or dealer debt, debt of parent's of brokers or dealers, and equity securities of brokers or dealers or their parents (sub-items 127E and 127H), see instructions for items 24 and 25.

Separate account UITs investing primarily in the shares of underlying management investment companies should provide this answer in sub-item 127J.

ITEMS 128, 129 and 130: Insured or guaranteed securities

These three items request information about securities owned by any series of the registrant whose principal or interest is insured or guaranteed by an entity other than the issuer. The insurance or guarantee may apply either to individual securities in the portfolio or to the portfolio itself. The entity providing the insurance or guarantee may be either a governmental or a nongovernmental entity. The insurance or guarantee may be derived through an insurance policy, a letter of credit, a collateralization agreement,

a put or repurchase agreement or a similar mechanism. If any of the securities owned by the registrant are insured or guaranteed, answer "Yes" to item 128. If the issuer of any such insured or guaranteed security is delinquent or in default as to payment of principal or interest at the end of the reporting period, answer "Yes" to item 129. Item 130 requires information concerning only whether the insurance or guarantee is being used in any way to value securities for which the issuer is delinquent or is in default as to payment of principal or interest. This item does not require information about whether the value of securities not delinquent or in default may in part be based upon some insurance or guarantee.

ITEM 132: "811" number of series included in filing

This item is to be used by any series of a UIT that had an "811" number assigned to it prior to September 1972. For more information regarding this item, see the instruction to sub-item 1B.

Signature Page

The following form of signature shall follow items 79, 85, 88, 104, 110 or 132 as appropriate.

This report is signed on behalf of the registrant (or depositor or trustee) in the City of _____ and State of _____ on ____ day of _____ 19__.

_____
(Name of registrant, depositor, or trustee)

Witness _____ By: _____

(Name and Title) (Name and title of person signing on behalf of registrant, depositor or trustee)

Appendix B

ANALYSIS OF ITEMS ELIMINATED OR CARRIED OVER FROM EXISTING FORMS TO NEW FORM N-SAR

ANALYSIS OF ITEMS ELIMINATED OR CARRIED OVER
FROM EXISTING FORMS TO NEW FORM N-SAR

Current Form Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
	Form N-1R					
FP	Name & address of registrant			x	1	IRS employee identification # eliminated Telephone # added SEC file # added
FP	Name of registrant's adviser			x	8-9	SEC file # added Location added
FP	Name of principal underwriter			x	11	B/D file # added Location added
FP	Name of independent accountant		x		13	Address added
1	Classification			x	7	Expanded to identify separate series of registrant
					62-69	Expanded to include a classification for all funds based upon kind of assets held. Data about open-end, closed-end, etc, in other items.
2	Diversification of assets			x	60	All details related to diversification were dropped
3	Attendance at directors' meetings	x				
4	Information about directors, officers & members of advisory boards	x				
5	Information about board vacancies	x				
6	Indemnification payments to officers & directors	x				
7	Indebtedness of officers & certain directors to registrant's adviser or principal underwriter	x				
8	Business or professional relationships of officers and certain non-interested directors with certain persons	x				
9	Transactions between officers or certain non-interested directors and certain other persons	x				
10	Compensation received by registrant's directors, officers and advisory board members			x	72M	Compensation of directors retained. Other data on compensation deleted.
11	Compensation of certain affiliated persons acting as agent in property transactions or as broker in securities transactions	x				
12	Transactions between registrant or a controlled company and affiliated or certain other persons	x				
13	Joint enterprises involving registrant or a controlled company and an affiliated person	x				

FP = facing page

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
14	Transactions between registrant and certain affiliated persons of directors or officers of registrant's adviser or principal underwriter	x				
15	Direct or indirect ownership interest which certain affiliated persons of the registrant had during the period in registrant's adviser, underwriter and other brokers or dealers	x				
16	Family relationships of certain affiliated persons of registrant	x				
17	Fidelity bonds			x	80-85	Additional questions added concerning deductibles and losses incurred that could have been claimed under the bond, joint coverage with other investment companies, and errors and omissions insurance policies.
18	Custody of securities			x	15-18	Expanded to include location of custodian and type of custody.
19	Deposit of funds in banks other than custodian banks	x				
20	Advisory contract and fees and expense limitations			x	45-53	Certain data about expense limitations revised and question about compliance with §205 of the Advisers Act dropped. Amount of advisory fee received by investment adviser from registered investment companies associated with registrant eliminated. Dollar amounts of fees and expense reimbursements appear in other items.
21	Entry into or renewal of advisory contract	x				
22	Personnel of adviser	x				
23	Services supplied by adviser.....		x		54	
24.	Direct or indirect ownership interest which certain affiliated persons of registrant's adviser had during the period in registrant's adviser, underwriter and certain B/D's	x				
25	Management related services paid for by registrant other than under an advisory contract	x				
26	Portfolio turnover rate			x	71	Calculation method changed. Formula now includes U.S. government securities. Separate turnover rate calculation for equity securities dropped.
27	Portfolio trading practices			x	70	Expanded to reflect current range of transactions funds engage in.

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
28	Portfolio transactions not settled by specified settlement date	x				
29	Restricted securities	x				
30	Portfolio transactions by registrant with B/D's acting as principal			x	22-23	Modified definition of principal transactions.
31	Brokerage commissions paid on portfolio transactions of registrant.....			x	20-21	Agency transactions defined. Only gross commissions paid directly by registrant to a broker are included.
32	Considerations which affected the participation of B/D's in commissions paid on portfolio transactions of registrant		x		26	
33	Participation of certain affiliated B/D's in brokerage commissions on registrant's portfolio transactions and on portfolio transactions of any associated registered invest. company			x	14	New item for names of affiliated B/Ds and SEC file no. Deleted information about participation in commissions on registrant's portfolio transactions.
34	Selection of B/D's in return for benefits or other considerations provided to other persons	x				
35	Tax status of registrant	x				
36	Underwriting commitments of registrant	x				
37	Monthly sales of registrant's shares, dividends, capital gains and other distributions			x	28	Reformatted and consolidated the data requested.
38	Solicitation of proxies	x				
39	Confirmations, share balance statements and other communications ...	x				
40	Dividends or distributions requiring a written statement to shareholders of registrant	x				
41	Purchase of securities of or other interest in an investment company adviser, B/D, underwriter or insurance company			x	24-25	Except for insurance companies and investment companies the new items are concerned with the requirements of Rule 12d3-1.
42	Procedures with respect to stated policies	x				
43	Purchase of securities during underwriting by affiliated principal underwriter	x				

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
44	Selection and ratification of accountants and auditors; preparation of financial statements filed with the Commission	x				
45	Cross-ownership and circular ownership	x				
46	Periodic calculation of current net asset value per share of registrant's outstanding capital stock	x				
47	Employees of registrant	x				
48	Policy with respect to trading in securities by certain affiliated persons of registrant or of its adviser	x				
49	Senior securities of registrant and applicable asset coverage			x	55	Reduced in scope. Asset coverage eliminated.
50	Issuance of securities other than for cash or securities	x				
51	Registration of securities	x				
52	Sales, repurchases and redemptions of securities by closed-end funds		x		86	
53	Distribution and repurchase of securities by closed-end funds	x				
54	Market discount or premium from net asset value for closed-end funds			x	76	Item changed to ask for only the market price
55	Securities of registrant listed on a national securities exchange or on NASDAQ		x		86	
56	Sales, redemptions and repurchases of securities			x	28	Data requested was simplified and reformatted. Monthly data now required.
57	Sales of securities to other investment companies	x				
58	Time lapse between sale of shares of, and receipt of proceeds by registrant; loss on cancellation of orders	x				
59	Suspension of right of redemption; delay in payment upon repurchase	x				
60	Pricing of registrant's shares for distribution, redemption and repurchase	x				
61	Exhange offers made to shareholders of registrant or of any other open-end company	x				
62	Variations in sales loads			x	30	Item changed to ask for the highest and lowest sales load percentages.
63	Sales load and distribution information			x	20-38	Some sub-items were dropped Questions on deferred or contingent sales loads added.

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
64	Entry into or renewal of principal underwriting contract	x				
65	Other payments by registrant to underwriters or dealers	x				
66	Ten dealers selling largest dollar amounts of registrant's shares (confidential item)	x				
67	Direct or indirect ownership interest which certain affiliated persons of registrant's principal underwriter had during the period in: registrant's adviser, principal underwriter, certain B/D's	x				
68	Sales of shares of registrant pursuant to periodic payment plans of the installment type issued by unit investment trusts	x				
69	Correspondence relating to shareholder accounts	x				
	Form N-5R					
FP	Registrant's name, address and state of incorporation			x	1	State of incorporation was dropped. Telephone # added. SEC file # added.
1	Securities registered on an exchange		x		96	
2	Ownership of voting and convertible securities of other issuers	x				
3	Tax status of registrant	x				
4	Issuance and redemption of securities		x		95	
5	Persons in a control relationship with registrant	x				
6	Persons owning equity securities of registrant	x				
7	Number of holders of equity securities			x	99[illegible]	Number of shareholder accounts requested.
8	Directors and executive officers .	x				
9	Members of advisory board	x				
10	Remuneration of directors, officers and members of advisory board			x	97[illegible]	Compensation of directors retained. Other data on compensation deleted.
11	Indemnification of directors and officers			x	110	New form inquires about errors and omissions insurance registrant has.
12	Employees of registrant	x				

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
13	Custody of securities and similar investments			x	92	Expanded to include location of custodian and type of custody.
14	Fidelity bond for directors, officers and employees			x	105-110	Information requested has been expanded.
15	Investment advisers			x	89 and 97	Requirement to list names of affiliated persons of the registrant has been dropped. Information about actions with respect to contract eliminated.
16	Business and other connections of advisers and their managements	x				
18	Interest of affiliated persons in certain transactions	x				
19	Exhibits to be filed include copies of all amendments and changes to all documents to be filed as exhibits to original registration statement filed under the 1940 Act and financial statements			x	97-101	Requirement to file certain documents as exhibits dropped and requirement to report certain financial information added.
	Form N-30A-2					
FP	Name of registrant			x	1	IRS employer identification # deleted. SEC file # and telephone # added.
FP	Name and address of depositor			x	111	IRS employer identification # deleted. SEC file # added.
FP	Name of trustee			x	113	IRS employer identification # deleted. SEC file # added.
FP	Issuing or not issuing periodic payment plan certificates	x				
1	Title of securities	x				
2	Modifications or changes in trust agreement	x				
3	Material litigation	x				
4	Loads, fees, charges, expenses			x	125-126	Data is requested as to amount of fees and loads received.
5	Relationship of annual charges and expenses to income			x	126 and 130	These relationships can be calculated from the data requested in the new form.
6	Receipt of payments for securites	x				
7	Receipt, custody and disposition of income	x				
8	Distributions to security holders			x	126	The item now asks only for the total income distributions made by all series of the trust investing in particular instruments.

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
9	Loans to security holders	x				
10	Insurance of holders of securities .	x				
11	Sales of securities			x	120	Total value of units sold during period is requested.
12	Computation of offering price of securities	x				
13	Redemption of securities	x				
14	Computation of redemption price ..	x				
15	Suspension of sales of securities .	x				
16	Revocation and denial of right to sell securities to the trust	x				
17	Suspension of redemption of securities of the trust	x				
18	Officials and affiliated persons of depositor	x				
19	Companies owning securities of depositor	x				
20	Controlling persons of depositor ..	x				
21	Remuneration of depositor	x				
22	Remuneration of officers of depositor	x				
23	Remuneration of directors of depositor	x				
24	Remuneration of employees of depositor	x				
25	Remuneration of other persons	x				
26	Relationship of depositor to other investment companies	x				
27	Information required for each depositor	x				
28	Ownership of securities of the trust by principal underwriter and others	x				
29	Remuneration of principal underwriter			x	125-126	New form only requests data as to sales loads received by principal underwriter.
30	Relationship of principal underwriter to other investment companies	x				
31	Brokerage commissions received by principal underwriter	x				
32	Fees of trustee	x				
33	Elimination and substitution of portfolio securities	x				

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
34	Regulated investment company under section 851 of the Internal Revenue Code	x				
35	Statistical information regarding periodic payment plan certificates	x				
36	Financial statements	x				
	Form N-30A-3					
FP	Name of registrant			x	1	Added address, telephone # and SEC file No.
FP	Name and address of depositor	x				
FP	Name and address of trustee	x				
1	Title of securities	x				
2	Modifications or changes in indenture or other agreements ...	x				
3	Material litigation	x				
4	Loads, fees, charges, expenses			x	29-39	Data is requested as to amount of fees and loads received.
5	Relationship of annual charges and expenses to income			x	72-73	These relationships can be calculated from the data requested in the new form.
6	Receipt of payments for securities .	x				
7	Receipt, custody and disposition of income	x				
8	Distributions to security holders			x	73	Only the amount of dividends and other distributions during period is requested.
9	Loans to security holders	x				
10	Insurance of holders of securities .	x				
11	Computation of valuation of underlying securities	x				
12	Computation of redemption price ...	x				
13	Suspension of sales of securities .	x				
14	Revocation and denial of right to sell securities of the registrant .	x				
15	Suspension of redemption of securities of the registrant	x				
16	Officials and affiliated persons of depositor	x				
17	Companies owning securities of depositor	x				
18	Controlling persons of depositor ..	x				

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
19	Remuneration of depositor	x				
20	Remuneration of officers of depositor	x				
21	Remuneration of directors of depositor	x				
22	Remuneration of employees of depositor	x				
23	Remuneration of other persons	x				
24	Relationship of depositor to other investment companies	x				
25	Information required for each depositor	x				
26	Ownership of securities of the trust by principal underwriter and others	x				
27	Remuneration of principal underwriter			x	30-33	New form requests data as to sales loads received by principal underwriter.
28	Relationship of principal underwriter to other investment companies	x				
29	Brokerage commissions received by principal underwriter	x				
30	Fees of trustee	x				
31	Remuneration of adviser		x		72F	
32	Provisions of governing instruments regulating investments	x				
33	Investments in particular types of securities			x	62-69	Rather than describing changes in investments the new form asks for the types of investments held at end of period.
34	Investments for purpose of exercising control	x				
35	Borrowing money			x	55	New form requires statement if any borrowings during period.
36	Underwriting securities issued by persons other than registrant ...	x				
37	Concentration of investments in particular industries	x				
38	Purchase and sale of real estate .	x				
39	Purchase and sale of commodities and commodity contracts			x	74H-74I	New form requires statement of amount invested in certain commodities at end of period.

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
40	Loans to other persons	x				
41	Portfolio turnover			x	71	Change in method of calculation.
42	Other fundamental policies	x				
43	Regulated investment company	x				
44	Status of registrant as a diversified or non-diversified investment company			x	60	Registrant must state if diversified.
45	Statistical information regarding certificates	x				
46	Financial statements			x	72-74	Registrant must provide summary financial data.
	Form 2-MD					
FP	Name of registrant			x	1	Added telephone # and SEC file #.
FP	Name and address of depositor			x	111	Added SEC file #.
FP	Name and address of sponsor			x	112	Added SEC file #.
FP	Name and address of trustee		x		113	
1	Information about trust property .	x				
2	Information about trust agreement .	x				
3	Information about contracts	x				
4	Income, charges and distributions			x	126 and 130	Relationships can be calculated.
5	Date and source of distributions .	x				
6	Date and source of special distributions	x				
7	Repurchase of trust shares	x				
8	Total amount of trust shares sold during the period			x	120	Requests information on value of portfolio.
9	Describe changes in method of calculating selling price of trust shares	x				
10	Information about reacquired shares	x				
12	Remuneration and payments to depositor, sponsor, trustee and affiliates of these entities	x				
13	Amount paid to certain persons by the depositor and sponsor	x				
14	Remuneration paid by depositor and sponsor to certain persons in excess of $20,000 during the period	x				
15	Names and addresses of all directors and officers of depositor	x				

Item #	Description of items in current forms	Disposition of items: Item Eliminated	Item Carried Over Unchanged	Item Carried Over Modified	Item Number in N-SAR	Brief description of modifications
16	Certain information required of persons owning more than 10% of any class of voting shares of the depositor	x				
17	Certain information required as to trust shares owned by each director and officer of the depositor	x				
18	Business connections between the depositor or any of its officers and directors with the issuer of any securities held by the trust	x				
19	Business connections between the depositor or any of its officers and directors with any principal underwriter of any of the securities held in the trust	x				
20	Identify any other trust issues created by the depositor within the period of the report	x				
21	If the sponsor of the trust is other than the depositor furnish information required in items 15 through 20 about the sponsor	x				
22	Financial statements	x				
23	Certain information required of issuers of which the trust owned more than 25% of their outstanding securities ...	x				
Form N-27D-2		x				No items carried over to Form N-SAR.
Form N-1Q			x		77 and 102	All items of Form N-1Q carried over to Form N-SAR unchanged.
Statement Pursuant to Rule 30a-3				x	78-79 and 103-104	Request information if the registrant has a wholly-owned subsidiary and the file number(s) and name(s) of such subsidiaries.
Statement Pursuant to Rule 30b1-2				x	78-79 and 103-104	Replaces statement of subsidiaries with questions for parent regarding wholly-owned subsidiaries.

[FR Doc. 85-842 Filed 1-10-85; 8:45 am]
BILLING CODE 8010-01-C

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

[T.D. 85-5]

Entry Type Codes

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document informs the public of changes in the assignment and format of entry type codes used by the international trade community in submitting entry documentation for processing by the Customs Service. The changes are one of the numerous initiatives Customs has undertaken relating to the development of a comprehensive integrated Automated Commercial System. When fully implemented, the changes will ensure entry processing efficiency.

EFFECTIVE DATE: February 1, 1985.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202-535-4155), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of entry type codes and entry numbers are desirable.

Accordingly, by notice published in the **Federal Register** on January 13, 1984 (49 FR 1740), Customs proposed new procedures for both entry type codes and entry numbers and invited interested parties to submit comments. Although comments were received on both procedures, those comments relating to the entry number proposal are still being analyzed. They will be the subject of a future document. This document contains only the analysis of comments concerning the proposed procedure for entry type codes.

The existing entry type codes, which were also published in the notice, have emerged over many years and serve to identify only a few of the many entry types. They are more related to categories that are of statistical interest than to types which distinguish Customs processing requirements. Many entry types such as informals, quota, and temporary importation bond cannot be specifically identified with this entry type code procedure.

There is a need to adopt a simple, flexible entry type code structure which will allow Customs to identify entry transactions by their processing requirements.

The proposed table of two-digit entry type codes which appeared in the notice uniquely identifies all current entry types and provides adequate room for additional types in the future. The first digit of the code identifies the general category of entry (i.e., consumption=0, informal=1, warehouse=2, etc.). The second digit further defines the specific processing type within the entry category (i.e., consumption quota=02, informal free and dutiable=11, etc.).

It is expected that the new codes will provide for all possible entry types. However, in the event of a transaction which does not appear to be covered, entry preparers are urged to contact Customs for clarification. If Customs is unable to determine a specific entry type, Special Entry Processing Code 99 will be temporarily used for processing until such time as Customs can provide a specific entry type code.

Once effective, all entry preparers must show the applicable two-digit code on the appropriate Customs entry forms including the entry summary document, Customs Form 7501. The February 1, 1985, effective date will correspond with the mandatory effective date of the revised Customs Form 7501 set forth in T.D. 84-129 published in the **Federal Register** on June 5, 1984 (49 FR 23161).

Discussion of Comments

Several of the seven commenters that responded to the notice raised issues concerning the use of the air waybill number as part of the Customs entry number, and the assignment of the entry filer codes. These issues relate only to the entry number proposal and are still being analyzed. Once these issues are resolved, Customs will publish another document on the entry number procedure.

One commenter requested that a longer time period be allowed for full implementation of the changes than was suggested in the notice. It is noted that many entry filers are already using the codes on a voluntary basis. Use of the codes at the earliest possible date is extremely important to ensure entry processing efficiency, for both Customs and entry preparers. Accordingly, use of the codes will be mandatory on all applicable entry documentation after February 1, 1985.

One commenter stated that a number of airlines presently have large stocks of cargo manifests containing a preprinted block for Immediate Transportation, Transportation and Exportation, or Immediate Exportation in-bond shipments. These airlines hoped to continue the use of such cargo manifests until existing supplies are consumed.

To accommodate these concerns, Customs has determined that these entry forms, preprinted with words that identify the entry type, may be used until existing supplies are exhausted provided that the appropriate two digit entry type code is printed in the entry type block.

Another commenter observed that there is no entry type provided for quota entries which also include countervailing or antidumping duties.

Customs agrees. To remedy this situation, consumption category entry type code 07 (countervailing and/or antidumping and quota) and warehouse withdrawal category entry type code 38 (countervailing and/or antidumping and quota) have been added to the list of entry type codes.

In addition to the changes suggested by the commenters, Customs has made four additional changes to the entry type codes. For clarification, the description of entry type 33 has been changed from "Aircraft and Vessel Supply" to "Aircraft and Vessel Supply for Immediate Exportation". The description for entry type 36 has been changed from "For Exportation" to "For Immediate Exportation" so that the terminology is consistent with entry type 63. Finally, to provide more specificity for transportation entry types on Customs Form 7512-C (Transportation Entry), the description for entry type 64 has been changed from "Transit" to "Barge Movement" and the following entry types added: entry type 65 with the description "Permit to Proceed", and entry type 66 with the description "Baggage".

Accordingly, after consideration of all the comments and a further review of the matter, Customs has determined to adopt the amendments relating to entry type codes as follows:

CUSTOMS ENTRY TYPE CODES

Entry type	Entry type code
Consumption Entries:	
Free and Dutiable	01
Quota	02
Countervailing Duty and/or Antidumping Duty	03
Appraisement	04
Vessel Repair	05
Foreign-Trade Zone (Consumption)	06
Countervailing and/or Antidumping and Quota	07
Informal Entries:	
Free and Dutiable	11
Quota	12
Warehouse Entries:	
Warehouse	21
Re-warehouse	22
Temporary Importation Bond (TIB)	23
Trade Fair	24
Permanent Exhibition	25
Foreign-Trade Zone (Admission)	26
Warehouse Withdrawal:	
For Consumption	31
Quota	32
Aircraft and Vessel Supply for Immediate Exportation	33
Countervailing Duty and/or Antidumping Duty	34
For Transportation	35
For Immediate Exportation	36
For Transportation and Exportation	37
Countervailing and/or Antidumping and Quota	38
Drawback Entries:	
Manufacturing	41
Same Condition	42
Rejected Importation	43
Government Entries:	
Defense Contract Importation (DCASR)	51
Dutiable	52
Free	53
Transportation Entries:	
Immediate Transportation	61
Transportation and Exportation	62
Immediate Exportation	63
Barge Movement	64
Permit to Proceed	65
Baggage	66
Special Processing Entries: Special Entry Processing	99

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the changes set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, imports, reporting and recordkeeping requirements.

Authority

This document is issued under the authority of R.S. 251, as amended (19 U.S.C. 66), sections 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624).

William von Raab,

Commissioner of Customs.

Approved December 20, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-887 Filed 1-10-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 175 and 176

[Docket No. 83F-0223]

Indirect Food Additives; Adhesives and Components of Coatings; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of resins containing mixed isobutyl and methyl esters of styrene-maleic anhydride in contact with food. This action responds to a petition filed by the Monsanto Co.

DATES: Effective January 11, 1985; objections by February 11, 1985.

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

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 19, 1983 (48 FR 37712), FDA announced that a petition (FAP 3B3730) had been filed by the Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63166, proposing that § 175.300 (21 CFR 175.300) and § 176.170 (21 CFR 176.170) be amended to provide for the safe use of isobutyl ester of styrene-maleic anhydride resin in contact with food.

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

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 175

Adhesives, Food additives, Food packaging.

21 CFR Part 176

Food additives, Food packaging, Paper and paperboard.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Parts 175 and 176 are amended as follows:

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

1. Part 175 is amended in § 175.300(b)(3)(xxxi) by revising the entry for "Styrene-maleic anhydride resin, partial methyl and *sec*-butyl ester," to read as follows:

§ 175.300 Resinous and polymeric coatings.

* * * * *

(b) * * *

(3) * * *

(xxxi) * * *

Styrene-maleic anhydride resin, partial methyl and butyl (*sec-* or *iso-*) esters, for use only at levels not in excess of 3 percent of the cement solids in can end cement formulations.

* * * * *

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

2. Part 176 is amended in § 176.170(b)(2) by revising the entry for "Styrene copolymers produced by copolymerizing styrene with maleic anhydride and its methyl and *sec*-butyl esters," to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(b) * * *
(2) * * *

List of substances	Limitations
* * * * *	
Styrene copolymers produced by copolymerizing styrene with maleic anhydride and its methyl and butyl (*sec-* or *iso-*) esters. Such copolymers may contain *β*-nitrostyrene as a polymerization chain terminator.	For use only as a coating or component of coatings and limited to use at a level not to exceed 1% by weight of paper or paperboard substrate.
* * * * *	

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 11, 1985 submit to the Dockets Management Branch (address above), written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective January 11, 1985.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 31, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-798 Filed 1-10-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 177

[Docket No. 80F-0125]

Indirect Food Additives; Polymers; Perfluorocarbon Resins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of perfluoropropylvinylether/tetrafluoroethylene copolymers as coatings or components of coatings for articles intended for repeated use in contact with food. Specifically, FDA is amending the food additive regulations to correct an inadvertent omission in a regulation that was published in the **Federal Register** of April 6, 1982 (47 FR 14698), to provide for the use of the optional ingredient naphthalene sulfonic acid formaldehyde condensate in perfluoropropylvinylether/tetrafluoroethylene copolymer resins. This action responds to comments on the final regulation submitted by the petitioner. Also, FDA is making metric conversions in the regulations where applicable and is amending certain language for clarity.

DATES: Effective January 11, 1985; objections by February 11, 1985.

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

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

SUPPLEMENTARY INFORMATION: In a final regulation published in the **Federal Register** of April 6, 1982 (47 FR 14698), among other things, FDA approved the use of perfluoropropylvinylether/tetrafluoroethylene copolymer with the optional substance naphthalene sulfonic acid formaldehyde condensate, sodium salt, as a coating or component of coatings not exceeding 1.2 mils (0.030 millimeter) for articles intended for repeated use in contact with food. On May 4, 1982, the petitioner, E.I. du Pont de Nemours & Co., Wilmington, DE 19898, submitted a comment concerning this part of the regulation, noting that it inadvertently established a limitation of 1.2 mils (0.030 millimeter) for the thickness of the copolymer coating containing naphthalene sulfonic acid formaldehyde condensate, sodium salt. The petitioner requested that the thickness be increased to not exceed 0.10 millimeter (0.004 inch) in § 177.1550(b)(4) (21 CFR 177.1550(b)(4)), as originally requested in its petition.

FDA agrees that the regulation should be amended as requested by the petitioner. The agency had originally evaluated the petition on that basis, although the resulting regulation inadvertently did not change the thickness limitation.

In its comments, Du Pont also recommended that § 177.1550 be amended in paragraph (e)(2) (i) and (ii). The company recommended changing the phrase "perfluorocarbon resin coatings consisting of resins * * *" to read "perfluorocarbon resin coatings based on resins * * *." The company contended that the term "consisting of" would limit the perfluorocarbon resin coating to the basic resin itself and would exclude the use of optional substances that are GRAS, prior-sanctioned, etc. FDA agrees that the term "based on" connotes the idea that the perfluorocarbon resin is one of the coating components and that the regulation should not preclude the use of other optional substances in the final formulated coating. The agency also has determined that Du Pont's recommended wording will not affect the end test extractive limitations specified in paragraph (e)(3) of § 177.1550. Therefore, the agency is amending the text in paragraph (e)(2) (i) and (ii) by replacing the term "consisting of" with the term "based on." The agency is also making metric conversions wherever it had not previously been done in § 177.1550.

FDA has evaluated data in the petition (FAP 9B3459) and other relevant material and concludes that the proposed food additive use is safe and that § 177.1550 (21 CFR 177.1550) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As

provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this regulation as announced in the notice of filing for FAP 9B3459 published in the **Federal Register** of May 6, 1980 (45 FR 29893). No new information or comments have been received that would alter the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

List of Subjects in 21 CFR Part 177

Food additives, Polymeric food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 177 is amended in § 177.1550 by revising the table in paragraph (b)(4), by changing at the end of paragraph (e) the footnote designation "2" to read "1", and by revising paragraph (e)(1) and (2) (i) and (ii) to read as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

§ 177.1550 Perfluorocarbon resins.

* * * * *

(b) * * *

(4) * * *

List of substances	Limitations
Lithium polysilicate containing not more than 20 weight percent silica, not more than 2.1 percent lithium oxide and having a maximum mole ratio of SiO_2/Li_2O of 8.5 to 1.	For use only as a component of repeated-use coatings not exceeding 0.030 millimeter (0.0012 inch) in thickness where the coatings are thermally cured at minimum sintering temperatures of 371° C (700° F). Lithium extractives shall not exceed 1.55 milligrams per square decimeter (0.1 milligram per square inch) of coating surface when tested in accordance with paragraph (e)(2) of this section.
Naphthalene sulfonic acid formaldehyde condensate, sodium salt.	For use only: 1. As a component of repeated-use coatings, based on the perfluorocarbon resin identified in paragraph (a)(1) of this section, not to exceed 0.030 millimeter (0.0012 inch) in thickness, and at a level not to exceed 0.4 weight percent of the coating.
	2. As a component of repeated-use coatings, based on the perfluorocarbon resin identified in paragraph (a)(2) of this section, not to exceed 0.10 millimeter (0.004 inch) in thickness, and at a level not to exceed 0.4 weight percent of the coating.

* * * * *

(e) *Limitations.*[1] (1) Perfluorocarbon-molded articles having a surface area of 6.45 square decimeters (100 square inches) or more and at least 1.27 millimeters (0.05 inch) thick shall be extracted at reflux temperatures for 2 hours separately with distilled water, 50 percent ethanol, *n*-heptane, and ethyl acetate.

(2) * * *

(i) Perfluorocarbon resin coatings based on resins identified in paragraph (a)(1) of this section shall be applied to both sides of a 0.025-millimeter (0.001 inch) thick aluminum foil to a thickness of 0.025 millimeter (0.001 inch) after thermal curing at 399° (750° F) for 10 minutes. If a primer is used, the total thickness of the primer plus topcoat shall equal 0.025 millimeter (0.001 inch) after heat curing.

(ii) Perfluorocarbon resin coatings based on resins identified in paragraph (a)(2) of this section shall be applied to both sides of a 0.025-millimeter (0.001 inch) thick aluminum foil to a thickness of 0.10 millimeter (0.004 inch) after thermal curing at 427° C (800° F) for 10 minutes. If a primer is used, the total thickness of the primer plus topcoat shall equal 0.10 millimeter (0.004 inch) after heat curing.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 11, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective January 11, 1985.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348).)

Dated: December 31, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–796 Filed 1–10–85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 178

[Docket No. 83F–0359]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of glyceryl tri-(12-acetoxystearate) as a component of polymers intended for use in contact with food. This action responds to a petition filed by Pluess-Staufer (California), Inc.

DATES: Effective January 11, 1985; objections by February 11, 1985.

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

FOR FURTHER INFORMATION CONTACT: George H. Pauli, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 8, 1983 (48 FR 55045), FDA announced that a food additive petition (FAP 1B3565) had been filed by Pluess-Staufer (California), Inc., P.O. Box 825, Lucerne Valley, CA 92356, proposing that the food additive regulations be amended to provide for the safe use of calcium carbonate treated with glyceryl tri-(acetoxystearate) as an extender for thermoplastics intended for use in contact with food.

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

In the regulation, the agency is identifying the additive more specifically than in the filing notice as glyceryl tri-(12-acetoxystearate). Also, FDA is listing the calcium carbonate/glyceryl tri-(12-acetoxystearate) mixture as an adjuvant rather than as an extender to provide for other uses in which the mixture may be used in lesser amounts.

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

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61), Part 178 is amended by adding new § 178.3505, to read as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

§ 178.3505 Glyceryl tri-(12-acetoxystearate).

Glyceryl tri-(12-acetoxystearate) (CAS Reg. No. 139–43–5) may be safely used as a component of articles intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, subject to the provisions of this section.

(a) The additive is applied to the surface of calcium carbonate at a level not to exceed 1 weight-percent of the total mixture.

(b) The calcium carbonate/glyceryl tri-(12-acetoxystearate) mixture is used as an adjuvant in polymers in contact with nonfatty foods at a level not to exceed 20 weight-percent of the polymer.

Any person who will be adversely affected by the foregoing regulation may at any time on or before February 11, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation is effective January 11, 1985.

(Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348))

Dated: December 31, 1984.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–797 Filed 1–10–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Parts 430, 436, 440, 446, 448, 450, 452 and 455

[Docket No. 84N–0348]

Antibiotic Drugs; Updating and Technical Changes

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations by making corrections, a minor noncontroversial technical change, and revocations in certain regulations providing for accepted standards of antibiotic and antibiotic-containing drugs for human use. These changes will result in more accurate and usable regulations.

DATES: Effective January 11, 1985, comments, notice of participation, and request for hearing by February 11, 1985; data, information, and analyses to justify a hearing by March 12, 1985.

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

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN–815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: FDA is amending the antibiotic drug regulations by making corrections, a minor noncontroversial technical change, and revocations in certain antibiotic drug regulations that provide for accepted standards of antibiotic and antibiotic-containing drugs intended for human use. In one instance, the need for a change was called to FDA's attention by an industry representative. To aid the reader in understanding the types of amendments in this document, the amendments are grouped into three general classes for discussion in this preamble: corrections, technical change, and revocations.

Corrections

1. In § 440.1a(a)(1), the last part of the chemical name of azlocillin sodium in the first sentence "[2*S*-[2α, 6β(*S**)]]-." is corrected to read "[2*S*-[2α, 5α, 6β(*S**)]]-."

2. In § 446.542(b)(2)(i), the preparation of the standard solution is corrected. It was incorrectly printed in the **Federal Register** which published on January 16, 1981 (46 FR 3835).

3. In § 450.220(a)(1), the last part of the last sentence "§ 450.20(a)(1) (i), (v), (vi), and (vii)." is corrected to read "§ 450.20(a)(1)." This amendment to § 440.220 was inadvertently omitted in the **Federal Register** which published on February 17, 1984 (49 FR 6090).

4. In § 452.510b, paragraph (b)(3) is removed. It was incorrectly included in the **Federal Register** which published on November 8, 1983 (41 FR 51292).

5. In § 455.12a(b)(8), the determination of the specific rotation of chloramphenicol sodium succinate is

revised to correctly state that it is calculated on an anhydrous basis.

Technical Change

In § 448.430(a)(1), the pH range for polymyxin B sulfate hydrocortisone otic solution (5.0 to 7.0) is revised to read 3.0 to 5.0. The sole manufacturer has submitted adequate data to support this change.

Revocations

Sections 440.51, 440.151, 440.151a, and 440.151b are removed. FDA has determined that penicillamine does not meet the definition of an antibiotic as defined in section 507(a) of the Federal Food, Drug, and Cosmetic Act because it does not have the capacity to inhibit or destroy microorganisms in dilute solutions. Manufacturers of penicillamine drug products have been previously notified of this determination. Therefore, regulations providing accepted standards for this drug are removed. Also, conforming amendments are made to Parts 430 and 436 where applicable.

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

List of Subjects

21 CFR Part 430

Administrative practice and procedure, Antibiotics.

21 CFR Part 436

Antibiotics.

21 CFR Part 440

Antibiotics, penicillin.

21 CFR Part 446

Antibiotics, tetracycline.

21 CFR Part 448

Antibiotics, peptide.

21 CFR Part 450

Antibiotics, antitumor.

21 CFR Part 452

Antibiotics, macrolide.

21 CFR Part 455

Antibiotics, certain other.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, 440, 446, 448, 450, 452, and 455 are amended as follows:

PART 430—ANTIBIOTIC DRUGS; GENERAL

1. Part 430 is amended:

§§ 430.4, 430.5, and 430.6 [Amended]

a. In § 430.4 Definitions of antibiotic substances, by removing and reserving paragraph (a)(35).

b. In § 430.5 Definitions of master and working standards, by removing and reserving paragraphs (a)(43) and (b)(43).

c. In § 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances, by removing and reserving paragraph (b)(46).

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

§ 436.33 [Amended]

2. Part 436 is amended in § 436.33 Safety test, by removing the item "Penicillamine" from the table in paragraph (b).

PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

§ 440.1a [Amended]

a. In § 440.1a Sterile azlocillin sodium, by revising the last part of the chemical name in the first sentence in paragraph (a)(1) to read "[2*S*-[2α,5α,6β(*S**)]]-."

§§ 440.51, 440.151, 440.151a, and 440.151b [Removed]

b. By removing § 440.51 Penicillamine.

c. By removing § 440.151 Penicillamine oral dosage forms.

d. By removing § 440.151a Penicillamine capsules.

e. By removing § 440.151b Penicillamine tablets.

PART 446—TETRACYCLINE ANTIBIOTIC DRUGS

4. Part 446 is amended in § 446.542 by correcting the first sentence and adding another sentence in paragraph (b)(2)(i). As revised (b)(2)(i) reads as follows:

§ 446.542 Meclocycline sulfosalicylate cream.

* * * * *

(b) * * *

(2) * * *

(i) *Preparation of standard solution.* Accurately weigh an amount of working standard equivalent to approximately 25 milligrams of meclocycline into a 50-milliliter volumetric flask. Dissolve and dilute to volume with methanol and mix. Transfer exactly 2.0 milliliters of this solution to a 100-milliliter volumetric flask, dilute to volume with mobile phase, and mix.

* * * * *

PART 448—PEPTIDE ANTIBIOTIC DRUGS

5. Part 448 is amended in § 448.430 by revising the fourth sentence in paragraph (a)(1) to read as follows:

§ 448.430 Polymyxin B sulfate-hydrocortisone otic solution.

(a) * * *

(1) * * * Its pH is not less than 3.0 and not more than 5.0. * * *

* * * * *

PART 450—ANTITUMOR ANTIBIOTIC DRUGS

6. Part 450 is amended in § 450.220 by revising the last sentence in paragraph (a)(1) to read as follows:

§ 450.220 Dactinomycin for injection.

(a) * * *

(1) * * * The dactinomycin used conforms to the standards prescribed by § 450.20(a)(1).

* * * * *

PART 452—MACROLIDE ANTIBIOTIC DRUGS

§ 452.510b [Amended]

7. Part 452 is amended in § 452.510b *Erythromycin topical solution,* by removing paragraph (b)(3).

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

8. Part 455 is amended in § 455.12a by adding a new sentence to the end of paragraph (b)(8) to read as follows:

§ 455.12a Sterile chloramphenicol sodium succinate.

* * * * *

(b) * * *

(8) * * * Calculate the specific rotation on the anhydrous basis.

These amendments institute changes that are corrective, editorial, or of a minor substantive nature. Because the amendments are not controversial and because when effective they provide notice of accepted standards, FDA finds that notice, public procedure, and delayed effective date are unnecessary and not in the public interest. The amendments, therefore, shall become effective January 11, 1985. However, interested persons may, on or before February 11, 1985, submit written

comments on this regulation to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before February 11, 1985, a written notice of participation and request for hearing, and (2) on or before March 12, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

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

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

Effective date. This regulation shall be effective January 11, 1985.

(Secs. 507, 701(f) and (g), 52 Stat. 1055–1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371(f) and (g)))

Dated: December 24, 1984.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 85–795 Filed 1–10–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. N–85–1223; FR 2084]

Statement of Policy—Anti-Pirating Prohibitions, UDAG Program

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Policy statement.

SUMMARY: Statutory provisions governing Urban Development Action Grants prohibit the making of grants for projects intended to facilitate the relocation of industrial or commercial facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the facility is to be relocated. HUD announces its policies regarding administration of this prohibition in the case of applications for UDAG projects containing speculative industrial or commercial space.

FOR FURTHER INFORMATION CONTACT: Stanley Newman, Director, Office of Urban Development Action Grants, Room 7262, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. (202) 755–6290. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 119 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5319), authorizes the Secretary of Housing and Urban Development to "make urban development action grants to cities and urban counties which are experiencing severe economic distress to help stimulate economic development activity needed to aid in economic recovery."

Subsection (h) of Section 119 provides:

(h) No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that the relocation does not significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated.

The foregoing prohibition is reflected in the UDAG program regulation at 24 CFR § 570.456, which provides:

§ 570.456 Ineligible activities and limitations on eligible activities.

* * * * *

(c) Except as specified herein, no assistance will be provided for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that such relocation does not significantly and adversely affect the level of unemployment or the economic base of the area from which such industrial or commercial plant or facility is to be relocated. However, moves within a metropolitan area shall not be subject to this provision.

The statutory and regulatory provision quoted above focus specifically on projects which are "intended to facilitate" relocation of commercial or industrial facilities "from one area to another." In the context of a facility specifically and explicitly designed to facilitate a relocation of an identified firm from an identified present location, the applicability of such provisions is clear. That is to say, it is clear that the threshold requirement for applicability of the prohibition has been met; whether the application can be considered fundable will depend on whether the Secretary can, or will, make the prescribed determination regarding the absence of significant and adverse effect on unemployment or the economic base of the area from which the facility is to be relocated.

In recent UDAG funding rounds the Department increasingly has been faced with applications where the threshold requirement for applicability of Section 119(h) is less immediately clear but the policy concerns which generated the statutory prohibition seem equally implicated. These applications involve projects which include speculative commercial or industrial space. Because of the absense of identification of an intended occupant of the facility when completed, it is not self-evident when the application is considered for preliminary approval that the project is intended to facilitate a relocation. In at least several instances, however, it has later developed—after final funding commitments have been made—that marketing of the project space has been directed almost exclusively to potential relocatees from specific nearby areas.

Mobility is an important element of a dynamic economic system. The Department believes, however, that Section 119(h) represents a strong

Congressional sentiment that discretionary Federal grants should not be a decisive factor in the competition between geographic areas to relocate business investment from one area to another. Accordingly, the Department has concluded that it must formulate guidelines for its administration of the anti-pirating provisions in the context of speculative projects, and that it should publish such guidelines for the guidance of potential UDAG applicants.

The Department does not believe that a prohibition or onerous restriction on all UDAG applications involving speculative office space would be justified by the narrower intent of Section 119(h). Based on its experience, however, the Department believes that it is reasonable to infer that a speculative project is more likely than not to be intended to facilitate a relocation if certain other determinable circumstances are present. These circumstances would include a current significant pattern of job movement from an area to reasonably proximate surrounding areas, and a likelihood that such a pattern of movement will continue, based on such factors as more favorable tax rates and energy costs. The Department believes that the presence of such circumstances reasonably justifies a presumption that a project including speculative commercial or industrial space is intended to facilitate a relocation of a facility from one area to another, even though the identity of the relocatee may not become known until subsequent marketing efforts have been made.

As indicated above, satisfaction of the threshold requirement does not end the matter. The Secretary may still fund the project if a determination is made that the relocation will not "significantly and adversely affect the unemployment or economic base of the area from which the industrial or commercial plant or facility is to be relocated."

Such a determination is not a simple matter in any circumstance and is less so when the precise identity and number of jobs to be relocated are not known. Under such circumstances, it is not possible to take into account such relevant factors as whether it is feasible to anticipate that all current holders of transferred jobs will continue to be employed at the new location, thus creating no additional unemployment; or whether an equivalently productive use will be made of the facility being abandoned by the relocating firm, thus possibly creating no deterioration of economic base.

However, the Department believes that the existence of the external circumstances referred to above, coupled with an additional factor, would reasonably justify a further presumption that the relocation that is presumed will result from the speculative project will also significantly and adversely affect the unemployment and economic base of the area from which the relocation will occur. The circumstances referred to above hypothesize a significant pattern of job movement out of an area and a likelihood of continuation of such a pattern. The additional circumstance to be considered is whether the area from which such job movement is occurring is a "distressed community" as defined in the UDAG program regulations. If all these circumstances exist, then it appears necessary to the Department that the impact of the presumed relocation resulting from the subject proposal be measured in the context of the cumulative effect upon an already distressed community of the pattern of job movement that is occurring.

The presumptions described above are rebuttable, but the burden of any rebuttal must be on the applicant. The applicant may elect to submit marketing studies which will support an inference that occupancy of the speculative space is more likely to result from expansion of other firms in the area or otherwise not result from relocation from the nearby distressed area. Except in exceptionally convincing cases, however, the Department does not anticipate that it will give great weight to marketing studies alone.

On certain past occasions, the Department has sought to address relocation concerns by requiring grant agreement covenants intended to prohibit leasing to tenants currently occupying space in a certain nearby distressed area or requiring replacement of jobs in the area from which a specific relocation is to occur. While the Department does not exclude the possibility of accepting covenants or other commitments as a means of assuring avoidance of relocation activities which HUD is prohibited from assisting, it should be recognized that the circumstances in which such arrangements will be considered adequate are rare. UDAG projects typically involve a substantial number of significant actors, and the Department's contractual arrangements typically are exclusively with the grantee. For this reason as well as other practical considerations, the Department's available remedies in the event of a subsequent post-development breach of a covenant are likely to be limited. Accordingly, in any case where the presumptions described above would otherwise require disapproval of a grant application, the Department will accept contractual commitments or covenants effectively precluding relocation or significant adverse effects thereof only if such covenants and commitments are entered directly by all necessary parties and only if the Department is satisfied that its available remedies in the event of a breach will be complete and are assured, such as by a clean irrevocable letter of credit assuring prompt repayment of the grant.

Based on the foregoing considerations, the Department announces the following policies and procedures:

1. For purposes of administering the requirements of 24 CFR § 570.456(c), HUD will presume that (a) a proposed project which includes speculative commercial or industrial space (other than space excluded pursuant to paragraph 5 below) is intended to facilitate the relocation of a facility from one area to another, and (b) such relocation will significantly and adversely affect the level of unemployment and the economic base of the area from which the facility is presumed to be relocated, if it is demonstrated to HUD's satisfaction that:

(i) The proposed project is reasonably proximate (i.e., within 50 miles) to an area from which there has been a significant current pattern of movement to areas reasonably proximate thereto of jobs of the category for which such space is appropriate;

(ii) There is a likelihood of continuation of such a pattern, based on measurable comparisons between the area from which such movement has been occurring and the area of the proposed project in terms of tax rates, energy costs, and similar relevant factors; and

(iii) The area from which such movement of jobs has been occurring is a distressed community as defined in 24 CFR 570.452.

2. The presumptions established pursuant to paragraph 1 are rebuttable by the applicant. However, the burden of overcoming such presumptions will be on the applicant, and the Secretary's determination as to whether such presumptions are applicable and, if applicable, whether the applicant has successfully rebutted them shall be conclusive. If the presumptions are applicable and are not rebutted to the Secretary's satisfaction, the Secretary will not grant approval to the application.

3. In connection with its effort to rebut

a presumption that a project is intended to facilitate relocation from a distressed community, the applicant may submit marketing studies which would support an inference that occupancy of the speculative space is more likely to result from expansion of other firms in the area or otherwise is more likely not to result from a relocation from the distressed area. Such marketing studies, by themselves, ordinarily will not be sufficient to overcome the presumption. However, the Secretary may, in his or her discretion, determine that the presumption is adequately rebutted if, in addition to such marketing studies, the applicant provides covenants and commitments which, in the Secretary's determination, are reasonably adequate to preclude a relocation from the distressed community. Such covenants and commitments will not be considered adequate unless, in addition to such other conditions as the Secretary may require, the following conditions are satisfied:

a. Such covenants and commitments will be executed by the applicant and such other participating parties as the Secretary may designate. Covenants and commitments relating to leasing of the subject space will apply only to initial leasing of the space, provided that the lease term of such initial leasing shall be for not less than five years.

b. The grant agreement will provide for remedies in the event of breach of any covenants and commitments, and such remedies shall be secured, in a manner which the Secretary determines will provide complete and assured relief. In general, such remedies and security therefor will not be considered complete and assured unless the Secretary is satisfied that prompt repayment of the grant to the Secretary is practicably and adequately assured in the event of a breach by any convenanting party.

4. Any covenants and commitments described in paragraph 3 will be included among the legally binding commitments required to be submitted pursuant to 24 CFR 570.461. However, the nature and scope of any such covenants and commitments, and the security therefor, will be required to be described and agreed to prior to preliminary funding approval.

5. The presumptions established in paragraph 1 will not apply if the speculative space contained in a commercial or industrial facility included in a project constitutes a lesser percentage of the total space contained in such facility than the threshold amounts specified below:

Size of facility	Maximum amount of speculative space (percent)
0 to 50,000 sq. ft.	10
50,001 to 250,000 sq. ft.	8
250,001 to 1,000,000 sq. ft.	5
1,000,001 or more sq. ft.	3

6. For purposes of the intergovernmental review procedures under Executive Order 12372 and, in particular, under 24 CFR 52.11, an application will be considered to have an "impact on interstate areas" if it proposes a project which includes speculative commercial or industrial space (other than space excluded pursuant to paragraph 5 above) to be located within 50 miles of another distressed community, as defined in 24 CFR 570.452, which is located in another State.

The policies and procedures described in this notice are applicable immediately.

Dated: January 9, 1985.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 85-999 Filed 1-10-85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Permanent Program Amendment From the State of Illinois Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On September 28, 1984, OSM received an amendment consisting of proposed changes in Illinois rules 1816.190 and 1817.190, concerning Affected Acreage Map.

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendment meets the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendment.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without undue delay; consistency of the State and Federal standards is required by SMCRA.

The Federal rules at 30 CFR Part 913 which codify decisions concerning the Illinois program are being amended to implement these actions.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Fulton, Director, Springfield Field Office, Office of Surface Mining, Room 20, 600 E. Monroe Street, Springfield, Illinois 62701; Telephone: (217) 492-4495.

SUPPLEMENTARY INFORMATION:

I. Background

The Illinois program was conditionally approved by the Secretary of the Interior on June 1, 1982 (47 FR 23858). Information pertinent to the general background, revisions, modifications and amendments to the Illinois program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Illinois program can be found in the June 1, 1982 **Federal Register.**

II. Submission of Amendment

By letter dated September 27, 1984, the State of Illinois formally submitted a request for approval of proposed Illinois rules 1816.190 and 1817.190, Affected Acreage Map.

Specifically, the proposed amendment includes the following revisions to Secs. 1816.190 and 1817.190.

Section 1816.190 Affected Acreage Map

(a) On or before September 1, of each year, every permit holder shall submit to the Department and to the county clerk, reports and maps of affected area.

(b) The forms shall be duly executed and duplicate maps shall be attached showing the area affected during the fiscal year just ended. The Department shall require the map to be executed by an engineer registered in the State of Illinois or Registered Land Surveyor.

(c) The map shall be planned as a continuous map, so that the area affected each year may be added and indicated on the map by the dates it was affected. Report forms as required by

section 1816.190 shall be submitted to the Department on forms provided by the Department. Map scales shall be in accordance with 62 Illinois Administrative Code 1771.23(e)(1).

(d) All maps shall show sections, township, range and county lines coming within the scope of the map; access to the area from the nearest public road and all weather roads within the mined area; and a title containing name of the operator, address, scale of the map, by whom the map was drawn, name of the surveyor or engineer.

Section 1817.190 Affected Acreage Map.

(a) On or before September 1, of each year, every permit holder shall submit to the Department and to the county clerk, reports and maps of affected areas.

(b) The forms shall be duly executed and duplicate maps shall be attached showing the area affected during the fiscal year just ended. The Department shall require the map to be executed by an engineer registered in the State of Illinois or Registered Land Surveyor.

(c) The map shall be planned as a continuous map so that the area affected each year may be added and indicated on the map by the dates it was affected. Report forms as required by Section 1817.190 shall be submitted to the Department on forms provided by the Department. Map scales shall be in accordance with 62 Illinois Administrative Code 1771.23(e)(1).

(d) All maps shall show sections, township, range and county lines coming with the scope of the map; access to the area from the nearest public road and all weather roads within the mined area; and a title containing name of the operator, address, scale of the map, by whom the map was drawn, name of the surveyor or engineer.

OSM published a notice in the **Federal Register** on October 30, 1984, announcing receipt of the amendments inviting public comment on the adequacy of the proposed amendments and extending an opportunity to request a public hearing (49 FR 43568). The public comment period closed on November 29, 1984. The notice stated that a public hearing would be held if requested. Since there were no requests for a hearing, the hearing was not held.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Illinois on September 27, 1984, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in the findings below.

Illinois is amending the program to require every permit holder to submit to the Department and to the county clerk annual reports and maps of affected areas. The Department requires the maps to be executed by an engineer registered in the State or a Registered Land Surveyor. The map shall be planned as a continuous map so that the area affected each year may be added and indicated on the map by the dates it was affected. The map scales shall be in accordance with 62 Illinois Administrative Code 1771.12(e)(1).

Generally, the Illinois rules at 1816.190 and 1817.190 have no counterpart in the Federal rules. However, the Director finds that the procedures represented by the Illinois amendment can be valuable in the State program administration. Therefore, the Director finds the Illinois rules do not conflict with any Federal provisions and, thus, are no less effective than the Federal regulations.

IV. Public Comment

One commenter suggested that only land surveyors can prepare the maps referred to in S. 1816.190 and 1817.190. These sections are being added at the State's discretion and there are no Federal counterpart regulations. The amendment allows both engineers and registered land surveyors to prepare these maps. Therefore, the Director finds that no changes are necessary. The commenter also offered the following language change in the phrase "the map to be executed by an engineer . . ." to read "the map to be 'signed and sealed' by an engineer . . ." because "executed" is not normal language for certificates. While OSM agrees that "executed" is not normal language for certifications, an engineer or land surveyor will execute by signing and sealing the certification. Therefore, no changes are necessary.

One commenter suggested that because the affected areas of the surface of underground coal mines do not change significantly from year to year, annual maps would not be appropriate for underground mines. The commenter has offered wording changes in 1817.190 to reflect this. The commenter has also offered language to make 1816.190 consistent with the underground section. Historically very few underground mines in Illinois fail to alter their surface areas each year. While the changes in affected areas may be smaller for underground mines than for surface mines, the Director finds the State requirement for an annual submission including maps could be a valuable tool for the State and finds the requirement is not inconsistent with the Federal provisions.

One commenter suggested that the terms "professional geologist" and "landscape architecture" need to be defined in the Illinois regulations. The Director finds that these comments are outside the scope of this rulemaking and, therefore, will require no changes from the State.

V. Director's Decision

The Director, based on the above findings, is approving the September 27, 1984 program amendment. The Director is amending Part 913 of 30 CFR Chapter VII to reflect approval of the State program amendments.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Secs. 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 913

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

PART 913—ILLINOIS

30 CFR 913.15 is amended by adding a new paragraph (f) as follows:

§ 913.15 **Approval of regulatory program amendments.**

* * * * *

(f) The following amendment submitted to OSM on September 27, 1984, is approved effective upon promulgation of the revised rule by the State, provided the rule is adopted in identical form as submitted to OSM: Illinois Administrative Code Secs. 1816.190 and 1817.190.

(Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

[FR Doc. 85–581 Filed 1–10–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL 2753–2]

Designations of Areas for Air Quality Planning Process; Attainment Status Designations: Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: This final rulemaking action addresses public comments received in response to the February 8, 1984, notice of proposed rulemaking (49 FR 4798), and revises the total suspended particulates (TSP) attainment status designations of all, or part, of 17 Illinois counties: Adams, Cook, DeKalb, Du Page, Grundy, Kendall, Knox, Lake, La Salle, Madison, Monroe, St. Clair, Peoria, Rock Island, Tazewell, Will, and Woodford. The revisions are based upon a January 27, 1983, redesignation request from the State of Illinois, and on supporting technical data submitted by the State. The request was amended on May 2, 1983, and supplemental information was provided on July 27, 1983. This final rulemaking action also rejects Illinois' request to redesignate the TSP attainment status designations of parts of the following five counties: Cook, Du Page, Kendall, Rock Island, and Will. In addition, this final rulemaking action affirms the current attainment status designations of La Salle Township, La Salle County, and Joliet Township, Will County, based on the State's withdrawal of their redesignation requests. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

EFFECTIVE DATE: This final rulemaking becomes effective on February 11, 1985.

ADDRESSES: Copies of the redesignation request, the technical support documents, public comments, and the supporting air quality data are available at the following addresses:

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6035.

SUPPLEMENTARY INFORMATION:

Background

On January 27, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a request to USEPA proposing redesignation of all, or part, of 17 countries for the pollutant TSP. IEPA amended its request on May 2, 1983, and provided additional information on July 27, 1983. The current designation of each area for which a change has been requested, and the requested change, is as follows:

1. Adams County: Ellington, Melrose, and Riverside Townships.	Secondary nonattainment to attainment.
2. Cook County:	
Berwyn, Calumet, Lake, Lyons, N. Stickney, Riverside, and Thornton Townships.	Primary nonattainment to secondary nonattainment.
Bremen, Hanover, Lemont, Oak Park, Orland, Palos, and Rich Townships.	Secondary nonattainment to attainment.
3. DeKalb County: DeKalb and Mayfield Townships.	Do.
4. DuPage County:	
Addison Township	Primary nonattainment to secondary nonattainment.
York Township	Primary nonattainment to attainment.
Bloomingdale, Downers Grove, Lisle, and Naperville Townships.	Secondary nonattainment to attainment.
5. Grundy County: AuxSable and Morris Townships.	Unclassified to secondary nonattainment.
6. Kendall County: Entire County	Secondary nonattainment to attainment.
7. Knox County: Entire County	Do.
8. Lake County: All secondary nonattainment townships.	Do.
9. LaSalle County:	
LaSalle Township	Primary nonattainment to unclassified.
Ottawa Township	Secondary nonattainment to attainment.
10. Madison County:	
Alton Township	Primary nonattainment to secondary nonattainment.
Alhambra, Edwardsville, Hamel, Helvetia, Jarvis, Marine, Omphghent, Pin Oak, Saline, and St. Jacob Townships.	Secondary nonattainment to attainment.
11. Monroe County: Township T. 2S–R. 4W.	Secondary nonattainment to attainment.
12. Peoria County:	
Limestone and Peoria Townships.	Primary nonattainment to secondary attainment.
All secondary nonattainment townships except Hollis, Richwoods, Kickapoo, and Medina Townships.	Secondary nonattainment to attainment.
13. Rock Island County:	
Rock Island and S. Rock Island Townships.	Primary nonattainment to secondary nonattainment.
South Moline Township	Primary nonattainment to unclassified.
14. St. Clair County:	
Cassyville, Shiloh Valley, and St. Clair Townships.	Primary nonattainment to secondary nonattainment.
Freeburg, Lebanon, O'Fallon, and Smithton Townships.	Secondary nonattainment to attainment.
15. Tazewell County:	
Fondulac and Groveland Townships.	Primary nonattainment to secondary nonattainment.
All secondary nonattainment townships except Cincinnati, Elm Grove, Pekin, Morton, and Washington Townships.	Secondary nonattainment to attainment.
16. Will County:	
DuPage, Lockport, and Joliet Townships.	Primary nonattainment to secondary nonattainment.
Florence, Frankfort, Green Garden, Homer, Manhattan, Peotone, and Wilton Townships.	Secondary nonattainment to attainment.
Monee Township	Attainment to secondary nonattainment.
17. Woodford County: All secondary nonattainment townships.	Secondary nonattainment to attainment.

In the February 8, 1984, Federal Register (49 FR 4798), USEPA proposed to revise the TSP attainment status designations of all, or part, of 15 of the 17 counties submitted for redesignation by IEPA, and to reject the redesignation request for all, or part, of 9 counties. USEPA proposed to revise the designations of all the Illinois townships as listed above, with the exception of the following:

1. Cook County: Lyons and Calumet Townships.
2. DuPage County: Addison Township.
3. Kendall County: Entire County.
4. LaSalle County: LaSalle Township.
5. Madison County: Alton Township.
6. Peoria County: Peoria Township.
7. Rock Island County: Rock Island, South Rock Island and South Moline Townships.
8. Tazewell County: Fondulac and Groveland Townships.
9. Will County: Joliet, DuPage, and Lockport Townships.

A detailed discussion of USEPA's proposed revisions, and the reasoning behind them, can be found in the February 8, 1984, notice of proposed rulemaking (49 FR 4798). USEPA rejected the redesignation request for all, or part, of the 9 counties because sufficient information was not available to support the redesignations. USEPA stated in its notice of proposed

rulemaking, however, that if the State provided adequate technical information during the public comment period to support the redesignations of these areas, then USEPA would take final action to approve the redesignations of these townships.

Public Comments

IEPA submitted the only comment received by USEPA in reponse to the request for public comment contained in the proposed rulemaking. This comment, and USEPA's response to this comment, is summarized below.

Comment: IEPA disagrees with USEPA's proposal to withhold approval of several of their redesignation requests until "the compliance status of major TSP sources in the area is resolved." IEPA feels that USEPA's requirement for individual source compliance prior to redesignation has no foundation under the Act. Moreover, it is quite possible for an area to be in attainment (as evidenced by monitored or modeling data) and still contain sources which are not, or may not be, in compliance with the applicable pollutant standard.

Response: USEPA's policy on redesignations is contained in the memoranda "Section 107 Designation Policy Summary," April 21, 1983, and "Section 107 Questions and Answers," December 23, 1983. These policies require review of "all available information relative to the attainment status of the * * * area plus evidence of an implemented control strategy that USEPA has fully approved." Individual source compliance can be relevant to the attainment status of an area because a source's emission limit is often an integral part of the overall control strategy, which has been developed to assure attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). If a source is not complying with its emission limit, it may be incorrect to assume that the area is attaining the NAAQS. Of course, if sufficient site-specific monitoring, and/or modeling data are available showing attainment and maintenance of the NAAQS despite noncompliance of individual sources, then redesignation to attainment may be appropriate.

In addition to its comment, IEPA submitted technical information that addressed problems noted in the February 8, 1984, notice of proposed rulemaking. This information is relevant to USEPA's proposed disapproval of the redesignations for all, or part, of the nine Illinois counties listed above. This information is discussed below.

Cook County

Lyons and Calumet Townships

The redesignation requests for these two townships are not supported by the available information. In Lyons Township, IEPA's modeling predicts substantial primary nonattainment attributable to two firms, Material Services Corporation and Vulcan Material. Two monitors, which were discontinued in 1980, recorded primary standard violations in the late 1970's. In Calumet Township, IEPA's modeling shows marginal primary nonattainment close to the only major TSP sources in the township, and nearby monitors (Blue Island and Carver High School) have recorded recent primary standard violations. Therefore, USEPA is disapproving Illinois' request that these areas be redesignated from primary to secondary nonattainment. IEPA did not provide any additional information for these townships during the public comment period.

DuPage County

Addison Township

In the February 8, 1984, notice of proposed rulemaking, USEPA stated that, before this redesignation from primary to secondary nonattainment could be approved, the State had to demonstrate that the Chicago Stone Company had in fact shutdown, and that the facility had been removed from the emission inventory. The State provided no new information on Chicago Stone during the public comment period. Therefore, USEPA is rejecting IEPA's redesignation request for Addison Township.

Kendall County

IEPA has requested that Kendall County be redesignated from secondary nonattainment to attainment. They noted that USEPA mistakenly designated the entire county as secondary nonattainment, rather than just Little Rock Township, when the county was originally designated (45 FR 6786). USEPA agrees that the original designation was in error, and that only Little Rock Township should have been designated as secondary nonattainment. Little Rock Township should remain secondary nonattainment, because IEPA has not provided sufficient air quality information to supplement the only available monitoring data from the discontinued Plano site. Therefore, USEPA is revising the designation of Kendall County, except for Little Rock Township, from secondary nonattainment to attainment. USEPA is rejecting Illinois' request to redesignate Little Rock Township from secondary nonattainment to attainment due to insufficient air quality data.

LaSalle County

LaSalle Township

USEPA affirms the current attainment status designation of LaSalle Township which is primary nonattainment. A monitor that was recently installed in the Township has shown a violation of the TSP NAAQS near the major TSP source for this area. Because of this violation, IEPA has withdrawn their redesignation request for this Township.

Madison County

Alton Township

The monitoring data from the remaining monitoring site in Alton Township shows attainment of the primary standards since 1980. However, IEPA's modeling predicted violations of the primary TSP NAAQS attributable to the Mississippi Lime Company. Therefore, USEPA proposed to reject this redesignation request, until such time that IEPA could document specific legally enforceable emission reductions beyond RACT levels from Mississippi Lime, and/or other sources, which are contributing to the high modeled concentrations.

It now appears that the emissions input to IEPA's modeling analysis was overestimated, resulting in an erroneous estimate of TSP fugitive emissions. IEPA has provided a more accurate plant-specific estimate, as well as evidence of an approved fugitive dust control plan, per Illinois Rule 203(f), for Mississippi Lime. Therefore, USEPA is approving the redesignation of Alton Township from primary to secondary nonattainment.

Peoria County

Peoria Township

USEPA proposed to reject Illinois' redesignation request (primary to secondary nonattainment) for this Township until the compliance status of major TSP sources in the area was resolved. As noted earlier, Illinois objects to the use of source compliance status as a criterion for review of Section 107 redesignation requests. Nevertheless, the compliance status of sources in this Township has been resolved, and USEPA approves the redesignation of this Township from primary to secondary nonattainment.

Rock Island County

Rock Island and South Rock Island Townships

These redesignations are supported by the available monitoring and modeling data, with the exception of the southern portion of South Rock Island Township. In this area, IEPA's modeling predicted substantial primary nonattainment attributable to the Allied Stone Company in nearby Rock Island. Despite the supporting technical data, USEPA proposed to reject Illinois' redesignation request from primary to secondary nonattainment until IEPA provided the following information:

(1) Documentation that legally enforceable emission reductions have occurred at the Allied Stone Company; and,

(2) Certification that a major TSP source in Rock Island Township is in compliance with existing SIP requirements.

During the public comment period, IEPA noted that the observed improvement in air quality levels at the site closest to Allied Stone coincides with the development of a fugitive dust program by the Allied Stone Company. However, sufficient information is not available to determine whether the entire area surrounding the Allied Stone Company is currently attaining the primary TSP NAAQS. Consequently, USEPA is rejecting the redesignation of South Rock Island Township. However, IEPA stipulated that the TSP source in Rock Island Township has now complied with applicable SIP regulations. Therefore, USEPA is approving the redesignation of Rock Island Township.

South Moline Township

USEPA proposed to reject Illinois' redesignation request from primary nonattainment to unclassified. During the public comment period, IEPA noted that two consecutive years of data are now available at a relocated monitoring site in this area, and requested that this Township be redesignated attainment from primary nonattainment. USEPA views IEPA's comments as a new request based on newly available information. Therefore, USEPA rejects the State's original redesignation request to unclassified, and will propose separate action at a later date on their new redesignation request for this Township.

Tazewell County

Fondulac and Groveland Townships

USEPA proposed to reject Illinois' redesignation request from primary to secondary nonattainment until the compliance status of the two major utility sources in the area is resolved. As stated above, IEPA disagrees with the use of source compliance status as a criterion for review of redesignation requests. Nevertheless, the compliance status of the major utility sources has now been resolved and USEPA approves the redesignation request for these two townships.

Will County

Joliet Township

USEPA affirms the current attainment status designation of Joilet Township which is primary nonattainment. A monitor that is located in this Township showed a violation of the primary TSP NAAQS during 1983. Because of this violation, IEPA has withdrawn their redesignation request for this Township.

DuPage and Lockport Townships

USEPA proposed to reject Illinois' redesignation request from primary to secondary nonattainment for these townships. The February 8, 1984, notice of proposed rulemaking required IEPA to provide additional information demonstrating that recent emission reductions at the Material Service Corporation and the Chicago Stone Company would alleviatea modeled high concentrations in these areas. During the public comment period, IEPA objected to our focus on individual sources, instead of area air quality, and restated their original redesignation request. However, IEPA provided no new information on the Material Service Corporation and the Chicago Stone Company. Therefore, USEPA is rejecting Illinois' request redesignation of these two townships.

Conclusion

USEPA is revising the TSP attainment status designation of the following Illinois counties, as indicated below:

1. Adams County: Ellington, Melrose, and Riverside Townships.	Secondary nonattainment to attainment.
2. Cook County:	
Berwyn, Lake, N. Stickney, Riverside, and Thornton Townships.	Primary nonattainment to secondary nonattainment.
Bremen, Hanover, Lemont, Oak Park, Orland, Palos, and Rich Townships.	Secondary nonattainment to attainment.
3. DeKalb County: DeKalb and Mayfield Townships.	Do.
4. DuPage County:	
York Township	Primary nonattainment to attainment.
Bloomingdale, Downers Grove, Lisle, and Naperville Townships.	Secondary nonattainment to attainment.
5. Grundy County: AuxSable and Morris Townships.	Unclassified to secondary nonattainment.
6. Kendall County: Entire county except for Little Rock Township.	Secondary nonattainment to attainment.
7. Knox County: Entire county	Do.
8. Lake County: All secondary nonattainment townships.	Do.
9. LaSalle County: Ottawa Township.	Do.
10. Madison County:	
Alton Township	Primary nonattainment to secondary nonattainment.
Alhambra, Edwardsville Hamel, Helvetia, Jarvis, Marine, Omphghent, Pin Oak, Saline, and St. Jacob Townships.	Secondary nonattainment to attainment.
11. Monroe County: Towhship T.2S-R.10W.	Do.
12. Peoria County	
Limestone and Peoria Townships.	Primary nonattainment to secondary nonattainment.
All secondary nonattainment townships except Hollis, Richwoods, Kickapoo, and Medina Townships.	Secondary nonattainment to attainment.
13. Rock Island County: Rock Island Township.	Primary nonattainment to secondary nonattainment.
14. St. Clair County:	
Caseyville, Shiloh Valley, and St. Clair Townships.	Primary nonattainment to secondary nonattainment.
Freeburg, Lebanon, O'Fallon, and Smithton Townships.	Secondary nonattainment to attainment.
15. Tazewell County:	
Fondulac and Groveland Townships.	Primary nonattainment to secondary nonattainment.
All secondary nonattainment townships except Cincinnati, Elm Grove, Pekin, Morton, and Washington Townships.	Secondary nonattainment to attainment.
16. Will County:	
Florance, Frankfort, Green Garden, Homer, Manhattan, Peotone, and Wilton Townships.	Do.
Monee Township	Attainment to secondary nonattainment.
17. Woodford County: All secondary nonattainment townships.	Secondary nonattainment to attainment.

USEPA is rejecting Illinois' request to change the TSP designations of parts of following counties:

1. Cook County: Lyons and Calumet Townships.
2. DuPage County: Addison Township.
3. Kendall County: Little Rock Township.
4. Rock Island County: South Rock Island and South Moline Townships.
5. Will County: DuPage and Lockport Townships.

USEPA is withdrawing its proposed rejection of the State's requested redesignations of LaSalle Township, LaSalle County, and Joliet Township, Will County. IEPA has withdrawn their original request for redesignation of these two townships, because of monitored violations of the TSP NAAQS that have occured in these two areas. In addition, IEPA has requested that USEPA revise the TSP attainment status designations of Chouteau Township, Madison County, and Derinda Township, Jo Daviess County. USEPA will address the redesignation of these two areas in a forthcoming notice of

proposed rulemaking. USEPA will address the redesignation of South Moline Township, Rock Island County, in the same notice. The redesignation of this Township was rejected in today's rulemaking because IEPA changed their original request, requiring reproposal of the action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 12, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Lists of Subjects in 40 CFR Part 81

Intergovernmental relations, Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7404).

Dated: December 3, 1984.

William D. Ruckelshaus,

Administrator.

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES—ILLINOIS

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

§ 81.314 [Amended]

1. Section 81.314—Illinois, the attainment status designation table for Total Suspended Particulates (TSP), is amended by revising the designations for the following counties:

ILLINOIS—TSP

Designated areas	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
AQCR 65:				
Knox County				X
Peoria County:				
Hollis		X		
Kickapoo		X		
Limestone		X		
Medina		X		
Peoria		X		
Richwoods		X		
All other townships				X
Tazewell County:				
Cincinnati		X		
Elm Grove		X		
Fondulac		X		
Groveland		X		
Morton		X		
Pekin		X		
Washington		X		
All other townships				X
Woodford County				X
*	*	*	*	*
AQCR 67:				
Cook County:				
Barrington				X
Berwyn		X		
Bremen				X
Calumet	X	X		
Cicero	X	X		
Evanston				X
Hanover				X
Hyde Park	X	X		
Lake		X		
Lemont				X
Lyons	X	X		
New Trier				X
North Stickney		X		
North Town	X	X		
Oak Park				X
Orland				X
Palos				X
Rich				X
Riverside		X		
Schaumburg				X
South Stickney	X	X		
South Town	X	X		
Thornton		X		
West Town	X	X		
Worth	X	X		
All other townships		X		
DuPage County:				
Addison	X	X		
Bloomingdale				X
Downers Grove				X
Lisle				X
Milton				X
Naperville				X
Wayne				X
Winfield				X
York				X
Kankakee County:				
Essex				X
Norton				X
Pilot				X
All other townships		X		
Kendall County:				
Little Rock		X		
All other townships				X
Lake County				X
Will County:				
Channahon		X		
Crete		X		
DuPage	X	X		
Jackson		X		
Joliet	X	X		
Lockport	X	X		
Monee		X		
New Lenox		X		
Plainfield		X		
Troy		X		
Wheatland		X		
Wilmington		X		
All other townships				X
Grundy County:				
AuxSable		X		
Morris		X		
All other townships				X
Kane County:				
Aurora		X		
Elgin		X		
All other townships				X
McHenry County				X
*	*	*	*	*
AQCR 69:				
Henry County				X
Rock Island County:				
Blackhawk	X	X		
Hampton	X	X		
Moline	X	X		
Rock Island		X		
South Moline	X	X		
South Rock Island	X	X		
All other townships				X
Whiteside County:				
Clyde		X		
Coloma		X		
Genesee		X		
Hopkins		X		
Hume		X		
Jordan		X		
Lyndon		X		
Montmorency		X		
Mount Pleasant		X		
Prophetstown		X		
Sterling		X		
All other townships				X
Carroll County				X
Mercer County				X
AQCR 70:				
Monroe County:				
T.1N–R.10W.		X		
T.1N–R.11W.		X		
T.1S–R.10W.		X		
All other townships				X
Madison County:				
Alhambra				X
Edwardsville				X
Granite City	X	X		
Hamel				X
Helvetia				X
Jarvis				X
Leef				X
Marine				X
Nameoki	X	X		

ILLINOIS—TSP—Continued

Designated areas	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
New Douglas				X
Olive				X
Omphghent				X
Pin Oak				X
Saline				X
St. Jacob				X
Venice	X	X		
Wood River	X	X		
All other townships		X		
St. Clair County:				
Caseyville		X		
Engelmann				X
Fayetteville				X
Freeburg				X
Lebanon				X
Lenzburg				X
Marissa				X
Mascoutah				X
Millstadt		X		
New Athens				X
O'Fallon				X
Prairiedulong				X
Shiloh Valley		X		
Smithton				X
St. Clair		X		
Stookey		X		
All other townships	X	X		
Bond County				X
Clinton County				X
Randolph County				X
Washington County				X
AQCR 71:				
Bureau County				X
LaSalle County:				
Deer Park		X		
Dimmick		X		
LaSalle	X	X		
Peru		X		
Utica		X		
Waltham		X		
All other townships				X
Lee County				X
Putnam County				X
Marshall County				X
Stark County				X
* * * * *				
AQCR 73:				
DeKalb County				X
Stephenson County				X
Winnebago County				X
Boone County				X
Ogle County				X
* * * * *				
AQCR 75:				
Adams County				X
Macon County:				
Decatur	X	X		

ILLINOIS—TSP—Continued

Designated areas	Does not meet primary	Does not meet secondary	Cannot be classified	Better than national standards
Hickory Point		X		
All other townships				X
Menard County:				
Petersburg East		X		
Petersburg North		X		
Petersburg South		X		
All other townships				X
Sangamon County:				
Springfield		X		
All other townships				X
Brown County				X
Calhoun County				X
Cass County				X
Christian County				X
Greene County				X
Jersey County				X
Logan County				X
Macoupin County				X
Montgomery County				X
Morgan County				X
Pike County				X
Schuyler County				X
Scott County				X
* * * * *				

[FR Doc. 85-594 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 271

[SW-6-FRL-2756-5]

Arkansas; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Arkansas' application for final authorization.

SUMMARY: Arkansas has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Arkansas' application and has reached a final determination that Arkansas' Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus, EPA is granting Final Authorization to the State to operate its program.

EFFECTIVE DATE: Final Authorization for Arkansas, for purposes of judicial review, shall be effective January 25, 1985.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section (6AW-HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270, (214) 767-2645.

SUPPLEMENTARY INFORMATION: Section 3006(b) of RCRA allows the EPA to authorize State hazardous waste management programs to operate in the state in lieu of the Federal program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other authorized state programs and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On July 18, 1984, Arkansas submitted a complete application to obtain Final Authorization to administer a RCRA program. On October 12, 1984, EPA published a tentative decision announcing its intent to grant Arkansas Final Authorization. Further background on the tentative decision appears at 49 FR 40055, October 12, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application and EPA's tentative determination. The public hearing was held on November 13, 1984, at 7:00 p.m. in Little Rock, Arkansas.

The State of Arkansas received Phase I, Interim Authorization on November 19, 1980, Phase II, Components A and B Interim Authorization on April 19, 1982, and Component C of Phase II Interim Authorization on January 24, 1984. Therefore, there will be no change in the status of permits or permitting authority on the effective date of this Final Determination.

Arkansas is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Responsiveness Summary

In addition to the **Federal Register** notice of tentative determination cited above, EPA publicized the notice of determination, the availability of the State's application for review and comment, and the public hearing by providing for publication of the notice in enough newspapers of general

circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major news media outlets in the State.

By the close of the public comment period, EPA received comments from six (6) persons on the Tentative Decision to grant Final Authorization to Arkansas. Comments are summarized and responded to below. The comments are grouped, to the extent possible, according to common areas for ease of response. This grouping is not meant to indicate any special significance or lack of significance of any comment. All comments have been carefully considered in reaching the decision to grant Final Authorization to the State of Arkansas.

1. *Comment:* One commenter stated that the current hazardous waste regulations in Arkansas will not protect the interests of the people of Arkansas. The commenter suggests that more resources are needed for the Arkansas program and that a more comprehensive plan of action is required. Such a regulatory scheme would include, among other things, waste reduction with a goal of zero discharge by 1990, on-site detoxification, waste exchange, not allowing any exemptions from full regulations, and prohibiting the landfilling of hazardous waste in Arkansas.

Response: As discussed earlier in this notice, EPA's decision to grant Final Authorization is based on the statutory requirements found in Sections 3006(b) and 7004 of RCRA as enacted by the Congress. EPA has reviewed the Arkansas program and has found that it meets those requirements, including sufficient resources for its operation.

EPA recognizes that the standards set out in the federal regulations may be supplemented by state requirements in order to provide the program desired by the state. Section 3009 of RCRA does allow for State programs to be more stringent than the federal program, if consistent with the federal scheme. All of the suggestions of the commenter encouraging stricter regulations have merit and deserve to be considered by the state. They are, however, not a consideration in the RCRA authorization process; EPA cannot deny authorization because the state has not implemented a more stringent program than EPA requires.

2. *Comment:* Two commenters expressed concern that the hazardous waste program in Arkansas would not prevent contamination of the environment by hazardous wastes. The commenters were concerned that hazardous waste not enter the environment and cause pollution of environmental resources, including aesthetic resources and water resources, and that due care be taken in preserving the environment of the State.

One of the commenters was also concerned that not enough resources were being allocated in Arkansas to properly regulate hazardous waste.

Response: EPA appreciates such concerns and wishes to assure the commenters, and all people concerned with proper hazardous waste management, that EPA is also concerned with the preservation of the environment and the abatement of existing pollution problems. The performance and technical standards for the protection of ground and surface water resources from hazardous waste contamination are at the core of the RCRA program. EPA has reviewed the Arkansas program and found that it meets the applicable requirements of the federal program. As noted above, part of this determination includes an assessment of Arkansas' resources for implementation of its program. Implementation of this program in Arkansas should serve to prevent pollution by hazardous waste.

3. *Comment:* Two commenters expressed support for the Final Authorization of the State of Arkansas' hazardous waste management program.

Response: EPA appreciates these comments and has certainly taken them, along with the other comments received, into consideration in reaching a decision. Arkansas has demonstrated that the State program meets the requirements of Sections 3006 and 7004 of RCRA, the primary standards against which EPA measures the Arkansas program in reaching the decision to grant Final Authorization.

4. *Comment:* One commenter stated that the Arkansas Department of Pollution Control and Ecology does not consider the comments of interested persons when reaching a decision. The commenter asserts that only industry in the State has input into regulatory decisions and that the present regulatory system allows too much self regulation by industry.

Response: EPA has reviewed the public participation procedures the State of Arkansas utilizes in developing regulations, issuing permits, etc. EPA has found that these procedures are equivalent to the procedures EPA would use in similar circumstances. EPA solicits and welcomes details regarding specific situations where the agency has failed to follow those procedures. The federal RCRA hazardous waste regulatory program is a cradle to grave system for regulating hazardous waste. This system, which Congress has chose to establish, involves compliance, reporting, and record keeping by the regulated community and compliance monitoring and enforcement by government. The Arkansas program for compliance and enforcement of hazardous waste laws and regulations has been found to meet the applicable requirements of the federal program. Failure of the State to implement the authorized RCRA program in a manner equivalent to the federal program would result in action by EPA to withdraw the authorization.

Decision

After reviewing the public comments, re-evaluating the State's submittal in light of those comments, and considering the performance of the State under Interim Authorization, it is my conclusion that Arkansas' application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, Arkansas is granted Final Authorization to operate its hazardous waste management program. Subject to the Hazardous and Solid Waste Amendments of 1984 [Pub. L. 98-616, November 8, 1984], Arkansas now has responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program. Arkansas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments [HSWA] amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Arkansas. To the extent the authorized State program is unaffected

by the HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the prohibitions and requirements of the HSWA in Arkansas until Arkansas receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

HSWA-related requirements and prohibitions that are more stringent than the State's program apply in Arkansas. Any State requirement that is more stringent than HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the authorized State program and the HSWA defines the applicable requirements in Arkansas. (Arkansas is not being authorized now for any requirement implementing the HSWA.)

EPA will be publishing a **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

Region VI and Arkansas are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA provides that Arkansas shall administer the RCRA program in lieu of EPA and that EPA shall not issue permits in the State. Thus, it is inconsistent with the HSWA and will be revised to reflect EPA's and Arkansas' respective responsibilities under the new Federal/State regulatory scheme. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this Final Authorization from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Arkansas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burden on small entities. This Final Determination therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This Final Determination is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b) and EPA delegation 8-7.

Dated: December 19, 1984.

Dick Whittington,

Regional Administrator.

[FR Doc. 85-857 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-6-FRL-2756-4]

New Mexico; Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on New Mexico's application for final authorization.

SUMMARY: New Mexico has applied for Final Authorization under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed New Mexico's application and has reached a final determination that New Mexico's Hazardous Waste Program satisfies all of the requirements necessary for Final Authorization. Thus, EPA is granting Final Authorization to the State to operate its program.

EFFECTIVE DATE: Final Authorization for New Mexico, for purposes of judicial review, shall be effective January 25, 1985.

FOR FURTHER INFORMATION CONTACT: H.J. Parr, State Programs Section (6AW-HP), Hazardous Materials Branch, U.S. Environmental Protection Agency, Region VI, 1201 Elm St., Dallas, Texas 75270 (214) 767-2645.

SUPPLEMENTARY INFORMATION: Section 3006(b) of RCRA allows the EPA to authorize State hazardous waste management programs to operate in the state in lieu of the Federal program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other authorized state programs and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On July 26, 1984, New Mexico submitted a complete application to obtain Final Authorization to administer a RCRA program. On October 24, 1984, EPA published a tentative decision announcing its intent to grant New Mexico Final Authorization. Further background on the tentative decision appears at 49 FR 42761, October 24, 1984.

Along with the tentative determination, EPA announced the availability of the State's application for public review and comment and the date of a public hearing on the application and EPA's tentative determination. The public hearing was held on November 28, 1984, at 10:00 a.m. in Albuquerque, New Mexico.

The State of New Mexico received Interim Authorization for Phase I and for Phase II, Components A and B on September 30, 1983. New Mexico chose not to apply for Component C. Upon receiving Final Authorization, New Mexico will implement its program for permitting land disposal facilities. Otherwise, there will be no change in the status of permits or permitting authority on the effective date of this Final Determination.

New Mexico is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Responsiveness Summary

In addition to the **Federal Register** notice of tentative determination cited above, EPA publicized the notice of determination, the availability of the State's application for review and comment, and the public hearing by providing for publication of the notice in enough newspapers of general circulation to ensure State wide coverage and by mailing notices to persons on the State and EPA mailing lists. Approximately one (1) week prior to the hearing EPA mailed a follow-up notice to the major media outlets in the State.

EPA received comments from three (3) persons on the Tentative Decision to grant Final Authorization to New Mexico. Comments are summarized and responded to below. The comments are grouped, to the extent possible, according to common areas for ease of response. This grouping is not meant to indicate any special signficance or lack of significance of any comment. All comments have been carefully

considered in reaching the decision to grant Final Authorization to the State of New Mexico.

1. *Comment:* One commenter maintains that the Government of the United States must keep direct control over the Hazardous Waste Program. The commenter asserts that it is not suitable to let the State of New Mexico or any other state take control of the program, even if a state proves to be a capable agency.

Response: Section 3006 of RCRA requires EPA to grant Final Authorization to the states if they meet the requirements of RCRA. While EPA appreciates the concern of the commenter, EPA has the obligation under federal law to grant the authorization if the state demonstrates compliance with RCRA.

2. *Comment:* Two commenters support the authorization of the State's Hazardous Waste Management Program.

Response: EPA appreciates these comments and has certainly taken them into consideration in reaching a decision. New Mexico has demonstrated that the State program meets the requirements of Sections 3006 and 7004 of RCRA, the primary standards against which EPA measures the New Mexico program in reaching the decision to grant Final Authorization.

Decision

After reviewing the public comments, re-evaluating the State's submittal in light of those comments, and considering the performance of the State under Interim Authorization, it is my conclusion that New Mexico's application for Final Authorization meets all of the regulatory and statutory requirements established by RCRA.

Accordingly, New Mexico is granted Final Authorization to operate its hazardous waste management program. Subject to the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984), New Mexico now has responsibility for permitting treatment, storage and disposal facilities within its borders and for carrying out all other aspects of the RCRA program. New Mexico also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit. Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in New Mexico. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. EPA will administer and enforce the prohibitions and requirements of the HSWA in New Mexico until New Mexico receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement.

HSWA-related requirements and prohibitions that are more stringent than the State's program apply in New Mexico. Any State requirement that is more stringent than an HSWA provision also remains in effect; thus, the universe of the more stringent provisions in the authorized State program and the HSWA define the applicable requirements in New Mexico. (New Mexico is not being authorized now for any requirement implementing the HSWA.)

EPA will be publishing a Federal Register notice that explains in detail the HSWA and its effect on authorized States. That notice should be referred to for further information.

Region VI and New Mexico are currently reviewing the Memorandum of Agreement (MOA) to revise it to address the requirements of the HSWA. The current MOA provides that New Mexico shall administer the RCRA program in lieu of EPA and that EPA shall not issue permits in the State. Thus, it is inconsistent with the HSWA and will be revised to reflect EPA's and New Mexico's respective responsibilities under the new Federal/State regulatory scheme. (Because of the strict statutory time clock for processing final authorization applications, the State and EPA did not have ample time to revise the MOA before EPA's final approval of the State's application.)

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this Final Authorization from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burden on small entities. This Final Determination therefore, does not require a regulatory flexibility analysis.

List of Subject in 40 CFR Part 271

Hazardous materials, Indian lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Intergovernmental relations, Penalties, Confidential business information.

Authority: This Final Determination is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b) and EPA delegation 8-7.

Dated: December 19, 1984.

Dick Whittington,

Regional Administrator.

[FR Doc. 85-860 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 71

Foreign Quarantine

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: This rule amends the regulations in 42 CFR Part 71 necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States. In 1967, the Public Health Service was reorganized, and the Quarantine Program was transferred to the Centers for Disease Control (CDC). Since the transfer, the Quarantine Program has been modernized and streamlined. The regulations have been updated to reflect

current concepts of disease surveillance, investigation, and control.

EFFECTIVE DATE: February 11, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Laurence S. Farer, Acting Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Ga. 30333, telephone (404) 329-2574, or FTS 236-2574.

SUPPLEMENTARY INFORMATION: This final rule implements revisions proposed in a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 9, 1983 (48 FR 36143). The NPRM provided a 60-day comment period scheduled to close on October 11, 1983. To be responsive to all groups affected by the proposed regulations, the comment period was subsequently extended an additional 60 days ending December 11, 1983. All comments received were considered in the final rule.

Discussion of Comments

Comments on the proposed rule were received from Federal and State agencies, professional associations, private industry, the military, and universities. A summary of the substantive comments and our responses follows. A more complete discussion on the provisions to which most comments were directed appears in the preamble of the NPRM.

Comment—Comments were received from 24 sources on the proposed elimination of restrictions on the importation of psittacine birds. The majority of commenters opposed the elimination of these restrictions, citing public health risks, occupational health risks to poultry workers, and threats to domestic poultry flocks.

Response—Psittacosis in humans is a disease which is easily managed and treated, and is rarely transmitted person-to-person. The Department acknowledges that psittacosis constitutes a health risk for the relatively small population engaged in commerce or ownership of cage and aviary birds and will continue to monitor the occurrence of psittacosis in this susceptible subpopulation. The Department further acknowledges the importance of measures to assure that infected birds do not enter into commerce and that uniform procedures of testing, treating, and identifying cage and aviary birds are established and applied within the industry. However, the low incidence of psittacosis among the general population does not warrant quarantine restrictions on the importation of psittacine birds.

The U.S. Department of Agriculture (USDA) has quarantine jurisdiction over all imported birds to protect domestic flocks against communicable diseases. USDA regulations (9 CFR 92.11) require chlortetracycline prophylactic treatment of imported psittacine birds. In accordance with discussions held early this year between HHS and USDA officials, the Department will continue to endorse this antimicrobial therapy for imported birds in quarantine, as required by USDA regulations, and will further recommend that industry or individual bird owners continue the treatment for 15 additional days. The Department will provide the USDA with advisory notices on the potential health risk to importers. These notices will be given to importers at the time their birds are released from the quarantine facility.

Comment—Comments were received from an officer of the U.S. Navy (USN) on the proposed changes regarding Deratting/Deratting Exemption Certificates. The commenter recommended that current Deratting/Deratting Exemption Certificate requirements for ships entering U.S. ports not be changed. The commenter indicated that since some foreign ports continue to require the certificates, eliminating the requirement for U.S. ports may lead to confusion.

Response—Although the certificate will no longer be required for ships entering U.S. ports as explained in the preamble of the NPRM, CDC will continue to perform rodent infestation inspections and to issue Deratting/Deratting Exemption Certificates, on request, to those ships which require the certificates for international itineraries. As explained in the preamble of the NPRM, the inspections and issuance of certificates will continue since some nations still require them and since the International Health Regulations require each health administration to provide the service. This response has been discussed with officials of the USN and they have accepted our position.

Comment—Comments were received from one source on the restrictions on importation of nonhuman primates. The commenter suggested that the definition of "exhibition purpose" is ambiguous in that more specific criteria for "reasonable vacation and retraining periods" are not provided. The commenter also pointed out that no provisions for "travel time" or "sick leave" were included in the definition.

Response—The definition of "exhibition purpose" was proposed in the NPRM for clarification and is stated as explicitly as circumstances will permit. In general, a prospective importer must provide evidence which reasonably demonstrates that nonhuman primates will be used solely for one of the purposes specified in the regulations.

Comment—The same commenter opposed the provision requiring that live nonhuman primates may be imported into the United States and sold, resold, or otherwise distributed only for *bona fide* scientific, educational, or exhibition purposes. The commenter stated that no justification had been presented for this restriction and suggested further that a provision should be made to permit an individual to import a nonhuman primate as a "companion animal."

Response—The existing regulations were proposed on March 14, 1975 (40 FR 11887). The 1975 NPRM included a provision for the importation of nonhuman primates for "personal use." Commenters opposed the 1975 provision because it was not consistent with the regulations as a whole, would be difficult to enforce, and would be subject to abuse. Lengthy documentation of the public health hazards associated with nonhuman primates and public comment regarding the proposed rulemaking were cited in the final rule published on August 11, 1975 (40 FR 33661) in which the waiver provision was omitted. Section 71.53(h) of the NPRM published on August 8, 1983 (48 FR 36143) included a provision for waiver of the restrictions "under exceptional circumstances." Since the rationale for the 1975 final rule (which eliminated waivers) remains valid, § 71.53(h) of the NPRM of August 8, 1983, has been omitted in this final rule, and subsequent subsections have been relettered.

Comment—Comments were received from two sources on the proposed changes to the list of communicable diseases for which the Director, CDC, may apprehend, detain, isolate, and/or conditionally release individuals, or order disinfection and/or disinfestation, to prevent the introduction, transmission, or spread of the diseases. One commenter proposed including dengue, while the other commenter proposed deleting cholera, infectious tuberculosis, and yellow fever.

Response—Section 361(b) of the PHS Act (42 U.S.C. 264(b)) provides that a list of communicable diseases for which individuals may be apprehended, detained, or conditionally released be specified by Executive Order of the President upon the recommendation of the National Advisory Health Council and the Assistant Secretary for Health. In accordance with this provision, the National Advisory Health Council and the Assistant Secretary for Health reviewed the list of diseases, as

explained in the preamble of the NPRM, and after lengthy review and deliberation, recommended the revised list of diseases. Subsequently, Executive Order 12452, updating the list of communicable diseases specified in Executive Order 11070, issued December 12, 1962, was issued on December 22, 1983 (48 FR 56927). Section 71.32(b) of this final rule is now consistent with the list contained in Executive Order 12452.

Comment—Comments were received from three sources on the requirements regarding reporting the occurrence of any death or ill person on board a ship. One commenter suggested that the penalty for not reporting the occurrence of any death or illiness on board ships be increased and enforced.

Response—The penalty as prescribed in section 368(a) of the PHS Act (42 U.S.C. 271(a)) is considered adequate. The shipping industry's history of compliance with reporting requirements has not demonstrated a need for an increased penalty.

Comment—One commenter opposed reporting requirements for passenger ships on the assumption that it should be the professional responsibility of the ship's physician to voluntarily report any communicable disease. Another commenter objected to the specific diarrhea reporting requirements for passenger ships as being redundant, burdensome, impractical, and unfair in singling out passenger ships. This commenter objected to the definition of "ill person" as used in these requirements.

Response—The specific requirement for reporting diarrhea is to enable the CDC to identify outbreaks of gastrointestinal disease of potentially serious nature. Under existing regulations, there is no requirement for a negative report when there are no cases of illness on board. The lack of a report could be the result of absence of cases, but also of failure to report, or technical communications problems between the ship and the quarantine station. Passenger ships are unique in having a large aggregation of people in a relatively isolated situation, in being the passengers' only source of food and water, and in having limited medical facilities. Cruise passengers may eat dozens of meals prepared in the same kitchen by the same staff, and may be exposed to drinking water taken on board at various ports of call, thus increasing their chances of being exposed to a source of gastrointestinal illness. Because of a large number of serious gastrointestinal disease outbreaks on passenger ships in the early 1970's, the CDC initiated a passenger ship diarrhea surveillance system in 1974. All passenger cruise ships were asked to report the number of cases of diarrhea in passengers and crew (including zero) prior to the termination of each cruise. The definition of an "ill person" in the NPRM corresponds to the definition of diarrhea which has been accepted by the industry and used in this surveillance system since 1974. The specific reporting measures for diarrheal illness, including negative reports, were and are considered necessary so that the Director, CDC, can be informed of gastrointestinal disease outbreaks in time to organize and conduct epidemiological investigations, or to follow up in the event no report is received.

Comment—One commenter, representing a group of international passenger ship companies, offered extensive comments concerning carrier inspection, detention, and remedial action. The commenter stated that provisions for inspection under proposed § 71.31(a) are not supported by enabling legislation, that the scope of disease control power authorized by section 361(a) of the PHS Act is limited to situations that threaten the spread of dangerous disease, and that provisions for detention and remedial action under proposed § 71.31(b) and § 71.32(c) may exceed the statutory scope of authority. The commenter further stated that the provisions for inspection, detention, and remedial action under proposed § 71.31(a), § 71.31(b), and § 71.32(c) are not clearly defined, and that the provisions apply quarantine powers for the control of "minor gastrointestinal illnesses," representing an unsound and costly expansion of regulatory standards bearing no reasonable relationship to significant health risks or benefits, are contrary to the mandate of Executive Order 12291 of February 17, 1981 (46 FR 13193), and the Regulatory Policy Guidelines issued by the Office of Management and Budget to help implement the Executive Order. The commenter specifically suggested that § 71.31(b) and § 71.32)c) be altered by adding the four words "into the United States" after "communicable disease," and that an additional subsection to §71.31 be added as follows:

(c) A carrier shall not be required to undergo a quarantine inspection under § 71.31(a), shall not be detained under § 71.31(b), and shall not be required to undergo any measures listed in § 71.32(c), on the basis of reported episodes of shipboard diarrhea, unless the Director has reasonable belief that shipboard conditions create a significant risk of spread of a serious diarrheal disorder into the United States.

Response—The regulatory language proposed by the commenter is considered to be unnecessary. The scope of the regulations is stated in § 71.1(a). The suggested addition to § 71.31 would place unrealistic restraints on the Director. The Director does not intend to impose disruptions or burdens without cause but must be able to determine if a threat of introduction, transmission, or spread of communicable disease exists. Sections 71.31 (a) and (b) and 71.32(c) provide for measures necessary to make this determination. However, an editorial change has been made in § 71.31(a) to clarify that the Director retains discretion to inspect or not, as conditions warrant.

The Department does not believe that these provisions for inspection, detention, and remedial action represent a significant expansion of regulatory standards. The Department has considerably reduced burdensome requirements on incoming vessels from foreign areas. Before 1969, every arriving ship and aircraft, including passengers and crew, was inspected. Since then, the Department has modernized and streamlined quarantine activities, resulting in benefit to the traveling public by expediting incoming traffic from foreign areas. The purpose of these amendments is primarily to update the regulations in this part by incorporating the new concepts and procedures to which the passenger ship industry has largely acceded since 1974. The legislative mandate requires the Department to promulgate regulatory provisions necessary to control the introduction of communicable diseases from foreign countries. The Department disagrees with the comment that the proposed regulations apply quarantine powers for the control of "minor shipboard illness." These regulations, including the modification of requirements for reporting of diarrheal illness, are intended to provide for measures necessary to identify and control a potential public health threat.

The regulations are based on legislative authority in secs. 361 through 369 of the PHS Act. The language used in these sections is broad and confers authority to make and enforce such regulations as are necessary to carry out the legislative purposes of preventing the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or possessions, or from one State or possession into any other State or possession. The Act refers to "communicable diseases," not categorized as major or minor, and does

not refer to any specific diseases. Section 366(c) of the PHS Act (42 U.S.C. 269(c)) confers the authority to prescribe regulations applicable to vessels in particular, for the purpose of preventing the introduction into the States or possessions of the United States of *any* communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. In this context, the Department believes the provisions for carrier inspection, detention, and remedial action are clearly supported by the enabling legislation (PHS Act) and is within the statutory scope of authority.

After consideration of all the comments received, the only change made in the final rule, other than editorial changes, is the deletion of the provision for waiving restrictions on importation of nonhuman primates under exceptional circumstances, as discussed above.

This rule is primarily a clarification of procedures and practices currently in use by CDC. The revised procedures have efficiently and effectively met the objectives and mission of the Quarantine Program. Since for the most part common practice is in accordance with what the regulations provide, the Secretary has determined that this rule is not a major rule under Executive Order 12291. Further, because this rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

The information collection requirements contained in these final regulations have been approved by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1980 and assigned control numbers as follows: Sections 71.21, 71.33, 71.35, 71.51, 71.52, and 71.53—OMB control number 0920-0134.

List of subjects in 42 CFR Part 71

Aircraft, Airports, Animals, Communicable diseases, Harbors, Imports, Pesticides and pests, Public Health, Quarantine, Vessels.

Part 71 of Title 42, Code of Federal Regulations, is amended as set forth below.

Dated: September 5, 1984.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Approved: December 11, 1984.

Margaret M. Heckler,

Secretary.

Part 71 is revised to read as follows.

PART 71—FOREIGN QUARANTINE

Subpart A—Definitions and General Provisions

Sec.

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71.2 Penalties.
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71.51 Dogs and cats.
71.52 Turtles, tortoises, and terrapins.
71.53 Nonhuman primates.
71.54 Etiological agents, hosts, and vectors.
71.55 Dead bodies.

Authority: Sec. 215 of Public Health Service (PHS) Act, as amended (42 U.S.C. 216); secs. 361-369, PHS Act, as amended (42 U.S.C. 264-272); E.O. 12452 of December 22, 1983, 48 FR 56927.

Subpart A—Definitions and General Provisions

§ 71.1 Scope and definitions.

(a) The provisions of this part contain the regulations to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the States or possessions of the United States. Regulations pertaining to preventing the interstate spread of communicable diseases are contained in 21 CFR Parts 1240 and 1250.

(b) As used in this part the term:

"Carrier" means a ship, aircraft, train, road vehicle, or other means of transport, including military.

"Communicable disease" means an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person or animal or a reservoir to a susceptible host, either directly, or indirectly through an intermediate animal host, vector, or the inanimate environment.

"Contamination" means the presence of undesirable substances or material which may contain infectious agents or their toxic products.

"Controlled Free Pratique" means permission for a carrier to enter a U.S. port, disembark, and begin operation under certain stipulated conditions.

"Deratting Certificate" means a certificate issued under the instructions of the Director, in the form prescribed by the International Health Regulations, recording the inspection and deratting of the ship.

"Deratting Exemption Certificate" means a certificate issued under the instructions of the Director, in the form prescribed by the International Health Regulations, recording the inspection and exemption from deratting of the ship which is rodent free.

"Detention" means the temporary holding of a person, ship, aircraft, or other carrier, animal, or thing in such place and for such period of time as may be determined by the Director.

"Director" means the Director, Centers for Disease Control, Public Health Service, Department of Health and Human Services, or his/her authorized representative.

"Disinfection" means the killing of infectious agents or inactivation of their toxic products outside the body by direct exposure to chemical or physical agents.

"Disinfestation" means any chemical or physical process serving to destroy or remove undesired small animal forms, particularly arthropods or rodents, present upon the person, the clothing, or the environment of an individual, or upon animals and carriers.

"Disinsection" means the operation in which measures are taken to kill the insect vectors of human disease present in carriers and containers.

"Educational purpose" means use in the teaching of a defined educational program at the university level or equivalent.

"Exhibition purpose" means use as a part of a display in a facility comparable to a zoological park or in a trained animal act. The animal display must be open to the general public at routinely scheduled hours on 5 or more days of each week. The trained animal act must be routinely scheduled for multiple performances each week and open to the general public except for reasonable vacation and retraining periods.

"Ill person" means a person who:

(1) Has a temperature of 100 °F. (or 38 °C.) or greater, accompanied by a rash, glandular swelling, or jaundice, or which has persisted for more than 48 hours; or

(2) Has diarrhea, defined as the occurrence in a 24-hour period of three or more loose stools or of a greater than normal (for the person) amount of loose stools.

"International Health Regulations" means the International Health Regulations of the World Health Organization, adopted by the Twenty-Second World Health Assembly in 1969, as amended by the Twenty-Sixth World Health Assembly in 1973, the Thirty-Fourth World Health Assembly in 1981, and as may be further amended.

"International voyage" means: (1) In the case of a carrier, a voyage between ports or airports of more than one country, or a voyage between ports or airports of the same country if the ship or aircraft stopped in any other country on its voyage; or (2) in the case of a person, a voyage involving entry into a country other than the country in which that person begins his/her voyage.

"Isolation" means: (1) When applied to a person or group of persons, the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner as to prevent the spread of infection; or (2) when applied to animals, the separation of an animal or group of animals from persons, other animals, or vectors of disease in such a manner as to prevent the spread of infection.

"Military services" means the U.S. Army, the U.S. Air Force, the U.S. Navy, and the U.S. Coast Guard.

"Scientific purpose" means use for scientific research following a defined protocol and other standards for research projects as normally conducted at the university level. The term also includes the use for safety testing, potency testing, and other activities related to the production of medical products.

"Surveillance" means the temporary supervision of a person who may have or has been exposed to a communicable disease.

"U.S. port" means any seaport, airport, or border crossing point under the control of the United States.

"United States" means the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Vector" means an animal (including insects) or thing which conveys or is capable of conveying infectious agents from a person or animal to another person or animal.

§ 71.2 Penalties.

Any person violating any provision of these regulations shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, as provided in section 368 of the Public Health Service Act (42 U.S.C. 271).

§ 71.3 Designation of yellow fever vaccination centers; Validation stamps.

(a) *Designation of yellow fever vaccination centers.* (1) The Director is responsible for the designation of yellow fever vaccination centers authorized to issue certificates of vaccination. This responsibility is delegated by the Director to a State or territorial health department with respect to yellow fever vaccination activities of non-Federal medical, public health facilities, and licensed physicians functioning within the respective jurisdictions of a State or territorial health department. Designation may be made upon application and presentation of evidence satisfactory to a State or territorial health department that the applicant has adequate facilities and professionally trained personnel for the handling, storage, and administration of a safe, potent, and pure yellow fever vaccine. Medical facilities of Federal agencies are authorized to obtain yellow fever vaccine without being designated as a yellow fever vaccination center by the Director.

(2) A designated yellow fever vaccination center shall comply with the instruction issued by the Director or by a delegated officer or employee of a State or territorial health department for the handling, storage, and administration of yellow fever vaccine. If a designated center fails to comply with such instruction, after notice to the center, the Director or, for non-Federal centers, a State or territorial health department, may revoke designation.

(b) *Validation stamps.* International Certificates of Vaccination against cholera and yellow fever issued for vaccinations performed in the United States shall be validated by:

(1) The Seal of the Public Health Service; or

(2) The Seal of the Department of State; or

(3) The stamp of the Department of Defense; or

(4) The stamp issued to the National Aeronautics and Space Administration; or

(5) The stamp issued by a State or territorial health department; or

(6) An official stamp of a design and size approved by the Director for such purpose.

Subpart B—Measures at Foreign Ports

§ 71.11 Bills of health.

A carrier at any foreign port clearing or departing for any U.S. port shall not be required to obtain or deliver a bill of health.

Subpart C—Notice of Communicable Disease Prior to Arrival

§ 71.21 Radio report of death or illness.

(a) The master of a ship destined for a U.S. port shall report immediately to the quarantine station at or nearest the port at which the ship will arrive, the occurrence, on board, of any death or any ill person among passengers or crew (including those who have disembarked or have been removed) during the 15-day period preceding the date of expected arrival or during the period since departure from a U.S. port (whichever period of time is shorter).

(b) The commander of an aircraft destined for a U.S. airport shall report immediately to the quarantine station at or nearest the airport at which the aircraft will arrive, the occurrence, on board, of any death or ill person among passengers or crew.

(c) In addition to (a) of this section, the master of a ship carrying 13 or more passengers must report by radio 24 hours before arrival the number of cases (including zero) of diarrhea in passengers and crew recorded in the ship's medical log during the current cruise. All cases of diarrhea that occur after the 24 hour report must also be reported not less than 4 hours before arrival.

(Approved by the Office of Management and Budget under control number 0920-0134)

Subpart D—Health Measures at U.S. Ports: Communicable Diseases

§ 71.31 General provisions.

(a) Upon arrival at a U.S. port, a carrier will not undergo inspection unless the Director determines that a failure to inspect will present a threat of introduction of communicable diseases into the United States, as may exist when the carrier has on board individual(s) reportable in accordance with § 71.21 or meets the circumstances described in §71.42. Carriers not subject to inspection under this section will be subject to sanitary inspection under § 71.41 of this part.

(b) The Director may require detention of a carrier until the completion of the measures outlined in this part that are necessary to prevent the introduction or spread of a communicable disease. The Director may issue a controlled free

pratique to the carrier stipulating what measures are to be met, but such issuance does not prevent the periodic boarding of a carrier and the inspection of persons and records to verify that the conditions have been met for granting the pratique.

§ 71.32 Persons, carriers, and things.

(a) Whenever the Director has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in (b) of this section, he/she may detain, isolate, or place the person under surveillance and may order disinfection or disinfestation as he/she considers necessary to prevent the introduction, transmission, or spread of the listed communicable diseases.

(b) The communicable diseases authorizing the application of sanitary, detention, and/or isolation measures under (a) of this section are: cholera or suspected cholera, diphtheria, infectious tuberculosis, plague, suspected smallpox, yellow fever, or suspected viral hemorrhagic fevers (Lassa, Marburg, Ebola, Congo-Crimean, and others not yet isolated or named).

(c) Whenever the Director has reason to believe that any arriving carrier or article or thing on board the carrier is or may be infected or contaminated with a communicable disease, he/she may require detention, disinsection, disinfection, disinfestation, fumigation, or other related measures respecting the carrier or article or thing as he/she considers necessary to prevent the introduction, transmission, or spread of communicable diseases.

§ 71.33 Persons: Isolation and surveillance.

(a) Persons held in isolation under this subpart may be held in facilities suitable for isolation and treatment.

(b) The Director may require isolation where surveillance is authorized in this subpart whenever the Director considers the risk of transmission of infection to be exceptionally serious.

(c) Every person who is placed under surveillance by authority of this subpart shall, during the period of surveillance:

(1) Give information relative to his/her health and his/her intended destination and report, in person or by telephone, to the local health officer having jurisdiction over the areas to be visited, and report for medical examinations as may be required;

(2) Upon arrival at any address other than that stated as the intended designation when placed under surveillance, or prior to departure from the United States, inform, in person or by telephone, the health officer serving the health jurisdiction from which he/she is departing.

(d) From time to time the Director may, in accordance with section 322 of the Public Health Service Act, enter into agreements with public or private medical or hospital facilities for providing care and treatment for persons detained under this part.

(Approved by the Office of Management and Budget under control number 0920-0134)

§ 71.34 Carriers of U.S. military services.

(a) Carriers belonging to or operated by the military services of the United States may be exempted from inspection if the Director is satisfied that they have complied with regulations of the military services which also meet the requirements of the regulations in this part. (For applicable regulations of the military services, see Army Regulation No. 40-12, Air Force Regulation No. 161-4, Secretary of the Navy Instruction 6210.2, and Coast Guard Commandant Instruction 6210.2).

(b) Notwithstanding exemption from inspection of carriers under this section, animals or articles on board shall be required to comply with the applicable requirements of Subpart F of this part.

§ 71.35 Report of death or illness on carrier during stay in port.

The master of any carrier at a U.S. port shall report immediately to the quarantine station at or nearest the port the occurrence, on board, of any death or any ill person among passengers or crew.

(Approved by the Office of Management and Budget under control number 0920-0134)

Subpart E—Requirements Upon Arrival at U.S. Ports: Sanitary Inspection

§ 71.41 General provisions.

Carriers arriving at a U.S. port from a foreign area shall be subject to a sanitary inspection to determine whether there exists rodent, insect, or other vermin infestation, contaminated food or water, or other insanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable disease.

§ 71.42 Disinfection of imports.

When the cargo manifest of a carrier lists articles which may require disinfection under the provisions of this part, the Director shall disinfect them on board or request the appropriate customs officer to keep the articles separated from the other cargo pending appropriate disposition.

§ 71.43 Exemption for mails.

Except to the extent that mail contains any article or thing subject to restrictions under Subpart F of this part, nothing in the regulations in this part shall render liable to detention, disinfection, or destruction any mail conveyed under the authority of the postal administration of the United States or of any other Government.

§ 71.44 Disinsection of aircraft.

(a) The Director may require disinsection of an aircraft if it has left a foreign area that is infected with insect-borne communicable disease and the aircraft is suspected of harboring insects of public health importance.

(b) Disinsection shall be the responsibility of the air carrier or, in the case of aircraft not for hire, the pilot in command, and shall be subject to monitoring by the Director.

(c) Disinsection of the aircraft shall be accomplished immediately after landing and blocking.

(1) The cargo compartment shall be disinsected before the mail, baggage, and other cargo are discharged.

(2) The rest of the aircraft shall be disinsected after passengers and crew deplane.

(d) Disinsection shall be performed with an approved insecticide in accordance with the manufacturer's instructions. The current list of approved insecticides and sources may be obtained from the Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333.

§ 71.45 Food, potable water, and waste: U.S. seaports and airports.

(a) Every seaport and airport shall be provided with a supply of potable water from a watering point approved by the Commissioner of Food and Drugs, Food and Drug Administration, in accordance with standards established in Title 21, Code of Federal Regulations, Parts 1240 and 1250.

(b) All food and potable water taken on board a ship or aircraft at any seaport or airport intended for human consumption thereon shall be obtained from sources approved in accordance with regulations cited in (a) of this section.

(c) Aircraft inbound or outbound on an international voyage shall not discharge over the United States any excrement, or waste water or other polluting materials. Arriving aircraft shall discharge such matter only at servicing areas approved under regulations cited in (a) of this section.

§ 71.46 Issuance of Deratting Certificates and Deratting Exemption Certificates.

Valid Deratting Certificates or Deratting Exemption Certificates are not required for ships to enter a U.S. seaport. In accordance with Article 17 of the International Health Regulations, the Public Health Service may perform rodent infestation inspections and issue Deratting Certificates and Deratting Exemption Certificates.

§ 71.47 Special provisions relating to airports: Office and isolation facilities.

Each U.S. airport which receives international traffic shall provide without cost to the Government suitable office, isolation, and other exclusive space for carrying out the Federal responsibilities under this part.

§ 71.48 Carriers in intercoastal and interstate traffic.

Carriers, on an international voyage, which are in traffic between U.S. ports, shall be subject to inspection as described in § 71.31 and § 71.41 when there occurs on board, among passengers or crew, any death, or any ill person, or when illness is suspected to be caused by insanitary conditions.

Subpart F—Importations

§ 71.51 Dogs and cats.

(a) *Definitions.*

As used in this section the term:

"Cat" means all domestic cats.

"Confinement" means restriction of a dog or cat to a building or other enclosure at a U.S. port, en route to destination and at destination, in isolation from other animals and from persons except for contact necessary for its care or, if the dog or cat is allowed out of the enclosure, muzzling and keeping it on a leash.

"Dog" means all domestic dogs.

"Owner" means owner or agent.

"Valid rabies vaccination certificate" means a certificate which was issued for a dog not less than 3 months of age at the time of vaccination and which—

(1) Identifies a dog on the basis of breed, sex, age, color, markings, and other identifying information.

(2) Specifies a date of rabies vaccination at least 30 days before the date of arrival of the dog at a U.S. port.

(3) Specifies a date of expiration which is after the date of arrival of the dog at a U.S. port. If no date of expiration is specified, then the date of vaccination shall be no more than 12 months before the date of arrival at a U.S. port.

(4) Bears the signature of a licensed veterinarian.

(b) *General requirements for admission of dogs and cats.*—(1) *Inspection by Director.* The Director shall inspect all dogs and cats which arrive at a U.S. port, and admit only those dogs and cats which show no signs of communicable disease as defined in § 71.1.

(2) *Examination by veterinarian and confinement of dogs and cats.* When, upon inspection, a dog or cat does not appear to be in good health on arrival (e.g., it has symptoms such as emaciation, lesions of the skin, nervous system disturbances, jaundice, or diarrhea), the Director may require prompt confinement and give the owner an opportunity to arrange for a licensed veterinarian to examine the animal and give or arrange for any tests or treatment indicated. The Director will consider the findings of the examination and tests in determining whether or not the dog or cat may have a communicable disease. The owner shall bear the expense of the examination, tests, and treatment. When it is necessary to detain a dog or cat pending determination of its admissibility, the owner shall provide confinement facilities which in the judgment of the Director will afford protection against any communicable disease. The owner shall bear the expense of confinement. Confinement shall be subject to conditions specified by the Director to protect the public health.

(3) *Record of sickness or death of dogs and cats and requirements for exposed animals.* (i) The carrier responsible for the care of dogs and cats shall maintain a record of sickness or death of animals en route to the United States and shall submit the record to the quarantine station at the U.S. port upon arrival. Dogs or cats which have become sick while en route or are dead on arrival shall be separated from other animals as soon as the sickness or death is discovered, and shall be held in confinement pending any necessary examination as determined by the Director.

(ii) When, upon inspection, a dog or cat appears healthy but, during shipment, has been exposed to a sick or dead animal suspected of having a communicable disease, the exposed dog or cat shall be admitted only if examination or tests made on arrival reveal no evidence that the animal may be infected with a communicable disease. The provisions of (b)(2) of this section shall be applicable to the examination or tests.

(4) *Sanitation.* When the Director finds that the cages or other containers of dogs or cats arriving in the United States are in an insanitary or other condition that may constitute a communicable disease hazard, the dogs or cats shall not be admitted in such containers unless the owner has the containers cleaned and disinfected.

(c) *Rabies vaccination requirements for dogs.* (1) A valid rabies vaccination certificate is required at a U.S. port for admission of a dog unless the owner submits evidence satisfactory to the Director that:

(i) If a dog is less than 6 months of age, it has been only in a country determined by the Director to be rabies-free (a current list of rabies-free countries may be obtained from the Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333); or

(ii) If a dog is 6 months of age or older, for the 6 months before arrival, it has been only in a country determined by the Director to be rabies-free; or

(iii) The dog is to be taken to a research facility to be used for research purposes and vaccination would interfere with its use for such purposes.

(2) Regardless of the provisions of (c)(1) of this section, the Director may authorize admission as follows:

(i) If the date of vaccination shown on the vaccination certificate is less than 30 days before the date of arrival, the dog may be admitted, but must be confined until at least 30 days have elapsed since the date of vaccination;

(ii) If the dog is less than 3 months of age, it may be admitted, but must be confined until vaccinated against rabies at 3 months of age and for at least 30 days after the date of vaccination;

(iii) If the dog is 3 months of age or older, it may be admitted, but must be confined until it is vaccinated against rabies. The dog must be vaccinated within 4 days after arrival at destination but no more than 10 days after arrival at a U.S. port. It must be kept in confinement for at least 30 days after the date of vaccination.

(3) When a dog is admitted under (c)(2) of this section, the Director shall notify the health department or other appropriate agency having jurisdiction at the point of destination and shall provide the address of the specified place of confinement and other pertinent information to facilitate surveillance and other appropriate action.

(d) *Certification requirements.* The owner shall submit such certification regarding confinement and vaccination prescribed under this section as may be required by the Director.

(e) *Additional requirements for the importation of dogs and cats.* Dogs and cats shall be subject to such additional requirements as may be deemed necessary by the Director or to exclusion if coming from areas which

the Director has determined to have high rates of rabies.

(f) *Requirements for dogs and cats in transit.* The provisions of this section shall apply to dogs and cats transported through the United States from one foreign country to another, except as provided below:

(1) Dogs and cats that appear healthy, but have been exposed to a sick or dead animal suspected of having a communicable disease, need not undergo examination or tests as provided in (b)(3) of this section if the Director determines that the conditions under which they are being transported will afford adequate protection against introduction of communicable disease.

(2) Rabies vaccination is not required for dogs that are transported by aircraft or ship and retained in custody of the carrier under conditions that would prevent transmission of rabies.

(g) *Disposal of excluded dogs and cats.* A dog or cat excluded from the United States under the regulations in this part shall be exported or destroyed. Pending exportation, it shall be detained at the owner's expense in the custody of the U.S. Customs Service at the U.S. port.

(Approved by the Office of Management and Budget under control number 0920-0134)

§ 71.52 Turtles, tortoises, and terrapins.

(a) *Definitions.*

As used in this section the term:

"Turtles" includes all animals commonly known as turtles, tortoises, terrapins, and all other animals of the order *Testudinata*, class *Reptilia*, except marine species (Families *Dermochelidae* and *Cheloniidae*).

(b) *Importation; general prohibition.* Except as otherwise provided in this section, live turtles with a carapace length of less than 4 inches and viable turtle eggs may not be imported into the United States.

(c) *Exceptions.* (1) Live turtles with a carapace length of less than 4 inches and viable turtle eggs may be imported into the United States, provided that such importation is not in connection with a business, and the importation is limited to lots of fewer than seven live turtles or fewer than seven viable turtle eggs, or any combinations of such turtles and turtle eggs totaling fewer than seven, for any entry.

(2) Seven or more live turtles with a carapace length of less than 4 inches, or seven or more viable turtle eggs or any combination of turtles and turtle eggs totaling seven or more, may be imported into the United States for bona fide scientific or educational purposes or for exhibition when accompanied by a permit issued by the Director.

(3) The requirements in (c)(1) and (c)(2) of this section shall not apply to the eggs of marine turtles excluded from these regulations under § 71.52(a).

(d) *Application for permits.* Applications for permits to import turtles, as set forth in (c)(2) of this section, shall be made by letter to the Director, and shall contain, identify, or describe, the name and address of the applicant, the number of specimens, and the common and scientific names of each species to be imported, the holding facilities, the intended use of the turtles following their importation, the precautions to be undertaken to prevent infection of members of the public with *Salmonella* and *Arizona* bacteria, and any other information and assurances the Director may require.

(e) *Criteria for issuance of permits.* A permit may be issued upon a determination that the holder of the permit will isolate or otherwise confine the turtles and will take such other precautions as may be determined by the Director to be necessary to prevent infection of members of the public with *Salmonella* and *Arizona* bacteria and on condition that the holder of the permit will provide such reports as the Director may require.

(f) *Interstate Regulations.* Upon admission at a U.S. Port, turtles and viable turtle eggs become subject to Food and Drug Administration Regulations (21 CFR 1240.62) regarding general prohibition.

(g) *Other permits.* Permits to import certain species of turtles may be required under other Federal regulations (50 CFR Parts 17 and 23) protecting such species.

(Approved by the Office of Management and Budget under control number 0920-0134)

§ 71.53 Nonhuman primates.

(a) *Definitions.*

As used in this section the term:

"Importer" means any person or corporation, partnership, or other organization, receiving live nonhuman primates from a foreign country within a period of 31 days, beginning with the importation date, whether or not the primates were held for part of the period at another location. The term "importer" includes the original importer and any other person or organization receiving imported primates within the 31-day period.

"Nonhuman primates" means all nonhuman members of the Order Primates, including, but not limited to, animals commonly known as monkeys, chimpanzees, orangutans, gorillas, gibbons, apes, baboons, marmosets, tamarin, lemurs, and lorises.

(b) *General prohibition.* No person or organization may import live nonhuman primates into the United States unless registered as an importer in accordance with applicable provisions of this section.

(c) *Uses for which nonhuman primates may be imported and distributed.* Live nonhuman primates may be imported into the United States and sold, resold, or otherwise distributed only for bona fide scientific, educational, or exhibition purposes. The importation of nonhuman primates for use in breeding colonies is also permitted provided that all offspring will be used only for scientific, educational, or exhibition purposes. The maintenance of nonhuman primates as pets, hobby, or an avocation with occasional display to the general public is not a permissible use.

(d) *Registration of importers.* (1) Importers of nonhuman primates shall register with the Director in a manner prescribed by the Director.

(2) Documentary evidence that an importer will use all nonhuman primates solely for the permitted purposes is required.

(3) Registration shall inlcude certification that the nonhuman primates will not be shipped, sold, or otherwise transferred to other persons or organizations without adequate proof that the primates will be used only for the permitted purposes.

(4) Registration shall be for 2 years, effective the date the application for registration is approved by the Director.

(5) Registration may be renewed by filing a registration application form with the Director not less than 30 days nor more than 60 days before expiration of the current registration.

(e) *Recordkeeping and reporting requirement for registered importers.* (1) Importers shall maintain records on each shipment of imported nonhuman primates received. The record on each shipment shall include the number of primates received, species, country of origin, date of importation, the number of primates in the shipment that die within 90 days after receipt, and cause(s) of deaths. If any primates in the shipment are sold or otherwise distributed within 90 days after receipt, the record shall include the number of primates in each shipment or sale, the dates of each shipment or sale, and the identity of the recipients. In addition, the record shall contain copies of documents that were presented to the importer to establish that the recipient would use the primates solely for the permitted purposes. The records shall be maintained in an organized manner in a

central location at or in close proximity to the importer's primate holding facility. The records shall be maintained for a period of 3 years and shall be available for inspection by the Director at any time.

(2) Importers shall report to the Director by telephone within 24 hours the occurrence of any illness in nonhuman primates that is suspected of being yellow fever, monkeypox, or Marburg/Ebola disease.

(3) Importers also shall report to the Director by telephone within 24 hours the occurrence of illness in any member of their staff suspected of having an infectious disease acquired from nonhuman primates.

(f) *Disease control measures.* Upon receipt of evidence of exposure of nonhuman primates to a communicable disease that may constitute a threat to public health, the Director may provide for or require examination, treatment, detention, isolation, seizure, or destruction of exposed animals. Any measures required shall be at the owner's expense.

(g) *Disposal of excluded nonhuman primates.* Nonhuman primate(s) excluded from the United States by provisions of this section shall, at the owner's option and expense, be exported, destroyed, or given to a scientific, educational, or exhibition facility under arrangements approved by the Director. If the owner fails to dispose of the nonhuman primate by one of the approved options or fails to select a method of disposal within 7 days, the Director will select the method of disposal. Pending disposal, the nonhuman primate(s) shall be detained at the owner's expense in custody of the U.S. Customs Service at the U.S. port.

(h) *Revocation of an importer's registration.* (1) An importer's registration may be revoked by the Director, upon notice to the importer holding such registration, if the Director determines that the importer has failed to comply with any applicable provisions of this section. The notice shall contain a statement of the grounds upon which the revocation is based.

(2) The importer may file an answer within 20 days after receipt of the notice. Answers shall admit or deny specifically, and in detail, each allegation in the notice. Allegations in the notice not denied by answer shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. Failure of the importer to file an answer within 20 days after receipt of the notice may be deemed an admission of all allegations of fact recited in the notice.

(3) The importer shall be entitled to a hearing with respect to the revocation upon filing a written request, either in the answer or in a separate document, with the Director within 20 days after the effective date of revocation. Failure to request a hearing shall be deemed a waiver of hearing and as consent to the submission of the case to the Director for decision based on the written record. The failure both to file an answer and to request a hearing shall be deemed to constitute consent to the making of a decision on the basis of available information.

(4) As soon as practicable after the completion of any hearing conducted pursuant to the provisions of this section, the Director shall render a final decision. A copy of such decision shall be served on the importer.

(5) An importer's registration which has been revoked may be reinstated by the Director upon inspection, examination of records, conference with the importer, and receipt of information and assurances of compliance with the requirements of this section.

(i) *Other permits.* In addition to the requirements under this section, permits to import certain species of nonhuman primates may also be required under other Federal regulations (50 CFR Parts 17 and 23) protecting such species.

(Approved by the Office of Management and Budget under control number 0920-0134)

§ 71.54 Etiological agents, hosts, and vectors.

(a) A person may not import into the United States, nor distribute after importation, any etiological agent or any arthropod or other animal host or vector of human disease, or any exotic living arthropod or other animal capable of being a host or vector of human disease unless accompanied by a permit issued by the Director.

(b) Any import coming within the provisions of this section will not be released from custody prior to receipt by the District Director of the U.S. Customs Service of a permit issued by the Director.

§ 71.55 Dead bodies.

The remains of a person who died of a communicable disease listed in § 71.32(b) may not be brought into a U.S. port unless the body is (a) properly embalmed and placed in a hermetically sealed casket, (b) cremated, or (c) accompanied by a permit issued by the Director.

[FR Doc. 85-872 Filed 1-10-85; 8:45 am]
BILLING CODE 4160-18-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 170, 171, 172, 173 and 174

[CGD 83-067]

Updates of References to 46 U.S.C. in 46 CFR Subchapter S

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Numerous general maritime shipping laws related to vessels and seamen were recently codified and enacted into positive law as Subtitle II of Title 46, United States Code (46 U.S.C. 2101 through 13110). The purpose of this final rule is to amend the authority citations and references in 46 CFR Subchapter S to conform with the changes to Title 46 U.S.C.

EFFECTIVE DATE: Effective January 11, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR D. L. Crede, Project Manager, Office of Merchant Marine Safety, 202-426-2197.

SUPPLEMENTARY INFORMATION: Public Law 98-89, August 26, 1983, revised and consolidated over 300 statutes related to vessel inspections, marine casualties, licenses and documents issued to seamen, manning of vessels, seamen protection and relief, identification of vessels and state boating safety programs. In their place Pub. L. 98-89 enacted an organized statement of the law concerning marine safety and the welfare of seamen as Subtitle II of Title 46 U.S.C. The revision and consolidation did not substantially affect the authority of the Coast Guard to promulgate regulations covered by this final rule. Regulations in effect under a statute repealed by Pub. L. 98-89 continue in effect under the corresponding provision of Pub. L. 98-89. The repeal of so many of the older statutes by the enactment of Pub. L. 98-89, however, makes it desirable to amend Title 46 of the Code of Federal Regulations where citations or references are made to Title 46 U.S.C.

This rule amends 46 CFR Subchapter S by changing the citations and references therein to conform with the changes to Title 46 U.S.C. Citations and references to statutes repealed by Pub. L. 98-89 are replaced with citations and references to the corresponding parts of Pub. L. 98-89. Amendments for correcting the citations and references in other subchapters of Title 46 CFR will be published as they are developed.

Because this amendment is merely editorial, the Coast Guard finds that

notice and comments under 5 U.S.C. 553(b) are unnecessary. This revision is effective immediately under 5 U.S.C. 553(d) because it is not a substantive rule.

This amendment is promulgated under 46 U.S.C. 2101, 2104, 3301, 3306, 3316, 46 App. U.S.C 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46. This amendment is strictly limited to updating citations and it is not to be interpreted or understood as a direct or indirect repromulgation, reaffirmation, revision or approval of the current CFR text. While every effort has been made to check the accuracy of each citation this is not a final determination of the applicability of any citation to any regulations. These issues will be addressed gradually in the scheduled review of all existing regulations.

Drafting Information

The principal persons involved in drafting this document are Eugene Holler, and LCDR D. L. Crede, Project Managers, Office of Merchant Marine Safety, and Michale N. Mervin, Project Counsel, Office of the Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking merely corrects the citations and references to Title 46 U.S.C. There is no change to current Coast Guard regulations or procedures.

Regulatory Flexibility Evaluation

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 170

Marine safety, Subdivision, Stability, Vessels, Tank vessels, Cargo vessels, Nuclear vessels, Passenger vessels, Oceanographic vessels, Sailing vessels, Nautical schools, Tugboats, Towboats, Mobile offshore drilling units, Barges, Grain, Oil and gas exploration, Hazardous materials transportation, Gases, Natural gas, Incorporation by reference.

46 CFR Part 171

Marine safety, Subdivision, Stability, Vessels, Passenger vessels, Sailing vessels, Barges, Incorporation by reference.

46 CFR Part 172

Marine safety, Subdivision, Stability, Vessels, Tank vessels, Cargo vessels, Passenger vessels, Sailing vessels, Barges, Grain, Oil and gas exploration, Hazardous materials transportation, Gases, Natural gas.

46 CFR Part 173

Marine safety, Subdivision, Stability, Vessels, Cargo vessels, Oceanographic vessels, Nautical schools, Tugboats, Towboats, Barges.

46 CFR Part 174

Marine safety, Subdivision, Stability, Vessels, Cargo vessels, Nuclear vessels, Tugboats, Towboats, Mobile offshore drilling units, Barges, Oil and gas exploration.

In consideration of the foregoing, the Coast Guard hereby amends Subchapter S of Chapter I of Title 46 Code of Federal Regulations as set forth below.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

1. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2101, 2104, 3301, 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

2. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2101, 2104, 3301, 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46.

PART 172—SPECIAL RULES PERTAINING TO BULK CARGOES

3. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2101, 2104, 3301, 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46.

PART 173—SPECIAL RULES PERTAINING TO VESSEL USE

4. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2101, 2104, 3301, 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

5. The authority citation following the table of contents is revised to read as follows:

Authority: 46 U.S.C. 2101, 2104, 3301, 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d); 50 U.S.C. 198; 49 CFR 1.46, except as otherwise noted.

Dated: January 7, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-738 Filed 1-10-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 81-893; FCC 84-652]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry)

AGENCY: Federal Communications Commission.

ACTION: Sixth report and order.

SUMMARY: The Order creates a framework under which certain Federal agencies will be able to obtain equipment and service needed for national security and emergency preparedness (NSEP) communications. The framework the Commission is creating will allow AT&T, through its subsidiaries AT&T Communications (AT&T-C) and AT&T Information Systems, and the Bell Operating Companies (BOCs) to provide specified Federal agencies with customer premises equipment for certain NSEP systems and in certain emergency situations. The core of this framework is a waiver which will allow AT&T-C and the BOCs to act as a single point of contact for these agencies to facilitate the operation, maintenance, and servicing of NSEP CPE.

EFFECTIVE DATE: January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Geoffrey Jarvis, Kent Nilsson, (202) 632-9342.

Sixth Report and Order

In the matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (Second Computer Inquiry); CC Docket No. 81-893, FCC 84-652.

Adopted: December 21, 1984.
Released: January 4, 1985.

By the Commission:

I. Introduction

1. This Order creates a framework under which certain Federal agencies [1] will be able to obtain equipment and service needed for national security and emergency preparedness (NSEP) communications. The framework the Commission is creating will allow the American Telephone and Telegraph Company (AT&T), through its subsidiaries AT&T Information Systems (AT&T-IS) and AT&T Communications (AT&T-C), and the Bell Operating Companies (BOCs) to provide the specified Federal agencies with customer premises equipment (CPE) for certain NSEP systems and in certain emergency situations.[2] At the heart of this framework is a waiver which will allow AT&T-C and the BOCs to act a a single point of contact for these agencies to facilitate the operation, maintenance, and servicing of NSEP CPE.[3] In addition, independent telephone companies (ITCs) will continue to be able to act as a single point of contact for NSEP communications needs.[4]

II. Background

2. In *Second Computer Inquiry* [5] we established a set of rules [6] which require AT&T to provide CPE through a fully separated subsidiary which is not subject to tariff regulation. We also required that those subsidiaries of AT&T which are subject to tariff regulation, such as AT&T-C, be prohibited from engaging in the provision of CPE. In 1983 we adopted a limited waiver of these Computer II Rules to permit the BOCs and AT&T Long Lines (the predecessor of AT&T-C) to furnish new CPE to federal agencies to meet NSEP communications needs.[7] The Department of Defense (DoD) and other specified federal agencies were authorized to obtain new CPE from AT&T Long Lines and the BOCs in emergencies declared by the President and in certain other emergencies.[8] They were also authorized to obtain service from AT&T-C and the BOCs in other situations in which sole source procurement is permitted under federal regulations. New CPE furnished under the waiver could not be provided under tariff or added to the embedded rate base. The waiver was to expire on the date of divestiture of the BOCs from AT&T. *CPE Waiver Order* at para. 18.

3. Effective on January 1, 1984, at the same time as the AT&T divestiture, we ordered as part of the ongoing *Second Computer Inquiry*, that the embedded CPE owned by the BOCs be detariffed and transferred to AT&T-IS.[9] In the comment period preceding the *CPE Detariffing Order* the Federal Executive Agencies (FEA) argued that embedded CPE associated with certain NSEP systems[10] should not be detariffed and transferred to AT&T-IS, but rather should be transferred to AT&T-C so that end-to-end service to DoD and the other specified federal agencies could be maintained. In the *CPE Detariffing Order* we rejected FEA's approach and concluded that all CPE should be detariffed and transferred to AT&T-IS. *CPE Detariffing Order*, 95 FCC 2d at 1376. We provided, however, that the detariffing of embedded CPE in NSEP systems would not occur until June 1, 1984, in order to provide interested parties with the opportunity to comment on the issues raised by FEA and to provide time for them to request waivers from the detariffing requirements. *Id.*

4. AT&T, at the request of DOD and the other specified federal agencies, submitted a petition for such a waiver.[11] The AT&T petition requested that all embedded CPE be transferred to AT&T-IS as of January 1, 1984, and that AT&T-C be allowed to continue serving as the single point of contact for the provision of NSEP services. To implement these requests AT&T asked that the Commission waive the Computer II Rules as of January 1, 1984, to the extent necessary to permit AT&T-C to be responsible for this CPE as part of its end-to-end service. AT&T also asked that AT&T-C be allowed to continue obtaining new CPE for the designated NSEP systems.

5. On December 29, 1983, the Chief, Common Carrier Bureau, issued an Order in this docket granting the AT&T waiver requests on a temporary basis subject to certain terms and conditions.[12] The *Bureau Waiver Order* waived the provisions of the *CPE Detariffing Order* which required that embedded CPE associated with NSEP systems be tariffed at the federal level until June 1, 1984, waived the Computer II Rules in the manner sought by AT&T, and extended all the provisions of the *CPE Waiver Order* (but narrrowed the waiver to apply only to the 21 systems and circuits designated by FEA). *See Bureau Waiver Order* at paras. 13–17. The *Bureau Waiver Order* provided that the waiver would expire on May 31, 1984. *Id.* at para. 21. On May 24, 1984, the Commission extended the waivers adopted in the *Bureau Waiver Order* from May 25, 1984, to December 31, 1984.[13]

6. In the *Bureau Waiver Order* the Bureau noted that it would recommend the issuance of a proposed rulemaking in this docket "to solicit comments from all interested parties regarding an appropriate framework for meeting the NSEP communications needs of DOD

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[1] The Federal agencies involved are the Department of Defense (DoD), the Department of Energy, the Department of the Interior, the Department of Transportation (including the Federal Aviation Administration and the Coast Guard), the General Services Administration, the Central Intelligence Agency, the Federal Emergency Management Agency, the National Aeronautics and Space Administration, the United States Information Agency, and the Nuclear Regulatory Commission. These agencies are hereinafter referred to as the "specified Federal agencies."

[2] *See* nn.8, 18, *infra*.

[3] AT&T has indicated that a waiver for NSEP purposes would be unnecessary if its Federal Systems Organization (FSO) petition is granted. AT&T Direct Comments at 2. In creating a waiver in this Order we do not endorse or deny AT&T's FSO petition; the policies established here will govern the provision of NSEP equipment by AT&T until we take further action.

[4] A specific waiver for the ITCs is unnecessary since they are not restricted by separate subsidiary requirements which would prevent their acting as a single point of contact for NSEP. See para. 2, *infra*. The waiver granted in this Order is simply a means of allowing AT&T and the BOCs the same flexibility for NSEP provisioning which the ITCs enjoy in all of their operations. We also note that the detariffing requirements of this Order do not apply in any way to any ITC CPE tariffed at the Federal or State levels. As we indicated in CC Docket No. 81–893, Third Report and Order, FCC 84–483, Mimeo No. 35148 (released Oct. 26, 1984), NSEP CPE owned by the ITC's will be detariffed at some future date pursuant to a Notice of Proposed Rulemaking which will be issued in the near future. Until an Order is adopted which specifically detariffs NSEP CPE owned by the ITC's, such equipment will remain under tariff.

[5] 77 FCC 2d 384, *recon.*, 84 FCC 2d 50 (1980), *further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer & Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983).

[6] Section 64.702 of the Commission's Rules and Regulations, 47 CFR 64.702 (hereinafter Computer II Rules).

[7] AT&T Petition for Waiver of § 64.702 of the Commission's Rules and Regulations with Respect to the Department of Defense and Specified Government Agencies, ENF 83–13, Memorandum Opinion and Order, 93 FCC 2d 632 (1983) (hereinafter *CPE Waiver Order*).

[8] Defense Communications Agency Circular 310–130–1, Ch. II, para. 2 (Feb. 1982) defines these other emergency situations. *See CPE Waiver Order* at para. 7 n.6.

[9] CC Docket No. 81–893, Report and Order, 95 FCC 2d 1276 (1983) (hereinafter *CPE Detariffing Order*).

[10] For a list of these systems see *CPE Detariffing Order*, 95 FCC 2d at 1375 & n.146.

[11] AT&T Petition, ENF 83–13 (filed Dec. 14, 1983).

[12] CC Docket No. 81–893, Order, Mimeo No. 1705 (released Jan. 10, 1984) (hereinafter *Bureau Waiver Order*).

[13] CC Docket No. 81–893, Order, 49 Fed. Reg. 28108 (July 10, 1984) (hereinafter *Second Bureau Waiver Order*).

and the specified federal agencies in a manner which gives due consideration to *Second Computer Inquiry* requirements and principles." *Bureau Waiver Order* at para. 1 n.4. On June 20, 1984, the Commission released such a proposed rulemaking.[14] In the *Second Notice* we proposed four broad options for the provision of NSEP CPE consistent to the extent possible, with the requirements of the Computer II Rules.[15] Under Option I we proposed to amend, or permanently waive, the Computer II Rules to enable AT&T–C to serve as single point of contact for the 21 NSEP communications systems specified by FEA.[16] AT&T–IS would own the embedded CPE for these systems, but AT&T–C would be responsible for it and for any new equipment which AT&T–C might acquire to preserve existing capabilities. The same arrangement created for AT&T would also apply to any embedded CPE retained by the BOCs and used in connection with NSEP functions.[17] Under Option II AT&T–C would retain or receive ownership of embedded CPE associated with the designated NSEP systems. This option would also require that AT&T–C be permitted to own and provide new CPE associated with these systems. The third option (Option III) proposed expanding the role of Bell Communications Research Incorporated (Bellcore) to supplant any end-to-end responsibility for NSEP communications needs currently performed by AT&T–C. Bellcore would become the industry-wide point of contact for DOD and the other specified federal agencies for all NSEP communications needs. Full *Second Computer Inquiry* separations requirements would apply to relationships between AT&T–C and AT&T–IS, and to relationships between regulated and unregulated BOC entities. AT&T's embedded CPE used for the designated NSEP systems would be detariffed and transferred to AT&T–IS. The final option proposed in the *Second Notice* (Option IV) would require AT&T–IS, rather than AT&T–C, to function as the single point of contact for the designated NSEP systems. Under this option all embedded CPE associated with the designated NSEP systems would be transferred to AT&T–IS. AT&T would be required to provide new CPE for these systems only through AT&T–IS, and AT&T–IS would be permitted to resell basic transmission service acquired from AT&T–C or other carriers.

III. Comments

7. Ten parties have filed comments or reply comments in response to our *Second Notice*.[18] These comments fall into two groups, those which supported Option I and those which supported Option III. No party offers any support for Option II or for Option IV.

8. Support for Option I focuses on the requirements of national security. Option I is viewed as a close approximation of the *status quo* because it would allow AT&T–C to act as an NSEP single point of contact for DoD and the other specified federal agencies.[19] FEA deems it essential that this single point of contact be maintained to ensure equipment compatibility, comprehensive system coverage, maximum system performance, and the minimization of any risk of unauthorized disclosure.[20] FEA further indicates that AT&T–C has the experienced personnel who understand these systems, without whose expertise and special handling unacceptable outages could occur.[21] Option I is portrayed as a means of allowing AT&T and the BOCs to provide the same type of end-to-end services for the designated NSEP systems that their competitors are already allowed to provide.[22]

9. Option I also receives support as the alternative which upheld the competitive goals of *Second Computer Inquiry*.[23] Several commenting parties indicate that the extension of the waiver to the BOCs would allow them into the NSEP market and would increase AT&T's competition in the provision of NSEP.[24] Parties also note that this option would provide additional sources of end-to-end service to the federal government in emergency situations.[25]

10. Opposition to Option I is motivated almost exclusively by an alleged threat to competition in the market for national security communications which would result from a waiver of the Computer II Rules in favor of AT&T. GTE argues that suppliers which are qualified to take part in the management of government communications systems would be precluded from bidding for full participation in such systems.[26] ASC suggests that any waiver of the Computer II Rules could be used as the basis for non-competitive procurement for government communications.[27] Rolm notes that the Commission has continually rejected applications for Computer II Rules waivers in the past and it should do so here.[28] Finally, GTE indicates a belief that there has been no adequate showing that only AT&T or the BOCs can provide critical NSEP systems or CPE, especially since DoD has stated that other companies are viable candidates for providing end-to-end NSEP services.[29]

11. GTE indicates that should the Commission accept Option I, AT&T's activities should continue to be monitored to prevent any AT&T advantage. GTE suggests that current reporting requirements must be preserved and the Commission should require additional pre-transaction reports on any transaction involving the waiver.[30] FEA opposes any form of advance Commission review and approval of waivers. It suggests that the proposal would put the Commission in the place of the General Accounting Office and would require the Commission to assess agency judgments.[31] FEA also notes that the pre-approval proposals did not distinguish between routine and emergency NSEP requirements and requiring such approval in emergency situations could cause unacceptable delays.[32]

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[14] CC Docket No. 81-983, Second Further Notice of Proposed Rulemaking, FCC 84-238, 49 FR 26109 (released June 20, 1984) (hereinafter *Second Notice*).

[15] For a detailed description of the four proposed options *see Second Notice* at paras. 9–19.

[16] For a list of the 21 NSEP systems (hereinafter the "designated NSEP systems") see Appendix A. For a description of each system, see Appendix B.

[17] Acquisitions by AT&T–C and the regulated BOC entities would be in accordance with the terms of the *CPE Waiver Order*.

[18] Parties filing are: American Satellite Company (ASC), the Ameritech Operating Companies (Ameritech), AT&T, FEA, GTE Corporation (GTE), Mountain States Telephone and Telegraph Company with Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company (Mountain States), Rolm Corporation (Rolm), Teltec Saving Communications Company (Teltec), and the Telephone Companies (composed of the Bell Telephone Company of Pennsylvania, the Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company, Nevada Bell, New England Telephone and Telegraph Company, New Jersey Bell Telephone Company, New York Telephone Company, Pacific Bell, South Central Bell Telephone Company, Southern Bell Telephone and Telegraph Company, and Southwestern Bell Telephone Company).

[19] FEA Direct Comments at 6; AT&T Direct Comments at 3.

[20] FEA Direct Comments, appendix at 7.

[21] *Id.* at 8.

[22] FEA Reply Comments at 10–11; AT&T Reply Comments at 3.

[23] Telephone Companies Direct Comments at 3.

[24] *Id.* at 3; FEA Reply Comments at 2.

[25] FEA Direct Comments at 7.

[26] GTE Direct Comments at 2.

[27] ASC Direct Comments at 2.

[28] Rolm Reply Comments at 2.

[29] GTE Direct Comments at 5–6.

[30] GTE Direct Comments at 10.

[31] FEA Reply Comments at 16.

[32] *Id.*

12. The Telephone Companies and Mountain States, although generally supportive of Option I, propose a modification in the way it deals with augmentation of the designated NSEP systems. Under the *Bureau Waiver Order*, and under Option I as proposed, AT&T is allowed to augment existing NSEP systems. These parties indicate that, to prevent abuse, Option I should be modified to create a clear line between augmenting existing NSEP systems and creating new ones, in order to prevent AT&T from using the waiver as a springboard to become the sole source for all existing and future NSEP communications CPE. The Telephone Companies propose that no new locations be added to the 21 designated NSEP systems from those existing as of July 1, 1984, and no significant increase in line capacity in those systems be allowed.[33] Mountain States argues for stricter limits on augmentation. Under the Mountain States modification, systems would be frozen at their current size and any new procurement would have to be on the open market.[34]

13. FEA and AT&T oppose any restrictions on augmentation. FEA argues that there is no need to limit augmentation since the existing waiver has been used only infrequently and the specified federal agencies are aware that the Commission could withdraw any future waiver if the waiver is abused.[35] Moreover, the federal procurement regulations already require special justification, not related to or provided by the Commission waiver, for sole source procurement.[36] AT&T notes that the government decides its own needs and chooses its own suppliers. Because it is impossible for AT&T to abuse the waiver by providing the government with equipment it does not want, AT&T argues that there is no need to limit the size of NSEP systems.[37] Finally, FEA suggests that freezing the size of NSEP systems ignores the reality of operational communications needs and could lead to the fragmentation of systems.[38]

14. The supporters of Option III claim that it would encourage competition by removing AT&T as the single point of contact. Rolm argues that the option would tend to irradicate the present closed procurement atmosphere,[39] while ASC suggests it would bolster competition by adhering to the separations requirements of the Computer II Rules.[40] It is also suggested that this option would meet the legitimate security needs of the federal government by providing a single contact point for NSEP,[41] especially since there has been no showing that only AT&T and the BOCs can adequately provide NSEP.[42]

15. The parties supporting Option III also propose that an organization other than Bellcore become the new NSEP single point of contact for DoD and the other specified federal agencies. GTE proposes, and ASC and Rolm agree, that the National Coordinating Center (NCC) replace Bellcore as the single point of contact.[43] NCC is favored because it was specifically created to respond to NSEP telecommunications requirements, and because it was never part of the Bell System.[44]

16. Option III is strongly opposed by several of the commenting parties. The opponents focus on potential problems with coordination of NSEP communications activities by an entity (NCC or Bellcore) that would have no prior experience in handling the responsibilities it would be required to assume.[45] FEA argues that the new entity might have substantial difficulties creating the new capabilities it would need to provide adequate end-to-end service for the designated NSEP systems, and that this process would be wasteful because similar capabilities which exist in AT&T would be allowed to deteriorate.[46] AT&T comments that the adoption of this option, in addition to creating operational problems, could lead to significant anti-competitive impacts. AT&T argues that under Option III the government, to obtain its NSEP requirements, would have to deal with a single entity representing the entire telecommunications industry, and this would require collaboration among competitors with anti-competitive implications.[47]

17. There are specific concerns about the two organizations, Bellcore and NCC, proposed as the coordinating entity. AT&T notes that the BOCs are prevented by the AT&T divestiture from providing interexchange service,[48] and since Bellcore is owned by the BOCs, its provision of end-to-end NSEP communications might violate the Modification of Final Judgment.[49] FEA, directing its comments toward NCC, indicates that NCC was not created to be a provisioning organization for end-to-end NSEP service. Its planned role was to be a vehicle by which the federal government would seek to facilitate a cooperative and coordinated multiple supplier response to NSEP telecommunications requirements.[50] FEA also indicates that GTE was not entirely straightforward in its proposal of NCC as the provisioning organization. In discussions surrounding the creation of NCC, GTE argued that the NCC Charter limits NCC involvement to existing emergencies.[51] FEA notes that GTE specifically objected to an NCC role assisting in the initiation and coordination of NSEP communications services—an area where GTE now argues NCC should take the central role.[52]

18. Option II is not supported by any party, although FEA indicates it would be acceptable if the Commission should not choose Option I.[53] Much of the opposition is predicated on the option's predicted anti-competitive effects. These effects are presumed by the commenting parties to be similar to those they foresee for Option I because AT&T–C would remain the single point of contact for the 21 designated NSEP systems.[54] Parties also argue that Option II would create competitive problems in excess of those noted for Option I because it would exclude the BOCs from the waiver[55] and because AT&T–C would not be required to inform DoD and the other specified federal agencies of alternative sources for NSEP equipment and services.[56] Finally, AT&T argues that Option II is unacceptable because it would unnecessarily fragment the CPE serving the federal government, thereby increasing AT&T's costs by requiring AT&T–C and AT&T–IS each to support

[33] Telephone Companies Direct Comments at 4.
[34] Mountain States Direct Comments at 4.
[35] FEA Reply Comments at 13.
[36] *Id.* at 14.
[37] AT&T Reply Comments at 6–7.
[38] FEA Reply Comments at 14.
[39] Rolm Reply Comments at 3.
[40] ASC Direct Comments at 2.
[41] *Id.*
[42] GTE Direct Comments at 5–6.
[43] GTE Direct Comments at 7; ASC Direct Comments at 2; Rolm Reply Comments at 3.
[44] GTE Direct Comments at 7; ASC Direct Comments at 2.
[45] FEA Direct Comments at 5; Mountain States Direct Comments at 3; Ameritech Direct Comments at 4.
[46] FEA Direct Comments at 9; AT&T Direct Comments at 10.
[47] AT&T Direct Comments at 10–11.
[48] Modification of Final Judgment in *United States v. American Tel. & Tel. Co.*, 522 F.Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).
[49] AT&T Direct Comments at 10.
[50] FEA Reply Comments at 6–7.
[51] *Id.* at 11–12.
[52] *Id.*
[53] FEA Direct Comments at 8.
[54] Central Direct Comments at 2; ASC Direct Comments at 2; Rolm Reply Comments at 2–3.
[55] Ameritech Direct Comments at 3; Telephone Companies Direct Comments at 6–7.
[56] *Id.*; Mountain States Direct Comments at 3.

the provision of identical government CPE.[57]

19. No party supports Option IV and nearly all of the commenting parties oppose it. The parties see in this option all of the faults of the other three options and none of the virtues. AT&T–IS is preceived as incapable of quickly developing the needed coordinating mechanism,[58] competition would be reduced by excluding the BOCs as suppliers and by not requiring AT&T–IS to notify the agencies of alternative sources of NSEP services,[59] and an institutional bias in favor of AT&T and AT&T–IS would be created.[60] Moreover, AT&T indicates that the resale of services is not flexible enough to meet all NSEP needs, and since system design is often the key to NSEP requirements, AT&T–IS does not have sufficient experience to oversee NSEP servicing on and end-to-end basis.[61]

IV. Discussion

20. In the *Second Notice* we presented four options for the provision of NSEP communications. Our evaluation of these options centers on two policy considerations: The impacts of the options on national security and their impacts on competition in the NSEP telecommunications market. As we discuss below, we must reconcile the conflicts between these two considerations without unduly compromising the objectives underlying each of them.

21. The primary national security consideration for an NSEP provisioning framework is ensuring that the 21 designated NSEP systems are adequately maintained and managed. Two conditions are critical to the continued viability of these systems.[62] First, DoD and the other specified federal agencies must have a single point of contact within the telecommunications industry capable of providing end-to-end services for these systems. And, second, the organization which provides this service must have the demonstrated capacity to do so. FEA suggests this latter condition requires that the organization which has provided such services over time continue to do so.[63] The Commission is convinced that both of these requirements are important to ensuring the viability of the designated NSEP systems and hence to protecting national security.[64] We are well aware of the technical complexity of these systems and the logistical problems which such complexity entails. We are also aware that DoD and the other specified federal agencies are not prepared to operate and maintain these systems. Nor is it clear that any entity which is not itself a telecommunications provider is capable of providing the needed technical and coordinating skills. We are convinced that the public interest in preserving our national security is best served by allowing various entities in the telecommunications industry which have provided end-to-end service to continue to be able to do so.

22. The second consideration which we must take into account is the promotion of competition in the provision of NSEP equipment and services. Over the past decade, in several proceedings, the Commission has taken action to create viable competition in the provision of telecommunications equipment and services.[65] We have found that in most areas the forces of competition will provide the most efficient and effective regulation.[66]

23. We recognize, however, that in the NSEP communications area it is very difficult to create a fully competitive environment while at the same time avoiding unacceptable national security risks. This conflict is in part a consequence of the requirement, noted above, that DoD and the other specified federal agencies have a single point of contact within the telecommunications industry for NSEP communications services and equipment. A single point of contact presents problems for competition with regard to the provision of CPE because the entity which has been chosen by DoD or another specified federal agency as a "general contractor" for an NSEP system will have an incentive to furnish its own equipment to the exclusion of those from other suppliers.[67] Thus, there is a potential risk that NSEP systems will tend to become locked in to the company which is chosen as general contractor. This competitive problem is magnified by the fact that a substantial majority of NSEP systems are currently managed by AT&T.[68] AT&T's management of these systems has allowed it to assume an extensive role in the provision of NSEP communications services and equipment, and a continuation of its management role for the designated systems could tend to extend AT&T's central position regarding NSEP communications.

24. As a consequence of the continuing organizational and management needs of the 21 NSEP systems, we must now make a decision which balances considerations of national security against the competitive principles we have implemented and supported for many years. In this proceeding, the comments and our own analysis have convinced us that there is no practicable means to reconcile fully the conflicting demands of both policies. Thus, we have concluded that to the extent that both policies cannot be fully realized, the concerns of national security must receive the higher priority. This is especially the case because we have concluded that the requirements of national security are more at risk in this proceeding than those of competition.[69] The 21 designated systems, although worth several hundred million dollars, represent only a tiny fraction of the overall communications market.[70] Yet, at the same time these are communications networks which are at the heart of some of the Nation's most crucial defense and emergency preparedness systems.[71]

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[57] AT&T Direct Comments at 9.

[58] FEA Direct Comments at 10.

[59] Ameritech Direct Comments at 3; Mountain States Direct Comments at 3.

[60] Telephone Companies Direct Comments at 6–7; ASC Direct Comments at 2.

[61] AT&T Direct Comments at 12.

[62] FEA Direct Comments, appendix at 7–8.

[63] *Id.*

[64] *See* para. 27, *infra.*

[65] *See, e.g., Second Computer Inquiry; Competitive Carrier Rulemaking,* 91 FCC 2d 59 (1982), *recon.* 93 FCC 2d 54 (1983); *Domestic Fixed-Satellite Transponder Sales,* 90 FCC 2d 1238 (1982), *aff'd sub nom. Wold Communications v. FCC,* D.C. Cir. No. 82–2054 (June 1, 1984); *Domestic Communications Satellite Facilities,* 35 FCC 2d 844 (1972); *Specialized Common Carrier Services,* 29 FCC 2d 870 (1971), *aff'd sub nom. Washington Utils. & Transp. Comm'n v. FCC,* 513 F.2d 1142 (9th Cir.), *cert. denied,* 423 U.S. 836 (1975).

[66] *See CPE Detariffing Order,* 95 FCC 2d at 1280.

[67] This tendency is suppressed by certain conditions established in this Order. *See* paras. 30–32, *infra.*

[68] All of the 21 designated NSEP systems are managed by AT&T. AT&T also manages more than 35 others not covered by this Order. No other commenting party has indicated that it is involved in more than one or two NSEP systems. *See* ASC Direct Comments at 1; GTE Direct Comments at 8.

[69] As has been noted in several proceedings, competition is not an end in itself, but is merely one means of serving the public interest as is required by Section 1 of the Communications Act of 1934, 47 U.S.C. 151 *See FCC v. RCA Communications, Inc.,* 346 U.S. 86, 92 (1953); *Hawaiian Tel. Co. v. FCC,* 498 F.2d 771, 776 (D.C. Cir. 1974).

[70] The original waiver granted to AT&T was for 56 systems, *see CPE Waiver Order* at para. 3, but this was later limited to the 21 designated NSEP systems. *See Bureau Waiver Order* at paras. 2, 3, 13.

[71] For a description of these systems, see Appendix B.

Thus, the nature of our policy decision in this Order could have serious repercussions for the national defense, but would be unlikely to have more than a peripheral impact on overall competition in the provision of communications equipment and services.

25. Accordingly, we select the Option I waiver as the best means of ensuring the continued viability of the 21 designated NSEP systems, while at the same time preserving to the greatest extent possible the pro-competitive aspects of our Computer II Rules. The Option I waiver is the best means of preserving the existing organizational capabilities for the end-to-end maintenance and provisioning of the 21 designated NSEP systems and for the provision of communications equipment in emergency situations. We also select this waiver because in the long run, and with the restrictions we will place on it, it will be the framework which is most favorable to competition.

26. In adopting Option I we are creating a permanent waiver of the Computer II Rules which will permit AT&T–C and the regulated BOC entities to maintain end-to-end responsibility for NSEP communications in cases of Presidentially declared and other emergencies[72] and on a continuous basis for the designated NSEP systems. The Commission, although creating a permanent waiver, reserves the right to reevaluate the waiver should conditions warrant. Under this waiver AT&T–C and the regulated BOC entities will be permitted to be responsible for the acquisition of limited amounts of new CPE to replace embedded CPE in the designated systems and for the reasonable augmentation of these systems.[73] AT&T–C and the BOCs will also be permitted to be responsible for the acquisition of unlimited amounts of CPE to carry out requested functions during Presidentially declared and other emergencies.[74] New CPE which is not needed to augment or replace embedded CPE for the 21 designated systems, or for a requested mission during a Presidentially declared or other emergency, will not be covered by this waiver.

[72] Those emergencies specified in Defense Communications Agency Circular 310–130–1, Ch. II, para. 2 (Feb. 1982). *See CPE Waiver Order* at para. 7 n.8.

[73] For rules on augmentation, see para. 30, *infra*.

[74] By "requested functions" we mean those functions which result from a specific request from DoD or another specified federal agency for AT&T–C or a regulated BOC entity to carry out some mission relating to Presidentially declared or other emergencies.

27. As we noted previously, the primary reason for this waiver is to maintain the integrity of the 21 designated NSEP systems. At the present time, AT&T–C has the existing personnel and expertise to maintain these systems, expertise that can only be gained from long experience with the unique aspects of each installation. An organization which lacked this experience (such as Bellcore, NCC, or AT&T–IS) would take considerable time to develop it after assuming the role of system manager. In the interim these systems, which are crucial to the national defense, would be maintained by an entity which is not fully capable of providing the needed service. We have concluded that there are unacceptable risks involved in permitting an inexperienced and ill-prepared organization to serve as system manager for critical defense communications systems. It is the existence of this expertise and experience in AT&T–C, and the difficulty in obtaining it elsewhere, which in part have led us to select Option I and to reject Options III and IV as unacceptably risky from the standpoint of national security. Moreover, if a new entity were selected it would be acquiring the needed expertise while an equivalent capability in AT&T–C would be allowed to deteriorate. To eliminate this waste of resources, and to prevent potentially dangerous lapses in the proper functioning of these systems, AT&T–C will be permitted to continue to fullfill a responsibility it has performed for many years.

28. Although Option I may not be the best means for creating a completely competitive environment for the provision of NSEP equipment, of the available options it is the one which will have the least long-term negative impact on competition in the communications industry and is the alternative that, as conditioned, will best promote competitive goals. First, its impact on competition for the overall provision of CPE will be minimal since the waiver of the Computer II Rules established in this Order is strictly limited to the designated systems and to certain emergency situations. Second, by allowing the BOCs to provide CPE and associated services for the designated systems we are creating additional competition to AT&T for these 21 systems that would not otherwise exist.[75] None of the other options outlined in the *Second Notice* contained this competitive factor. Finally, government procurement regulations control the acquisition of equipment for the designated systems, and those regulations place strict limitations on what DoD and the other specified federal agencies can and cannot do.[76] These existing regulations will help promote competition in the NSEP procurement process.

[75] For a description of the BOC waiver see para. 26, *supra*.

29. Each of the alternative options has significant drawbacks compared with Option I. Options II and IV, although limited in scope, do not provide for additional competition to AT&T from the BOCs. In addition, Option II would require a broader waiver than the one we are mandating here because it would allow AT&T–C to own as well as manage the embedded CPE for these systems.[77] Finally, Option III could present a threat to overall competition in the industry. Option III would create an industry-wide point of contact for NSEP equipment provisioning (in Bellcore, NCC, or some other entity) and would require all companies in the industry to cooperate regarding NSEP communications needs. Allowing such cooperation in a single forum could provide a ready mechanism for the formulation and imposition of various exclusionary and other anti-competitive practices. Thus, from an industry-wide perspective[78] we perceive the Option III approach as providing unnecessary dangers to competition in the overall provision of telecommunications equipment and services.

30. The NSEP communications equipment provisioning framework outlined above, as well as being inherently limited in its impact on overall telecommunications competition, is flexible enough to allow certain pro-competitive aspects to be included in the framework. In describing the waiver we noted it is limited to certain emergencies, to replacing embedded CPE, and for the reasonable augmentation of existing systems.[79] We

[76] *See* Federal Acquisition Regulation, 48 CFR 14.103-1(a), 34.00–5–1; *see also Pub. L. 98–72, 97 Stat. 403 (Aug. 11, 1983); Office of Federal Procurement Policy, Policy Letter No. 84–2, "Non-Competitive Procurement Procedures," 49 F.R. 8315 (1984).*

[77] Also, AT&T suggests this option would cause duplication of facilities resulting in economic inefficiency, an outcome the Commission wishes to avoid. See para. 18, *supra*.

[78] Viewed from a single-company perspective this option might seem to enhance competition since it would reduce AT&T's ability to dominate the provision of NSEP communications services and equipment. However, viewing the industry as a whole, the idea of creating forums where competitors learn to cooperate is not a pro-competitive policy choice.

[79] *See* para. 26, *supra*.

chose to impose this "reasonableness" limitation on augmentation as a means of promoting competition by preventing AT&T from creating entirely new systems under the auspices of our limited waiver. Although some commenting parties suggested we strictly limit the size of NSEP systems, we have rejected this approach because it would be too inflexible to meet the requirements of national security. We are convinced that the augmentation limitation is sufficiently flexible to protect national security, but not so broad as to allow entirely new systems to be "augmented" onto systems covered by the waiver. We also note that the reporting requirements we impose in this Order will assist the Commission in identifying and eliminating any abuses of the limitation.[80]

31. A further pro-competitive aspect of the waiver we are creating is the requirement that AT&T–C and the BOCs must inform DOD and the other specified federal agencies of alternative CPE suppliers should there be a need for additional CPE. In any case in which AT&T–C or a BOC is authorized by the waiver to be responsible for the acquisition of new CPE, and service required by DoD or another specified federal agency cannot be provided with CPE from the embedded base, AT&T–C or the BOC will be required to notify the affected government agency. AT&T–C or BOC will specify the CPE which is unavailable and will identify one or more suppliers, at least one of which must not be affiliated with the BOC or AT&T–C.[81] The affected government agency will then determine from which supplier AT&T–C or the BOC will obtain the new CPE in question, and will advise AT&T–C or the BOC, which will then obtain the CPE and be responsible for it as part of end-to-end service to the federal government. If AT&T–C or the BOC is unable to specify an unaffiliated vendor it must so certify to the affected agency and to this Commission. This requirement, which mandates that alternative suppliers be identified, will allow DoD and the other specified federal agencies to select their own equipment suppliers and should reduce any anti-competitive effect of having AT&T–C, a BOC, or some other company as the general contractor.

32. The final action we take in this Order to protect competition in the NSEP marketplace is to impose upon AT&T–C and the regulated BOC entities a quarterly reporting requirement.[82] We impose this requirement to ensure that AT&T–C and the BOCs do not abuse the waiver we are granting, and we note once again that we have reserved the right to review this waiver should the conditions warrant. We do not require pre-approval for use of this waiver, since such a requirement would unnecessarily burden this Commission, AT&T–C, and the BOCs. It would also reduce flexibility in the case of an emergency.

33. There are some final points in regard to the waiver which must be addressed. First, AT&T–C or any BOC operating under the waiver will be required to bill any maintenance of service charges for CPE to DoD or a specified federal agency in accordance with any applicable tariffs. These expenses should not find their way, in any form, into the rate base where ratepaying customers would become responsible. Second, to protect the ratepayers further, AT&T–C and the regulated BOC entities will be allowed to act as general contractors for the specified NSEP systems and in cases of Presidentially declared and other emergencies, but will not be able to take title to any new CPE. New CPE will be titled in the affected government agency, AT&T–IS, or a BOC unregulated subsidiary. Any expenses incurred by AT&T–C or a BOC in connection with making the needed procurement arrangements shall not be allocated to any sevice or facility other than the NSEP service or facility with which the expense is associated.

34. Finally, in regard to detariffing of embedded CPE which was approved on an interim basis in the *Bureau Waiver Order*, we now make such detariffing final. Embedded CPE currently owned by AT&T and used for NSEP communications functions shall be detariffed and transferred to AT&T–IS. The transfer will be in accordance with the terms of the *CPE Detariffing Order*. The transition period will be retroactive to the time AT&T first offered the equipment for sale,[83] and any price increases will occur at the intervals we have specified in previous decisions.[84] The NSEP CPE will be aggregated with other multi-line CPE for the purposes of the net book value limitations.

35. We shall require the policies, rules, and requirements established in this Order to take effect on January 1, 1985. We recognize that the Administrative Procedure Act (APA) requires the effective date of rule to occur at least 30 days following publication in the **Federal Register**, "except . . . as otherwise provided by the agency for good cause found and published with the rule," 5 U.S.C. 553(d). To the extent that this provision of the APA may be applicable to this Order, we hereby find good cause for an earlier effective date to exist because of the need for these policies, rules, and requirements to be in place by January 1, 1985. Such an early effective date is essential to the continued effective and efficient operation of the 21 designated NSEP systems, and hence to the national security.

V. Ordering Clauses

36. It is therefore ordered, pursuant to sections 4 (i) and (j), 201–205, 213, 218, 220, and 403 of the Communications act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 213, 218, 220, and 403, That the waiver, policies, and requirements set forth herein are adopted, effective January 1, 1985.

37. It is further ordered, that the American Telephone and Telegraph Company and any Bell Operating Company using this waiver shall provide quarterly reports to the Chief, Common Carrier Bureau, on the types and quantities of new customer premises equipment provided by AT&T Communications and the BOCs pursuant to this waiver. These reports shall indicate whether the new CPE was acquired to replace embedded equipment, to augment an existing system, or as part of a requested mission during a Presidentially declared or other emergency. These reports shall be filed no later than 30 days after the close of each calendar quarter, beginning with the quarter ending March 31, 1985.

38. It is further ordered, that AT&T or a BOC shall notify the Chief, Common Carrier Bureau, in writing on any occasion when the waiver is used and an unaffiliated alternative supplier cannot be named. Such notification shall include the specifications of the

[80] *See* paras. 31–32, *infra*.

[81] Nothing in this Order is intended to limit the government agencies to those suppliers identified by AT&T–C or a BOC. The agencies remain free to choose any CPE suppliers who can meet their CPE needs.

[82] *See* para. 36, *infra*, on the type of reports which will be required.

[83] In its comments AT&T noted that it had treated equipment from the 21 designated systems as detariffed on January 1, 1984. AT&T Direct Comments at 7–8. In this Order we support AT&T's actions, except to the extent that what we have said in this Order is different from the *CPE Detariffing Order*.

[84] *See* CC Docket No. 81–893, Second Report and Order, FCC No. 84–269, 49 FR 27754 (released June 29, 1984); CC Docket No. 81–893, Order, FCC No. 84–304, 49 FR 30710 (released June 29, 1984).

equipment for which an unaffiliated supplier could not be located.

39. It is further ordered, that the motion for leave to file late comments filed by the Telephone Companies is granted.

40. It is further ordered, That the inclusion of a missing page in an original filed by the Federal Executive Agencies is accepted, as requested by the Federal Executive Agencies.

Federal Communications Commission.

William J. Tricarico

Secretary.

Appendix A

Designated NSEP Systems:

- Automatic Secure Voice Communications Network (AUTOSEVOCOM)
- Joint Chiefs of Staff Alerting Network (JCSAN)
- Minuteman
- SAC Primary Alerting System (PAS)
- SAC Operations Conference System (SOCS)
- SAC Command Post Command and Control Consoles (Turrets)
- NORAD Alerting System (NAS)
- TAC Command and Control Alerting System (TACCALS)
- TAC Force Control Management System (TACNET)
- Military Airlift Command Operational Phone System (MACOPS)
- Air Force Digital Graphics System (AFDIGS)
- Air Force Command Post Alerting Network (COPAN)
- Air Force Command Post Record Capability (COPREC)
- White House Communications Agency Transportable Electric Consoles (TECs)
- White House Communications Agency Echo Fox Radio System
- U.S. National Airspace System
- FEMA (classified system)
- Emergency Broadcast System
- FEMA National Voice System (FNAVS)
- FEMA National Warning System (NAWAS)
- Nuclear Regulatory Commission Emergency Notification System (ENS)

Appendix B

Critical National Security and Emergency Preparedness Systems/ Circuits Requiring End-to-End Provisioning, Including CPE, by AT&T Long Lines

Department of Defense

A. *Automatic Secure Voice Communications Network (AUTOSEVOCOM):*

AUTOSEVOCOM, utilizing the AUTOVON network, provides a secure voice network for the purpose of exchanging information of any security classification. This system consists of both manual and automatic switched voice networks which have been linked together to form a single system. It is designed to provide users with a means for exchanging classified information over circuitry which has been cryptographically secured.

B. *Joint Chiefs of Staff (JCS):*

1. *Joint Chiefs of Staff Alerting Network (JCSAN):* This is the primary non-secure voice alerting system of the Joint Chiefs of Staff. It connects the National Military Command Center with the command centers of the Unified and Specified commands throughout the world via direct lines which permit instantaneous and reliable connectivity for critical command and control of U.S. forces. It is the means for dissemination of Emergency Action Messages to the CINCs.

2. *Minuteman:* This interstate VHF mobile radio system provides continuous command and control voice connectivity between and among key DoD command and control personnel, and between DoD and other Government agencies personnel. It extends the National Military Command and Control System from land line switchboards via radio to key Government personnel anywhere in the Washington Metro area, and ensures continuous connectivity while personnel are in transit.

C. *Strategic Air Command (SAC):*

1. *SAC Primary Alerting Systems (PAS):*

PAS is the Commander in Chief (CINC) SAC's primary voice communications system. It links Headquarters SAC, the Numbered Air Forces, SAC Unit Command Posts, Air National Guard Bases, Dispersal Bases, Missile launch control centers, Giant Talk HF sites, and Super Low Frequency Communications Systems sites. It includes CPE at such sites, dedicated leased circuits between the sites, and it is used to increase alert force readiness, direct the positive control launch of alert aircraft, and relay National Command Authority execution directives.

2. *SAC Operations Conference System (SOCS):*

SOCS is CINCSAC's backup to the PAS, and in addition provides voice command and control capability for conferencing for aircraft emergencies, potential missile hazards, and air to ground phone patches through unit command posts for airborne aircraft experiencing difficulties.

3. *SAC Command Post Command and Control Consoles (Turrets):*

The Main Operating Base turret (Command Post Console) is the termination interface between the PAS, SOCS, and the individual base command and control systems (klaxons, the tactical air-crew alerting network, the interbase radio system, etc.) to alert air crews and aircraft. While the MOB turrets are currently provided under contracts with the BOCs, the pre-divestiture AT&T corporate structure ensured the effective integration of this CPE into SAC's command and control communications capability. For example, AT&T maintained configuration control over the consoles thereby ensuring the required uniformity at each of the 30 Command Post locations. With the impending divestiture of the BOCs and AT&T into separate, unaffiliated companies, SAC believes it imperative to integrate the MOB consoles with the transmission network provided by AT&T Long Lines.

D. *NORAD Alerting System (NAS):*

The NAS is the primary means for the Commander-in-Chief (CINC) NORAD to command and control his units. It is a voice network but is being upgraded by AT&T Long Lines by the addition of computer control to monitor line status, perform roll calls and restore circuits. Provision of the entire system by Long Lines is a firm operational requirement to ensure the NAS system meets 99.9 percent availability criteria because the computer control will be distributed throughout the network and the terminal equipments. In addition, separation of such a system into CPE and network would create maintenance problems.

E. *Tactical Air Command (TAC):*

1. *TAC Command and Control Alerting System (TACCALS):*

TAC's alerting system provides instantaneous alerting capability from the TAC Command Post to TAC Command Posts of wing level or higher. This system also provides instantaneous primary voice communications between the Ninth and Twelfth Air Force Command Posts and their respective subordinate unit command posts and provides TAC with an alternate route to subordinate unit command posts.

2. *TAC Force Control Management System (TACNET):*

This system provides timely digital communications between Headquarters Tactical Air Command, TAC Numbered Air Forces, and TAC contingency support staffs to gather and correlate information necessary to formulate command and control decisions, expedite dissemination of these decisions, receive and disseminate

information required to implement these decisions, and report status or problems of implementation.

F. *Military Airlift Command Military Airlift Command Operational Phone System (MACOPS):*

MACOPS is a standardized state-of-the-art leased command and control communications console system developed by MAC/AT&T Long Lines which provides responsive voice communications for HQ MAC Command Center, its Numbered Air Forces Operations Centers, and selected subordinate MAC Command Posts to facilitate MAC's ability to carry out its worldwide airlift mission. The MACOPS console package is a unique special assembly designed by Western Electric and the consoles are equipped and can interface with AUTOVON (on/off hook), ¾ wire private lines, PBX stations, central office access links, UHF/VHF/FM radios, and intercom.

G. *Air Force Digital Graphics System (AFDIGS):*

The AFDIGS is a worldwide system for the distribution of weather maps generated primarily by the Air Force Global Weather Central (AFGWC) at Offutt AFB and the National Weather Service. The system consists of terminal facsimile recorders located at base weather stations and circuits which connect the bases to the network transmit station at the AFGWC. The CONUS and Alaskan portions (164 locations) of the network (facsimile recorders and circuits) are leased entirely from AT&T Long Lines on a 5-year contract issued through DECCO in October 1980. The AFDIGS supports the flying safety of DoD aircraft and the protection of DoD resources and personnel at USAF and US Army bases through advance warning of severe weather. A single manager is vital for the integration, restoration and responsiveness necessary to meet operational needs.

H. *Air Force Command Post Alerting Network (COPAN):*

COPAN is an extension of the JCS Alerting Network (JCSAN) providing rapid, reliable voice communications between the Air Force Operations Center (AFOC), it's alternate (AFEOC) and all Major Air Commands for passing critical, time sensitive information, including JCS emergency action messages. This system is now, and has been since its inception, managed by AT&T Long Lines.

I. *Air Force Command Post Record Capability (COPREC):*

COPREC provides the Air Force Operations Center a fast, reliable, secure capability for passing record messages between the Air Force Operations Center, its alternate (AFEOC) and all Major Air Commands. COPREC utilizes COPAN circuitry as it's primary transmission medium. The COPREC system has been managed by AT&T Long Lines since its inception.

J. *White House Communications Agency (WHCA):*

1. *Transportable Electric Consoles (TECs):*

The TECs are presently leased from AT&T Long Lines by the WHCA for utilization during Presidential travel outside the Washington, DC area. Long Lines has been the single-system manager for not only the consoles but also the full-period voice circuits which tie the TECs to the White House from the travel locations throughout the world. Long Lines has also provided the necessary liaison with the TEC developer, Western Electric, for system enhancements and major troubleshooting as required.

2. *Echo Fox Radio System:*

It is comprised of Long Lines circuits connected to Long Lines provided radio transmitter/receiver equipment at mostly Long Lines facilities located at strategic locations throughout the continental United States. This system provides a vital communications link to the Presidential aircraft.

Federal Aviation Administration

U.S. National Airspace System:

Used to control both military and civil aircraft, the telecommunications framework of this system is a complex arrangement of leased systems and circuits supporting the three major Air Traffic Control subsystems, Enroute, Terminal, and Flight Service. The 20 air route traffic control centers (ARTCC) and terminals control all military and civil aircraft at approximately 420 airports in CONUS, Alaska, Hawaii, Puerto Rico and Guam. The flight service system provides pre-flight and in-flight services to predominately general aviation pilots at more than 300 facilities. These three ATC subsystems are supported by AT&T/BOC specially designed and/or specially modified CPE to meet FAA's unique requirements. While most of the CPE is currently provided under contracts with the BOCs, the pre-divestiture AT&T corporate structure ensured the effective integration of this CPE into FAA's ATAC communications capability. Because the CPE on these systems are today connected by approximately 17,000 circuits, the majority of which are and will continue to be provided by Long Lines, because of the critical nature of these services to the continuity of the air transportation system, and because of the frequent need for expedited rearrangements or implementation on an end-to-end basis, FAA believes transfer of the "embedded" CPE to Long Lines is the only effective means to retain the required single-system management capability that currently exists.

Federal Emergency Management Agency (FEMA)

1. A classified, special purpose, FEMA system provided under the U.S. Government portion of AT&T Tariff FCC No. 260, and pursuant to contract No. DA-49-068-SC190. Information regarding the purpose of this system, where it is located and how it is interconnected, are classified and can be provided under separate cover only to properly cleared personnel.

2. *Emergency Broadcast System:*

It provides the President of the United States with an expeditious method of communicating with the American public in the event of war, threat of war, or grave national crisis. It can also be used during day-to-day emergencies at the State and local levels to provide the means for prompt, reliable receipt and release of life and property-saving warning as well as emergency information.

3. *FEMA National Voice System (FNAVS):*

It is a dedicated leased voice system providing point-to-point communications between the FEMA regional office and the associated state emergency services office (Civil Defense). While the "embedded" CPE is currently provided under a contract with a local telco, AT&T functions as the single system manager.

4. *FEMA National Warning System (NAWAS):*

The primary purpose of the NAWAS is to provide information of an impending attack on the United States. It is also used extensively in natural disasters, weather and sea wave warning. This information is furnished to the state governments, cities, counties and various Federal Agencies. These points disseminate the warning to the population by the various local warning systems, Emergency Broadcast System, sirens, and public service radio. The NAWAS is a leased (including maintenance), dedicated, non-secure voice network and has two basic configurations; the warning circuit and the control circuit and it is in continuous operation. The warning circuits are connected to approximately 2,400 terminals throughout the United States. Approximately 1,600 of these are monitored at all times.

Nuclear Regulatory Commission (NRC)

Emergency Notification System (ENS):

The ENS is the designated system to provide the capabilities required by NRC licensees and the NRC to exchange critical information concerning potential and actual nuclear emergencies. Full period, dedicated voice circuits connect each plant control room and emergency response facility to the NRC Operations Center, and the ENS "hotline" is utilized for initial notification to the NRC Operations Center of unusual events, alerts, site area emergencies followed by continuous communications during abnormal operating conditions.

[FR Doc 85-733 Filed 1-10-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

FM Broadcast Subcarrier Transmissions

AGENCY: Federal Communications Commission, FCC.

ACTION: Final rule.

SUMMARY: Through diplomatic note signed December 6, 1984, the United States of Mexico has expressed its acceptance of an amendment to the U.S.-Mexico FM Broadcast Agreement. The amended agreement permits United States FM stations within 300 kilometers of the common United States-Mexico border to use subsidiary communications subcarriers between 20 and 99 kHz. This Orders is necessary to amend the rules to conform to the agreement, thus permitting United States FM stations to expand their transmission services.

DATES: Effective January 1, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Reiser, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

FM radio broadcast stations.

Order

In the matter of FM Broadcast Subcarrier Transmissions

Adopted: December 26, 1984.
Released: January 3, 1985.

By the Acting Chief, Mass Media Bureau.

1. On December 17, the Commission was notified through exchange of diplomatic notes that the United States of Mexico accepted an amendment to the FM agreement with the United States of America. The amendment will permit the FM subcarrier baseband to extend to 99 kHz. This action negates the note to Rule § 73.319, paragraph (c) which currently prohibits the use of subcarriers above 75 kHz within 300 kilometers (199 miles) of the common border between the countries. The note therefore is being editorially removed.

2. Rule § 73.319(d) is also being editorially amended for clarification. The amendments to the rules permitting the use of subcarriers up to 99 kHz were intended to also allow stations transmitting stereophonic progamming up to 20% modulation by subsidiary communications subcarriers. The present rule limits subcarrier modulation below 75 kHz to a maximum of 10 percent and likewise limits subcarrier modulation above 75 kHz to 10 percent. The 10 percent restriction should apply only above 75 kHz.

3. Since the amendments begin adopted are editorial in nature, the prior notice and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553 are inapplicable. Authority for the amendments being adopted is contained in section 5(d) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's Rules.

4. In view of the foregoing, IT IS ORDERED, that 47 CFR Part 73 IS AMENDED as set forth in the attached Appendix effective January 1, 1985.

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

Roderick K. Porter,

Acting Chief, Mass Media Bureau, Federal Communication Commission.

PART 73—[AMENDED]

Appendix

47 CFR 73.319 is amended by removing the **Note** following paragraph (c)(3) and revising paragraphs (d) (1), (2) and (3) in their entirety to read as follows:

§ 73.319 FM multiplex subcarrier technical standards.

* * * * *

(d) *Subcarrier injection.*

(1) During monophonic program transmissions, modulation of the carrier by the arithmetic sum of all subcarriers may not exceed 30% referenced to 75 kHz modulation deviation. However, the modulation of the carrier by the airthmetic sum of all subcarriers above 75 kHz may not modulate the carrier by more than 10%.

(2) During stereophonic program transmissions, modulation of the carrier by the arithmetic sum of all subcarriers may not exceed 20% referenced to 75 kHz modulation deviation. However, the modulation of the carrier by the arithmetic sum of all subcarriers above 75 kHz may not modulate the carrier by more than 10%.

(3) During periods when no broadcast program service is transmitted, modulation of the carrier by the arithmetic sum of all subcarriers may not exceed 30% referenced to 75 kHz modulation deviation. However, the modulation of the carrier by the arithmetic sum of all subcarriers above 75 kHz may not modulate the carrier by more than 10%.

(4) * * *

* * * * *

[FR Doc. 85-802 Filed 1-10-85; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Ch. 5

Rules of the GSA Board of Contract Appeals; Transfer of Regulations

For a document transferring Appendix B of Chapter 5 to 48 CFR Part 6101, see FR Doc. 85-878 appearing in Part V of this issue.

BILLING CODE 1505-02-M

48 CFR Ch. 5

[APD 2800.12 CHGE 6]

Acquisition Regulations, Contract Clauses; Payments by Wire Transfer; Basis of Award for Construction Contracts; and Miscellaneous Changes

AGENCY: Office of GSA Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Ch. 5, is amended to incorporate the contents of the Acquisition Circulars AC-84-4, Contract Clauses; AC-84-5, Payment by Wire Transfer and Related Clauses; and AC-84-6, Basis of Award for Construction Contracts into GSAR. The intended effect is to update and maintain the regulation for the benefit of contracting activities.

EFFECTIVE DATE: December 28, 1984.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-4754.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1984, the General Services Administration published in the **Federal Register** (49 FR 40615) a GSAR Notice No. 5–78 inviting comments from interested parties. No public comments were received. Interagency comments have been reviewed, reconciled, and incorporated, when applicable, into this GSAR change.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempt certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certified in its original **Federal Register** publication (49 FR 40615, 10/17/84) that this document 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.). Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

Lists of Subjects in 48 CFR Parts 509, 532, 536, and 552

Government procurement.

1. The authority citation for 48 CFR Ch. 5 reads as follows:

Authority: 40 U.S.C. 486(c).

PART 509—CONTRACTOR QUALIFICATIONS

2. Section 509.206–2 is revised to read as follows:

509.206–2 Solicitation provisions and contract clause.

The contracting officer shall insert one of the clauses at GSAR 552.209–73, Product Removal from Qualified Products Lists, in solicitations and contracts, when qualified products are to be procured. These clauses supplement the clauses at FAR 52.209–1 and 52.209–2.

PART 532—CONTRACT FINANCING

3. Section 532.111 is revised to read as follows:

532.111 Contract clauses.

(a) *Discounts for early (prompt) payment.* The contracting officer shall insert one of the clauses referenced below in solicitations and contracts under the conditions indicated, in lieu of the clause at FAR 52.232–8.

(1) The basic clause at GSAR 552.232–8(a) is for use in contracts for supplies other than multiple-award schedule contracts.

(2) The clause shown as Alternate I at GSAR 552.232–8(a) is for use in solicitations and contracts for nonpersonal services.

(3) The clause at GSAR 552.232–8(b) is for use in multiple-award schedule solicitations and resultant contracts. (See GSAR 515.605–70.)

(b) *Payment due date.* The contracting officer shall insert one of the clauses at GSAR 552.232–70 in solicitations and contracts under the conditions indicated. Additional clauses of a similar nature may be developed for use in situations not covered at GSAR 552.232–70.

(c) *Interest on overdue payments.* The contracting officer shall insert one of the clauses at GSAR 552.232–71 in all solicitations and contracts which are subject to the interest penalty requirements of the Prompt Payment Act. Applicability statements are included in the preface to the basic clause and each of the alternates.

(d) *Invoice requirements.* (1) The contracting officer shall insert a clause substantially the same as the clause at GSAR 552.232–72 in all solicitations and contracts for supplies or services which require the submission of invoices as a prerequisite to payment by the Government.

(2) The first six entries shown in paragraph (a) of the clause are prescribed in OMB Circular A–125. Additional items of information or substantiating documentation shall be listed as appropriate. In this connection, all matters required to constitute a "proper invoice" shall be listed in the clause, notwithstanding that the requirement may also be indicated elsewhere in the solicitation/contract, because it is this clause, together with the Payment Due Date clause, which provides a basis for withholding payment (if necessary) without incurring a late payment penalty.

(3) Anything listed in paragraph (b) of the clause is requested for the convenience of the Government, but is not a "proper invoice" requirement. The use of this paragraph is optional.

(e) *Method of payment.* The contracting officer shall insert one of the clauses at GSAR 552.232–73 in solicitations and contracts when it is anticipated that payments of $25,000 or more may be made under any of the resultant contracts.

(1) The clause at GSAR 552.232–73(a) is for use when payments will be made solely by GSA. However, this clause shall also be used if other agencies are authorized to place orders and make payments under resultant contracts, provided that individual orders placed by such agencies will be for less than $25,000 (e.g., orders limited to $10,000 under indefinite quantity contracts for repairs and alterations).

(2) A clause, substantially the same as shown at GSAR 552.232–73(b), shall be used when payments will be made by GSA and other agencies.

4. Section 532.705–1 is revised to read as follows:

532.705–1 Clauses for contracting in advance of funds.

The contracting officer shall insert the clause at GSAR 552.232–77, Availability of Funds, in solicitations and contracts for services which are "severable" when option provisions are included, when the contract will be chargeable to funds of the new fiscal year and the contract action is to be initiated before the funds are available, or when the performance period may span fiscal years.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

5. The table of contents for Part 536 is amended by adding three sections to Subpart 536.3 and adding section 536.570 and retitling section 536.570–4 in Subpart 536.5 to read as follows:

Subpart 536.3—Special Aspects of Formal Advertising in Construction Contracting

* * * * *

Sec.

536.303–71 Bids that include options.

536.303–72 Bids that include alternates and options.

536.370 Exercise of options.

Subpart 536.5—Contract Clauses

536.570 Supplemental provisions and clauses.

* * * * *

536.570–4 Basis of award—construction contract.

6. Sections 536.303–70 is added to read as follows:

536.303–70 Bids that include alternatives.

(a) The base bid shall include all features that are essential to a sound and adequate building design. However, if it appears that funds available for a project may be insufficient to allow the inclusion of all desired features in the base bid, the contracting officer may issue a solicitation for a base bid and include one or more alternates in a stated order of priority. Alternates shall be used only when clearly justified and should involve significant amounts of work in relation to the base bid. Their use shall be limited and should involve only "add" alternates.

(b) The language of all solicitation provisions for alternates shall be approved in writing by counsel.

(c) All solicitations requiring a base bid and alternates shall include the Alternate II provision at GSAR 552.236–73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

(d) Before opening bids that include alternates, the contracting officer shall determine and record in the contract file the amount of funds available for the project. The amount recorded shall be announced at the beginning of the bid opening and shall be the controlling factor in determining the low bidder. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid and the same combination of alternate items.

7. Sections 536.303–71, 536.303–72 and 536.370 are added to read as follows:

536.303–71 Bids that include options.

(a) Subject to the limitations in paragraph (c) below, the contracting officer may include options in contracts when it is in the Government's interest.

(b) The appropriate use of options may include, but is not limited to, the following:

(1) When additional work is anticipated but funds are not expected to be available at the time of award and it would not be practicable to award a separate contract or to permit an additional contractor to work on the same site.

(2) When fixed building equipment, e.g. elevators, escalators, etc., will be installed under the construction contract and it is advantageous to have the installer of the equipment maintain and service the equipment during the warranty period.

(c) The contracting officer shall not employ options if—

(1) The prospective option represents known firm requirements for which funds are available unless competition for the option quantity is impracticable once the initial contract is awarded; or

(2) The contractor will incur undue risks; e.g., the price or availability of necessary materials or labor is not reasonably foreseeable.

(d) Solicitations containing option provisions shall state the period within which the options may be exercised.

(e) The solicitations shall state whether the basis of award is inclusive or exclusive of the options. Before a solicitation that includes evaluated options is issued, the contracting officer shall make a determination that there is reasonable certainty that funds will be made available to permit exercise of the option.

(f) The language of all solicitation provisions for options shall be approved, in writing, by counsel.

(g) All solicitations requiring a base bid and options shall include the Alternate I provision at GSAR 552.236–73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

536.303–72 Bids that include alternatives and options.

(a) Solicitations may include alternates and options when the conditions in GSAR 536.303–70, Bids that include alternates, and GSAR 536.303–71, Bids that include options, are satisfied. In such solicitations, the low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening, plus (3) all options designated to be evaluated.

(b) In the case of options associated with alternates, the basis of award may require the evaluation of such options if the related alternate is selected.

(c) All solicitations requiring a base bid, alternates and options shall include the Alternate III provision at GSAR 552.236–73, Basis of Award—Construction Contract, which prescribes the method of evaluation of bids.

(d) Before opening bids that include alternates and options, the contracting officer shall determine and record in the contract file the amount of funds available for the project (i.e., for the base bid and alternate work). The amount recorded shall be announced at the beginning of the bid opening. This amount may be increased later when determining the alternate items to be awarded to the low bidder, provided that the award amount of the base bid and evaluated options plus such a combination of alternate items does not exceed the amount offered by any other responsible bidder whose bid conforms to the solicitation for the base bid, the evaluated options, and the same combination of alternate items.

536.370 Exercise of options.

(a) When exercising an option, the contracting officer shall notify the contractor, in writing, within the time period specified in the contract.

(b) The contracting officer may exercise options only after determining that—

(1) Funds are available;

(2) The requirement covered by the option fulfills an existing Government need; and

(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors considered.

(c) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option and the requirements of this section. The written determination shall be included in the contract file.

(d) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority. The negotiation authorities under 41 U.S.C. 252(c) do not apply and shall not be cited.

8. Section 536.570 is added to read as follows:

536.570 Supplemental solicitations and clauses.

9. Section 536.570–2 is revised to read as follows:

536.570–2 Authorities and limitations.

The contracting officer shall insert the clause at GSAR 552.236–71, Authorities and Limitations, in solicitations and contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

10. Section 536.570–4 is amended by revising the title and section to read as follows:

536.570–4 Basis of award—construction contracts.

The contracting officer shall insert the provision at GSAR 552.236–73, Basis of Award—Construction Contract, or the appropriate Alternate, as applicable, in solicitations for fixed-price construction except for indefinite quantity contracts, when the contract amount is expected to exceed the small purchase limitation.

11. Section 536.570–8 is revised to read as follows:

536.570–8 Specifications and drawings.

The contracting officer shall insert the clause at GSAR 552.236–77, Specifications and Drawings, in contracts when construction, dismantling, demolition, or removal of improvements is contemplated and the contract is expected to exceed the small purchase limitation.

12. Section 536.570–9 is revised to read as follows:

536.570–9 Shop drawings, coordination drawings, and schedules.

The contracting officer shall insert the clause at GSAR 552.236–78, Shop Drawings, Coordination Drawings, and Schedules, in contracts when construction is contemplated and the contract is expected to exceed the small purchase limitation.

13. Section 536.570.14 is revised to read as follows:

536.570–14 Furnishing information and records.

The contracting officer shall insert the clause at GSAR 552.236–83, Furnishing Information and Records, in solicitations and contracts when construction, dismantling, demolition or removal of improvements is contemplated and the contract amount is expected to exceed the small purchase limitation.

14. Section 536.57–16 is amended to revise the section number in the title to read as follows:

536.570–16 Drawings and other data to become property of the Government.

* * * * *

15. The table of contents for Part 552 is amended by revising the title of section 552.26–73 to read as follows:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

552.236–73 Basis of Award—Construction Contract.

16. Section 552.209–73 is amended by revising the introductory text to read as follows:

552.209–73 Product removal from qualified products list.

As prescribed in GSAR 509.206–2, insert one of the following clauses in solicitations and contracts when acquiring qualified products (use with FAR 52.209–1 and 52.209–2):

* * * * *

17. Section 552.232–72 is amended by revising the introductory text, the clause heading, and paragraphs (a)(2) through (a)(6) of the clause and adding paragraph (a)(7) to read as follows:

552.232–72 Invoice requirements.

As prescribed in GSAR 532.111(d), insert a clause substantially as follows in solicitations and contracts for supplies or services which require the submission of invoices:

Invoice Requirements (Dec 1984)

(a) * * *

(1) * * *

(2) Contract number.

(3) Delivery order number or other authorization for delivery of property or services.

(4) Item number, national stock number (NSN) or other product identification number, description, price, and quantity of property or services actually delivered or rendered.

(5) Shipping and payment terms.

(6) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent. The "remit to" address must correspond to the remittance address in the contract.

(7) [**Note.**—Continue listing other information or documentation necessary to effect payment under the contract. When the Method of Payment clause in GSAR 552.232–73(b) is used, insert a statement substantially as follows: "Information necessary to enable the Government to make payment by wire transfer shall be furnished in accordance with the Method of Payment clause of this contract."]

* * * * *

18. Section 552.232–73 is amended by revising paragraph (a), revising paragraph (b) introductory text, (c) and (d) of the clause and adding paragraph (b) as follows:

552.232–73 Method of payment.

(a) As prescribed in GSAR 532.111(e)(1), insert the following clause:

Method of Payment (DEC 1984)

(a) * * *

(b) The Contractor shall forward the following information, in writing, to the Contracting Officer not later than 7 calendar days after receipt of notice of award.

* * * * *

(c) Any changes to the information furnished under paragraph (b) of this clause shall be furnished to the Contracting Officer, in writing, at least 30 calendar days before the effective date of the change. It is the Contractor's responsibility to furnish these changes 30 calendar days before submitting invoices to avoid invocies being returned as improper.

(d) The document furnishing the information required in paragraphs (b) and (c) must be dated and contain the signature, title, and telephone number of the Contractor official authorized to provide it, as well as the Contractor's name and contract number. (OMB Control Number 1510–0050).

(End of Clause)

(b) As prescribed in GSAR 532.111(e)(2), insert the following clause:

Method of Payment (Aug 1984)

(a) *Payment options.* Payments under this contract will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government.

(b) *Information requirements to accomplish payment by wire transfer.* The Contractor shall include the following information on, or as an attachment to, each invoice showing an amount due of $25,000 or more (exclusive of discounts for early payment), except as provided in paragraph (c) of this clause. (OMB Control Number 1510–0050).

(1) Name, address, and telegraphic abbreviation of the receiving financial institution.

(2) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer of funds. (Provide this number only if the receiving financial institution has access to the Federal Reserve Communications System.)

(3) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(4) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(i) Address and telegraphic abbreviation of the correspondent financial institution.

(ii) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) *Exceptions.* The banking information specified in paragraph (b) of this clause is not required to be furnished to the Department of Defense, the United States Postal Service, or the Tennessee Valley Authority. Information furnished to the Veterans Administration shall be by special arrangement and in accordance with instructions received from that agency. Other agencies or departments thereof may waive the requirements of this clause by a notice on delivery orders, or by other means.

(End of Clause)

19. Section 552.232–77 is revised to read as follows:

552.232–77 Availability of funds.

As prescribed in GSAR 532.705–1, insert the following clause:

Availability of Funds (July 1984)

The authorization of performance of work under this contract during the initial contract period and any option or extension period(s) is contingent upon the appropriation of funds to procure this service. If the contract is awarded, extended, or option(s) exercised, the Government's obligation beyond the end of the fiscal year (September 30), in which the award or extension is made or option(s) exercised, is contingent upon the availability of funds from which payment for the contract services can be made. No legal liability on the part of the Government for payment of any money beyond the end of each fiscal year (September 30) shall arise unless or until funds are made available to the Contracting Officer for this procurement and written notice of such availability is given to the Contractor.

(End of Clause)

20. Section 552.236–73 is revised to read as follows:

552.236-73 Basis of award—Construction Contract.

As prescribed in GSAR 536.570-4, insert the provision or the appropriate alternate substantially as follows in solicitations for fixed-price construction, except for indefinite quantity contracts, when the contract amount is expected to exceed the small purchase limitation. Use the basic clause when the solicitation includes only a base bid.

Basis of Award—Construction Contract (Aug. 1984)

(a) The low bidder for purposes of award is the responsible bidder offering the lowest price for the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form). See Standard Form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Formal Advertising—Construction."

(b) A bid may be rejected as nonresponsive if the bid is materially unbalanced as to bid prices. A bid is unbalanced when the bid is based on prices significantly less than cost for some work and significantly overstated for other work.

(End of Provision)

Alternate I

If the solicitation includes a base bid and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraph (a) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) all options designated to be evaluated. The evaluation of options will not obligate the Government to exercise the options. See Standard form 1442, Solicitation, Offer, and Award and the provision entitled "Contract Award—Formal Advertising-Construction."

Alternate II

If the solicitation includes a base bid and alternates, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening. See the provision entitled "Contract Award—Formal; Advertising-Construction."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, and Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates does not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), an award may be made to that low bidder on the base bid, plus any combination of alternates for which funds are available at the time of award, but only if the award amount does not exceed the amount offered by any other responsible bidder. If the base bid plus the proposed combination of alternates exceeds the amount offered by any other responsible bidder for the same combination of alternates, the award cannot be made on that combination of alternates.

Alternate III

If the solicitation includes a base bid, alternates, and options, the Contracting Officer shall delete paragraph (a) of the basic clause and insert paragraphs (a), (c), and (d) substantially as follows:

(a) The low bidder for purposes of award is the responsible bidder offering the lowest aggregate price for (1) the base bid (consisting of the lump sum bid and any associated unit price bids extended by the applicable number of units shown on the bid form) plus (2) those alternates in the order of priority listed in the solicitation that provide the most features of work within the funds available at bid opening plus (3) all options designated to be evaluated except those options associated with alternates which are skipped during the selection process outlined in paragraph (c) below. The evaluation of options will not obligate the Government to exercise the options. See the provision entitled "Contract Award—Formal Advertising-Construction."

(c) Alternates will be added to the base bid in the order listed in the solicitation (see Standard Form 1442, Solicitation, Offer, or Award). If the addition of an alternate would make all bids exceed the funds available at bid opening, that alternate shall be skipped and the next subsequent alternate in a lower amount shall be added, provided that the aggregate of base bid and the selected alternates does not exceed the funds available at bid opening. For example, when the amount available is $100,000 and a bidder's base bid is $85,000, with its separate bids on four successive alternates being $10,000, $8,000, $6,000, and $4,000, the aggregate amount of the bid for purposes of selecting the alternates would be $99,000 (base bid plus the first and fourth alternates). The second and third alternates are skipped because each of them would cause the aggregate of the base bid and alternates to exceed the $100,000 amount available when considered with the first alternate. All bids shall be evaluated on the basis of the same alternates.

(d) After the low bidder has been determined in accordance with paragraph (a), award may be made to that low bidder on the base bid and evaluated options plus any combination of alternates for which funds are available at the time of award, but only if that low bidder is still low on the sum thereof plus any previously unevaluated options designated to be evaluated which are associated with proposed alternates that were skipped during the selection uder paragraph (c). If that low bidder is not still low, award cannot be made on the proposed combination of alternates.

21. Section 552.242-70 is revised to read as follows:

552.242-70 Status report of orders and shipments.

As prescribed in GSAR 542.1107(a), insert the following clause:

Status Report of Orders and Shipments (July 1984)

(a) The Contractor shall furnish to the Administrative Contracting Officer (ACO) a report covering orders received and shipments made during each calendar month this contract is in effect. The information required by the Government shall be reported on GSA Form 1678, Status Report of Order and Shipments, in accordance with instruction on the form, and forwarded to the ACO not later than the seventh workday after the close of each reporting period.

(b) Submission of the information in an automated printout form as an attachment to the GSA Form 1678 is acceptable when authorized by the ACO. In that instance, blocks 1 through 5 of the GSA Form 1678 shall be completed and attached as a cover page to the automated report.

(c) An initial supply of GSA Form 1678 will be forwarded to the Contractor with the contract. Additional copies of the form, if needed, may be obtained from the ACO, or the Contractor may reproduce the form.

(End of Clause)

22. Section 552.242-71 is amended by revising the introductory text to read as follows:

552.242-71 Preproduction samples.

As prescribed in GSAR 542.1107(b), insert a clause substantially as follows:

* * * * *

23. Section 552.246-71 is amended by revising the clause to read as follows:

552.246-71 Final inspection and tests.

* * * * *

Final Inspection and Tests (Dec 1984)

The requirements of the Inspection of Construction clause prescribed in FAR 52.246-12, are supplemented to provide that the Contractor shall give the Contracting Officer at least 10 calendar days advance

written notice of the date the work will be fully completed and ready for final inspection and tests. Final inspection and tests will be started within 10 calendar days from the date specified in the aforesaid notice unless the Contracting Officer determines that the work is not ready for final inspection and so informs the Contractor.

(End of Clause)

24. Section 552.246–72 is amended by revising the clause to read as follows:

552.246–72 Responsibility for supplies (Rejected Supplies).

* * * * *

Responsibility for Supplies—Rejected Supplies (July 1984)

As provided in FAR 52.246–16, the Contractor shall bear all risks as to rejected supplies after notice of rejection. The Contractor shall be liable for all costs, including but not limited to storage costs, incurred by the Government in taking such measures as are expedient to save unnecessary loss to the Contractor. Should the Contractor upon due notice fail to remove or provide instructions for the removal of the rejected supplies within the period specified by the Government, or within a reasonable period of time if no period is specified, the supplies may be stored for the Contractor's account, or reshipped to the Contractor at the Contractor's expense, or sold to the highest bidder on the open market and the proceeds applied against the accumulated storage and other costs, including costs of the sale. The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of Clause)

25. Section 552.246–73 is amended by revising paragraphs (a)(1), (2) and (c) of the clause to read as follows:

552.246–73 Source inspection.

* * * * *

Source Inspection (Dec 1984)

(a) * * *

(1) Supplies to be furnished under this contract will be inspected at source by the Government prior to shipment from the manufacturing plant or other facility designated by the Contractor, unless (a) the Contractor is notified otherwise in writing by the Contracting Officer or his designated respresentative or (b) the Contractor or his subcontractor, pursuant to a Quality Approved Manufacturer Agreement with the General Services Administration, is authorized to issue a certificate covering such supplies at the time of shipment. Notwithstanding the foregoing, the Government may perform any or all tests contained in the contract specifications at a Government facility without prior written notice by the Contracting Officer before release of the supplies for shipment.

(2) Inspection responsibility will be assigned, by written notice, to the Contract Management Division of the GSA regional office having jurisdiction over the State in which the Contractor's or subcontractor's plant or other designated point for source inspection is located. The Contractor shall notify, or arrange for his subcontractor to notify, that office at least 10 calendar days prior to the date when supplies will be ready for inspection. Shipments shall not be made until released by the Contract Management Division unless release is otherwise authorized under terms of a currently applicable Quality Approved Manufacturer Agreement.

(b) * * *

(c) *Availability of records.* In addition to any other requirement of the contract, the Contractor shall maintain at the point for source inspection, and make available to the Contracting Officer or an authorized representative, for the duration of the contract and 6 months (180 days) thereafter, records showing the following information for each order received under the contract: (1) order number; (2) date order received by the contractor; (3) quantity ordered; (4) date scheduled into production; (5) batch or lot number, if applicable; (6) date inspected and/or tested; (7) date available for shipment; and (8) date shipped or date service completed.

* * * * *

Dated: December 28, 1984.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–843 Filed 1–10–85; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 50, No. 8
Friday, January 11, 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.

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 1124

Milk in the Oregon-Washington Marketing Area; Public Meeting Concerning Payments to Producers Under the Oregon-Washington Federal Milk Order and the Oregon State Quota Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting concerning payments to producers.

SUMMARY: This notice announces a public meeting that is being held jointly with the State of Oregon's Department of Agriculture. The meeting is to consider the issue of payments to producers under the Oregon-Washington Federal milk order and the State of Oregon Milk Audit and Stabilization Act. Interested parties will have an opportunity to present data, views and arguments relevant to consideration of the basis on which producers should be paid.

DATE: The meeting will begin at 9:30 a.m. on January 23, 1985.

ADDRESS: The meeting will be held in Room 50, Oregon State Capitol, Salem, Oregon.

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

SUPPLEMENTARY INFORMATION:

Background Information

Officials of the State Department of Agriculture of the State of Oregon and the United States Department of Agriculture have concluded that a public meeting should be held to ascertain the views of the dairy industry relative to payments to producers under the Oregon-Washington Federal milk order and the Oregon State Milk Audit and Stabilization Act.

The Oregon-Washington milk order currently provides that returns to producers participating in the Oregon Quota plan will be paid by the market administrator to the Oregon State Milk Audit and Stabilization Division for payment to producers under the State's quota plan. Producers or cooperative associations included in the State program who do not wish to be paid on the basis of the Oregon payment plan may be paid instead on the basis of Federal order uniform prices if the associations or individual producers so request.

Currently, about 40 percent of the producers who are eligible to participate in the State's payment plan have chosen instead to be paid the uniform prices computed under the Federal order. Oregon State officials have concluded that the lack of producer participation in the quota plan has encouraged excessive milk production and led to a decline in the Class I utilization percentage in the pool.

As a means of facilitating the administration of the Federal and State milk order programs, the Secretary of Agriculture of the United States and the Director of the Oregon State Department of Agriculture have been operating under a cooperative agreement. The current agreement has been in effect since May 1, 1971. The agreement sets forth the procedures to be followed by the two agencies in the administration of the Federal and State programs applicable to the marketing and regulation of milk.

Supplementary Information: Data, views and arguments may be submitted at the public meeting on the following issues:

1. What changes, if any, are needed in the cooperative agreement?

2. Should the Oregon-Washington Federal milk order be continued in its present form? If not, what changes in the current regulations should be considered at a public hearing?

3. Should the State of Oregon Milk Audit and Stabilization Act be continued in its present form? If not, what changes in the present regulation would be appropriate?

4. Other issues directly related to the producer payment plan administered by the State of Oregon.

Such data, views and arguments may be presented through oral statements or written statements submitted at the meeting. Clarifying questions and cross examination limited to the scope of the oral statement will be permitted. Four copies of written statements, statistical tables, charts or other written exhibits should be supplied by the person offering the statement or exhibit.

Signed at Washington, D.C., on January 4, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-830 Filed 1-10-85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 322 and 381

[Docket No. 84-011P]

Exempting Military Shipments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection and poultry products inspection regulations to exempt United States (U.S.) military shipments of meat and poultry products intended for export from the export stamp requirement. This action is necessary because presently the Federal meat inspection regulations contain only two limited exemptions to its requirement that the outside container of meat and meat products intended for export must be marked with an official export stamp bearing the number of the export certificate. The poultry products inspection regulations do not mandate the issuance of export certificates, but provide for their issuance upon request. If issued, the export container must be stamped with the export certificate number. The poultry products inspection regulations do not provide for any exemptions for omitting the export stamp when export certificates are issued. FSIS is, therefore, also proposing to add the two exemptions currently provided in the meat inspection regulations to the poultry products inspection regulations.

DATE: Comments must be received on or before March 12, 1985.

ADDRESS: Written comments should be sent in duplicate to the Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments may be directed to Dr. Richard Mikita, (202) 447-9051. (See also "Comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Mikitas, Acting Director, Export Coordination Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-9051.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a "major rule" under Executive Order 12291. It will not 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The proposed regulation would only codify existing Agency practices.

Effect on Small Entities

The Administrator, FSIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The proposed regulation would only codify existing Agency practices.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent in duplicate to the Regulations Office. Please include the docket number appearing in the heading of this document. Any person desiring an opportunity for oral presentation of views on this proposed rule must make such request to Dr. Richard Mikita so that arrangements may be made. A transcript will be made of all oral presentations. All comments submitted in response to this proposal will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) requires that meat and meat products intended for export be accompanied by a certificate issued by an authorized inspector indicating that the products are sound and wholesome, unless the Secretary waives the requirements of such certificate (21 U.S.C. 617). Further, the Federal meat inspection regulations require that the outside containers of products intended for export be marked with an official export stamp bearing the number of the export certificate (9 CFR 322.1(a)). The Federal meat inspection regulations provide two exemptions to this export stamp requirement. These exemptions are for product intended for ship stores and small quantities of product consigned to an individual exclusively for personal use and not for sale or distribution.

The Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) does not require that a certificate accompany poultry and poultry products intended for export. However, most exporters and importing countries do require some form of certification indicating the product's wholesomeness. Upon request, a certificate can be issued by an authorized inspector. Once a certificate is issued, the poultry products inspection regulations provide that the shipping container must be marked with an export stamp bearing the number of the export certificate (9 CFR 381.105(a)). The poultry products inspection regulations do not provide for any exemption from this export stamp requirement.

The Department of Defense (DOD) assembles shipments of meat and poultry products in military staging warehouses in the United States. The shipments have been certified for export by USDA. The shipments are disassembled and reassembled in the warehouses to meet the specific needs of military bases located outside of the United States. DOD military veterinary officers recertify the reassembled shipments for export by using information obtained from the export certificates, and identify the outside containers with special symbols, including contract number and specifications. As a matter of policy, FSIS has allowed U.S. military shipments of meat and poultry products intended for export to be exempted from the export stamp requirement. FSIS is proposing to amend the Federal meat inspection and poultry products inspection regulations to reflect this policy by adding U.S. military shipments as an exemption from the export stamps requirement. Concurrently, FSIS is proposing to add the two current exemptions contained in the meat inspection regulations relating to ship stores and personal use to the poultry products inspection regulations.

Accordingly, § 322.1, paragraph (a), of the Federal meat inspection regulations and section 381.105, paragraph (a), of the poultry products inspection regulations would be amended to read as set forth below.

List of Subjects

9 CFR Part 322

Meat inspection, Exports.

9 CFR Part 381

Poultry products inspection, Exports, Official marks, Devices and certificates.

Proposed Rule

PART 322—[AMENDED]

1. The authority citation for Part 322 reads as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; (21 U.S.C. 601 *et seq.*); (21 U.S.C. 71 *et seq.* 601 *et seq.*, 33 U.S.C. 466–466K).

2. Section 322.1(a) (9 CFR 322.1(a)) would be revised to read as follows:

§ 322.1 Manner of affixing stamps and marking products for export.

(a) The outside container (including cloth wrappings) of any inspected and passed product for export, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, shall be marked with an official export stamp, as shown in § 312.8 of this subchapter, bearing the number of the export certificate.

* * * * *

PART 381—[AMENDED]

3. The authority citation for Part 381 reads as follows:

Authority: 71 Stat. 441, 76 Stat. 110, as amended, Sec. 14 (21 U.S.C. 451 *et seq.*).

4. Section 381.105(a) (9 CFR 381.105(a)) would be revised to read as follows:

§ 381.105 Export certification; marking of containers.

(a) Upon request or application by any person intending to export any poultry product, any inspector is authorized to issue an official export certificate as prescribed in § 381.107 with respect to the shipment to any foreign country of any inspected and passed poultry product, after adequate inspection of the product has been made by the inspector

to determine its identity as inspected and passed and eligible for export: *Provided,* that the product is offered for inspection at an official establishment. Each shipping container covered by the export certificate, except ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, shall be marked with an official export stamp as shown in § 381.104 bearing the number of the export certificate. Official export certificates will be issued only upon condition that the products covered thereby shall be subject to reinspection at any place and at any time prior to exportation to determine the identity of the products and their eligibility for certification, and such certificates shall become invalid if such reinspection is refused or discloses that the products are not eligible for certification. If reinspection discloses that any poultry products covered by an export certificate are not eligible for such certification, a superseding certificate setting forth such findings shall be issued and copies shall be furnished to interested persons.

* * * * *

Done at Washington, D.C., on: December 3, 1984.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-831 Filed 1-10-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 23737; Notice 84-23A]

Airworthiness Standards: Aircraft Engines; Turboprop Engine Propeller Brake Proposals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of comment period on notice of proposed rulemaking (NPRM).

SUMMARY: The NPRM which proposed to amend Part 33 of the Federal Aviation Regulations (FAR) (14 CFR Part 33), to establish new airworthiness standards applicable to turbopropeller engines equipped with a propeller brake, was published in the **Federal Register** at 49 FR 48760 on December 14, 1984. The Aerospace Industries Association (AIA) has requested a 30-day extension of the comment period. The request is based on the fact that many member companies are on concurrent holiday and vacation leave within the published NPRM comment period and are unable to properly address the NPRM without additional time. FAA concurs with the request and is extending the comment period on the NPRM for an additional 30 days.

FOR FURTHER INFORMATION CONTACT: Donald F. Perrault, Engine and Propeller Standards Staff, ANE-110, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7081.

SUPPLEMENTARY INFORMATION: Accordingly, revise "DATES" on page 48760 of the **Federal Register** of December 14, 1984, (49 FR 48760) to read as follows:

DATES: Comments must be received on or before February 25, 1985.

(Sec. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421, and 1423); (49 U.S.C. 106(g) revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.45)

Issued in Burlington, Massachusetts, on December 28, 1984.

Jack A. Sain,

Acting Director, New England Region.

[FR Doc. 85-804 Filed 1-10-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239 and 274

[Release No. 33-6563; IC-14300; File No. S7-2-85]

Conforming Amendments; Registration Statement Forms

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendment of investment company registration statement forms.

SUMMARY: The Commission is proposing for public comment amendments to the instructions of the registration statement forms for open-end and closed-end investment companies. The amendments would change the way in which registrants calculate their portfolio turnover rate to conform to the way in which registants are required to calculate that rate in their semi-annual reports filed with the Commission.

DATE: Comments should be received on or before March 5, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-2-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: William C. Gibbs, Attorney, Office of Regulatory Policy (202) 272-2048 or John Banks-Brooks, Attorney, Office of Disclosure Policy and Adviser Regulation (202) 272-2107.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to (i) instruction 12 to item 3 of form N-1A [17 CFR 239.14], the registration statement form for open-end investment companies; and (ii) instruction 12 to item 3 of form N-2 [17 CFR 239.14], the registration statement for closed-end investment companies. These amendments are intended to conform the manner in which registrants are required to calculate their portfolio turnover rate to the manner prescribed in the instructions to items 77 and 102 of form N-SAR [17 CFR 274.*101*], the new semi-annual reporting form for registered investment companies.[1]

Discussion

Forms N-1A and N-2 are the registration statements for virtually all open and closed-end management investment companies.[2] Both registration statement forms require a registrant to disclose its portfolio turnover rate, as calculated according to the instructions to the applicable items of the forms. Those instructions direct a registrant to divide the lesser of purchases or sales of portfolio securities for the particular fiscal year by the monthly average of the value of the portfolio securities owned by the registrant during the particular fiscal year. The instructions also direct the registrant to exclude from both the numerator and the denominator all short-term securities and all U.S. Government securities.

In commenting on a similar item in proposed form N-SAR, a commentator suggested that long-term U.S. Government securities should be included in the calculation. As stated in the release adopting form N-SAR,[3] the

[1] *See* Investment Company Act Release No. 14299, dated January 4, 1985 [50 FR———].

[2] The final version of the new registration statements for insurance company separate accounts that offer variable annuity contracts (forms N-3 and N-4 proposed in Investment Company Act Release No. 13689, dated December 23, 1983 [49 FR 614]) will require a registrant to calculate its portfolio turnover rate in the same manner as it is calculated in forms N-SAR, N-1A and N-2.

[3] *See supra* note 1.

Commission believes that there is no reason to distinguish between long-term U.S. Government securities and other types of long-term debt securities for purposes of calculating a registrant's portfolio turnover rate. Accordingly, the instructions to items 77 and 102 of the final version of form N-SAR direct a registrant to include *all* long-term debt securities in the calculation. Since a registrant should use the same method to calculate its portfolio turnover rate in its registration statement and in its semi-annual reports, the Commission is proposing conforming amendments to forms N-1A and N-2 as set forth below.[4]

List of Subjects in 17 CFR Parts 239 and 274

Reporting and recordkeeping requirements, Securities.

Text of Proposed Form Changes

Parts 239 and 274 of Chapter II of Title 17 of the Code of Federal Regulations are proposed to be amended as set forth below:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. By revising paragraphs b and d in instruction 12 to item 3 of form N-2 described in §§ 239.14 and 274.11a-1 to read as follows:

§ 239.14 Form N-2, registration statement of closed-end management investment companies.

§ 274.11a-1 Form N-2, registration statement of closed-end management investment companies

* * * * *

Item 3. *Condensed Financial Information* (Prospectus *only*).

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X:

* * * * *

Instructions:

* * * * *

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. * * *

b. For purposes of this Item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturities or expiration date at the time of acquisition were one year or less. All long-term securities, including U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost of rights or warrants purchased. Sales shall include the net proceeds of the sales of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. * * *

d. Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition should be included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

* * * * *

2. By revising paragraphs b and d in instruction 12 to item 3 of form N-1A described in §§ 239.15A and 274.11a to read as follows:

§ 239.15A Form N-1A, registration statement of open-end management investment companies.

§ 274.11A Form N-1A, registration statement of open-end management investment companies.

* * * * *

Item 3. *Condensed Financial Information.*

(a) Furnish the following information for the Registrant, or for the Registrant and its subsidiaries consolidated as prescribed in rule 6-03 [17 CFR 210.6-03] of Regulation S-X.

* * * * *

Instructions:

* * * * *

12. The portfolio turnover rate to be shown at caption 12 shall be calculated in accordance with the following instructions:

a. * * *

b. For purposes of this Item, there shall be excluded from both the numerator and denominator all securities, including options, whose maturities or expiration date at the time of acquisition were one year or less. All long-term securities, including U.S. Government securities, should be included. Purchases shall include any cash paid upon the conversion of one portfolio security into another. Purchases shall also include the cost or rights or warrants purchased. Sales shall include the net proceeds of the sale of rights or warrants. Sales shall also include the net proceeds of portfolio securities which have been called, or for which payment has been made through redemption or maturity.

c. * * *

d. Short sales which the registrant intends to maintain for more than one year and put and call options where the expiration date is more than one year from the date of acquisition are included in purchases and sales for purposes of this Item. The proceeds from a short sale should be included in the value of the portfolio securities which the registrant sold during the reporting period and the cost of covering a short sale should be included in the value of the portfolio securities which the registrant purchased during the period. The premiums paid to purchase options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of options should be included in the value of the portfolio securities which the registrant sold during the period.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed form amendments will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Statutory Authority

The Commission hereby publishes for comment proposed amendments to form N-1A and N-2 under the Securities Act of 1933 and the Investment Company Act of 1940, pursuant to the provisions of sections 7, 10 and 19 of the Securities Act of 1933 [15 U.S.C. 77g, 77j and 77s] and sections 8, 30 and 38 of the Investment Company Act of 1940 [15 U.S.C. 80a-8, 29, and 37].

By the Commission.

Dated: January 4, 1985.

John Wheeler,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to Form N-1A and N-2 under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], to conform the method required to calculate a registrant's portfolio turnover rate in those registration statements to the method required in the instructions to Form N-SAR, the semi-annual report

[4] In addition to directing a registrant using forms N-1A or N-2 to include all long-term debt securities in the calculation of its portfolio turnover rate, the proposed amendments would also clarify, as in the instructions to items 77 and 102 of form N-SAR, the treatment of put or call options for purposes of the calculation.

The instructions explain that in the case of put or call options expiring more than one year from the date of acquisition, the premiums paid to purchase such options should be included in the value of the portfolio securities which the registrant purchased during the reporting period and the premiums received from the sale of such options should be included in the value of the portfolio securities which the registrant sold during the period.

form for registered investment companies, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed amendments would not have a significant economic impact on any registrant and, accordingly, would not have a significant economic impact on a substantial number of small entities. This is because the calculation of information required by the amendments is already required by Form N-SAR, the data necessary for the calculation is readily available to registrants, and the change in method of calculating the information will not impose a significant burden on any registrant.

Dated: January 4, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85-834 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

Proposed Customs Regulations Amendments Relating to Entry and Clearance of Civil Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the size, type of paper, and ink used on forms required for the entry and clearance of civil aircraft by Customs. These proposed changes are less restrictive than current standards. They are minor changes which would apply only to the forms involved. They would facilitiate the procedures involved in entering and clearing civil aircraft without making any substantive changes in those procedures.

DATE: Written comments must be received on or before March 12, 1985.

ADDRESS: Comments (preferable in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Joseph O'Gorman, Office of Cargo Enforcement and Facilitation, (202-566-8151). Legal Aspects: John Mathis, Carriers, Drawback and Bonds Division, (202-556-5706) U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 6.6(a), Customs Regulations (19 CFR 6.6(a)), currently provides that the size of Customs Form 7507 (General Declaration) and Customs Form 7509 (Cargo Manifest), required for the entry and clearance of civil aircraft, shall be approximately but not to exceed 8½ inches wide and 14 inches long. Additional specifications provided for in § 6.6(a) are that the forms shall be on white bond paper that will not discolor or become brittle within 20 years; that if these forms are dittoed or if the entries on them are to be dittoed, the paper must be substance 40, 17 inches by 22 inches, 1,000 sheet basis; if printed or typewritten, at least 25 percent rag, substance 26, 17 inches by 22 inches, 1,000 sheet basis. Also, these forms and the entries thereon must be dittoed, typewritten, or printed with ink, or dye that will not fade or "feather" within 20 years.

Section 6.6(b), Customs Regulations (19 CFR 6.6(b)), currently provides that these forms may be printed or dittoed by private parties, provided the forms so printed or dittoed conform to the official forms currently in use, with respect to size, wording arrangement, style and size of type, and paper specifications.

After a review of these requirements, Customs believes the specifications for these two forms are too restrictive, particularly with regard to their size. Therefore, Customs is proposing to reduce the size of the forms to 8½ inches by 11 inches, with a provision permitting the private printing of the forms up to a maximum size of 8½ inches by 14 inches. Customs recognizes that there also may be some justification, due to the exigencies of aircraft operation of which we are unaware, for permitting some minimum size that is smaller than 8½ inches by 11 inches. The proposed changes provide for these extenuating circumstances. In addition to the change in size specifications, Customs is also proposing to eliminate all restrictions with regard to the type of paper and ink used on the forms.

Customs does not believe that Annex 9 to the Convention on International Civil Aviation precludes any of the proposed changes. No restrictions on the type of paper or ink to be used for the forms exist. With regard to size, Annex 9 does not specify a size, but does provide specimen copies of forms in metric sizes equal to 8¼ inches by 11¾ inches. However, the size recommended by Annex 9 is not binding as evidenced by the fact that the present forms measure 8½ inches by 14 inches. Therefore, to reflect these desired changes, Customs is proposing amendments to § 6.6 (a) and (b).

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to the proposal because the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Comments

Before adopting this proposal, consideration will be given to any written commemts timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 6

Air carriers, aircraft, customs duties and inspection, imports.

Proposed Amendments

PART 6—AIR COMMERCE REGULATIONS

It is proposed to revise § 6.6 (a) and (b), Customs Regulations (19 CFR 6.6 (a), (b)), to read as follows:

§ 6.6 Document; form.

(a) The forms described in §§ 6.7 and 6.8 shall be the primary documents required for the entry and clearance of the aircraft, passengers, crewmembers and merchandise carried thereon. The forms shall be approved by the Commissioner of Customs. The forms shall be approximately 8½ inches wide and 11 inches long and shall be on white writing paper. If a document or the entries thereon are in a foreign language, a translation in English shall be furnished with the original and with each copy.

(b) The Customs forms described in §§ 6.7 and 6.8 are in the English language and are obtainable from district directors upon payment by the owner or operator of the aircraft. A small quantity of each of the forms shall be set aside by district directors for free distribution and official use. These forms may be printed by private parties, provided the forms so printed conform to the official forms currently in use with regard to wording arrangement, style and size of type and quality of paper. While minimal variation in size of the forms is acceptable, the size of the forms shall not exceed 8½ inches wide and 14 inches long.

Authority

These changes are proposed under the authority of R.S. 251, sec. 624, 46 Stat. 759, secs. 904, 1109, 72 Stat. 787, 799, as amended, sec. 101,76 Stat. 72; 5 U.S.C. 301, 19 U.S.C. 66, 1624, 49 U.S.C. 1474, 1509, Gen. Hdnote. 11, Tariff Schedules of the United States.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: December 21, 1984.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 85-884 Filed 1-10-85; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Part 18

Proposed Customs Regulations Amendments Relating to Liquidated Damages Claims Against Bonded Carriers

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations relating to the liability of bonded carriers for shortages, irregular delivery, or nondelivery of mechandise. The purpose of the proposal is to assure uniform assessment of liquidated damages claims against carriers, as well as cartmen, for the shortage, irregular delivery, or nondelivery of bonded merchandise.

DATE: Comments must be receive on or before March 12, 1985.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: William Rosoff, Carriers, Drawback, and Bonds Division (202-566-5732).

Operational Aspects: Kent Parsell, Inspection and Control Division (202-566-5354), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

By publication of T.D. 84-213 in the **Federal Register** on October 19, 1984 (49 FR 41152), the Customs Regulations (19 CFR Chapter I), were amended to revise the bond structure by consolidating and reducing the number of bond forms in use, to simplify transactions between Customs and the importing public, and to facilitate establishment of an efficient computerized bond control system.

Recent enforcement operations undertaken by Customs have indicated that penalty provisions for failure to deliver in-bond cargo are insufficient to protect the revenue and actually contribute to a disregard of the in-bond regulations and procedures. One important element of the recently amended bond structure is an increase in the amounts chargeable for failure to deliver bonded mechandise, to an amount equal to the value of the cargo (three times the value in the case of restricted mechandise or liquor). The amendment provides that these amounts control unless another amount is authorized elsewhere in the regulations.

Section 18.8, Customs Regulations (19 CFR 18.8), provides specific liability amounts assessable against bonded carriers for shortage, irregular delivery, or nondelivery of bonded mechanidise. These amounts are widely variant from those provided in T.D. 84-213 and, due to the stipulation appearing in that amendment concening amounts otherwise authorized, are the amounts that are assessed in the event of a violation. Section 18.8 applies in the case of a violation by a bonded carrier. However, T.D. 84-213 is also applicable to bonded cartmen (one who transports goods or merchandise within the limits of a port). Thus, even though carriers and cartman peform the same function, a disparity is created betwen their liability.

T.D. 84-213 stated that a complete review of the various regulatory provisions containing lesser liability amounts would be conducted (§ 18.8 among them), and that upon completion of that review, a proposal to modify any of the provisions would be published for public comment. However, due to an immediate need to insure protection of the revenue as well as the equal treatment of all concerned parties, we have determined to propose amendments to § 18.8 in advance of completion of the study.

List of Subjects in 19 CFR Part 18

Common carriers, Freight fowarders, Motor carriers, Surety bonds.

Proposed Regulations Amendments

It is proposed to amend Part 18, Customs Regulations (19 CFR Part 18), in the following manner.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to revise § 18.8(b) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

(a) * * *

(b) Carriers shall be liable for payment of liquidated damages under the carriers bond for any shortage, failure to deliver, or irregular delivery, as provided in such bond.

2. It is proposed to amend the second sentence of § 18.8(e)(1) by removing the word "computed" and the phrase "paragraphs (b)(1), (2), and (3) of."

Authority

This proposal is made under the authority of R.S. 251, as amended, sec. 621, 46 Stat. 759, sec. 1109, 72 Stat. 799, as amended (19 U.S.C. 66, 1624; 49 U.S.C. 1509).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 522), and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs

Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Executive Order 12291

This proposal is not a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments because the rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: December 21, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-885 Filed 1-10-85; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 18 and 114

Proposed Customs Regulations Amendments Relating to Limitation of Liability of Domestic Guaranteeing Associations Under TIR Carnets and Other Matters

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: Customs is considering amending its regulations relating to the limitation on liability of U.S. guaranteeing associations for shortages or improper deliveries of goods carried under the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets. The changes are made necessary by the accession of the U.S. to the latest of those Conventions.

In acceding to the TIR Convention, countries agree that standardized procedures will be observed in administering shipments of merchandise covered by Convention terms. The TIR Convention, to which the U.S. has acceded, places limits on the nature of a guaranteeing association's liability, as well as the dollar amount of that liability for shortages and irregularities in deliveries of merchandise. The proposed amendments reflect these latest changes, in addition to making other clarifying points, including the fact that the period of validity for A.T.A carnets cannot be extended.

DATE: Comments must be received on or before March 12, 1985.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Arnold L. Sarasky, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202-566-8646).

SUPPLEMENTARY INFORMATION

Background

Carnets are international customs documents, backed by an internationally valid guarantee, which may be used for the entry of articles under various customs procedures such as temporary importation and transportation in bond (transit). The carnet is used in place of the usual national customs documentation and guarantees the payment of duties (including taxes) which may become due if the requirements under a particular customs procedure are not satisfied. The existence of a single international document rather than numerous national documents facilitates international commerce.

The Customs Convention on the International Transport of Goods Under Cover of TIR (International Road Transport) Carnets, 1959, TIAS 6633, represents the efforts of acceding nations to standardize their procedures regarding the movement of goods traveling under such carnets. The U.S. acceded to the 1959 TIR Convention, with the Customs procedures for administering the movement of goods under carnets being contained in Parts 18 and 114, Customs Regulations (19 CFR Parts 18 and 114). Most recently, the U.S. acceded to an updated version of the Convention done at Geneva, on November 14, 1975 (1975 TIR Convention), which agreement strictly limited the liability of guaranteeing associations (associations in the U.S. approved by the Commissioner of Customs to guarantee the payment of obligations shipped under a TIR carnet). To reflect the limits of liability of guaranteeing associations and to reference the 1975 TIR Convention, and to make clear that pursuant to Articles 4 and 5 of the A.T.A. Carnet Convention, the period of validity for A.T.A. carnets cannot be extended, it is necessary to amend Parts 18 and 114, Customs Regulations (19 CFR Parts 18, 114).

Section 18.6(d), Customs Regulations (19 CFR 18.6(d)), describes the procedure to be followed when merchandise covered by a carnet cannot be recovered intact following shortages, irregular delivery, or nondelivery of merchandise. The section now provides that the domestic guaranteeing association is liable for unspecified pecuniary penalties, liquidated damages, duties, and taxes. The proposal reflects the changes made by the 1975 TIR Convention by eliminating reference to pecuniary penalties and by limiting the liability of a guaranteeing association for duties, taxes, and amounts collected in lieu thereof, to $50,000 per TIR carnet. The initial bonded carrier in the U.S. would continue to be liable to Customs for all items beyond the liability of the domestic guaranteeing association. Thus, Customs would remain fully covered to protect the revenue of the U.S.

Section 18.8(e), Customs Regulations (19 CFR 18.8(e)), concerns the liability of domestic guaranteeing associations as well as the time limits for notifying such associations of shortages, irregular deliveries, and nondeliveries. The proposal eliminates all mention of guaranteeing associations' liability for anything other than duties, taxes, and amounts collected in lieu thereof, up to $50,000 per TIR carnet, and makes other minor changes as well to accurately reflect the terms of the 1975 TIR Convention.

Section 114.1(f), Customs Regulations (19 CFR 114.1(f)), provides the definition of a TIR Carnet for the purposes of Part 114, Customs Regulations, the portion of the regulations which describes the use of all manner of carnets. The proposal removes the outdated reference to TIAS 6633, the 1959 TIR Convention number. The 1975 TIR Convention has not been assigned a TIAS number.

Section 114.2(c), Customs Regulations (19 CFR 114.2(c)), states that the regulations in Part 114 related to carnets provided for in the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, without designating any particular Convention. The proposal adds a citation to the 1975 TIR Convention.

Section 114.23(a), Customs Regulations (19 CFR 114.23(a)), provides that no A.T.A. Carnet (temporary admission carnet) with a period of

validity exceeding one year from the date of issue shall be accepted. Constant inquiries are made as to whether the period of validity can be extended. The A.T.A. Carnet Convention (Articles 4 and 5) states that the period of validity cannot be extended under any circumstances, and the proposal makes this clear as well.

Section 114.31(b), Customs Regulations (19 CFR 114.31(b)), provides that merchandise which is restricted from temporary importation under bond is likewise restricted from entry under cover of an A.T.A. or E.C.S. carnet. The U.S. has denounced the E.C.S. convention and the proposal removes the reference to that Convention from the regulations.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Headquarters, Room 2426, 1301 Constitution Avenue, NW, Washington, D.C. 20229.

Executive Order 12291 and Regulatory Flexibility Act

Inasmuch as Customs does not believe that the proposal meets the criteria for a "major rule" within the meaning of § 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

It has not been determined whether the proposed regulation would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601–612). However, we will continue to review this matter and will consider any comments submitted thereon before issuing a final rule.

List of Subjects in 19 CFR Parts 18 and 114

Customs duties and inspection, Imports.

Authority

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 624, 46 Stat. 759 (19 U.S.C. 1624).

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Proposed Amendments to the Regulations

It is proposed to amend Parts 18 and 114, Customs Regulations (19 CFR Parts 18 and 114), as set forth below:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. It is proposed to amend the first sentence of § 18.6(d) by removing the words "pecuniary penalties."

2. It is proposed to amend § 18.8(e)(1) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(e)(1) The domestic guaranteeing association shall be jointly and severally liable with the initial bonded carrier for duties and taxes accruing to the United States, and any other charges imposed, in lieu thereof, as the result of any shortage, irregular delivery, or nondelivery at the port of destination or port of exit of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages on the initial bonded carrier, and sums assessed the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery shall be computed in accordance with subparagraphs (1), (2), and (3) of paragraph (b) of this section. If a TIR carnet has not been discharged, or has been discharged subject to a reservation, the guaranteeing association shall be notified within 1 year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge shall have been obtained improperly or fraudulently the period shall be 2 years. However, in cases which become the subject of legal proceedings during the above-mentioned period, no claim for payment shall be made more than 1 year after the date when the decision of the court becomes enforceable.

PART 114—CARNETS

1. It is proposed to amend § 114.1(f) by removing the designation "(TIAS 6633)."

2. It is proposed to amend § 114.2(c) to read as follows:

§ 114.2 Customs conventions.

* * * * *

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633.

§ 114.23 [Amended]

3. It is proposed to amend § 114.23(a) by adding a new sentence at the end thereof to read, "This period of validity cannot be extended."

§ 114.31 [Amended]

4. It is proposed to amend § 114.31(b) by removing the words "or E.C.S."

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved December 21, 1984.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-886 Filed 1-10-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-225]

Occupational Exposure to Formaldehyde

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for information and notice of public information gathering meeting.

SUMMARY: This notice schedules a public information-gathering meeting and requests information concerning the health effects of formaldehyde and its toxicologic properties, estimates of the risk of acute and chronic health effects associated with occupational exposure to formaldehyde and other health-related matters concerning formaldehyde. The purpose of this meeting is to receive comments and information on the issues raised in this notice and on other topics relevant to the control of occupational exposure to formaldehyde.

DATES: Comments must be received by March 1, 1985. Notices of intention to appear at the public meeting must be received on or before February 1, 1985. The meeting will begin at 10 a.m. on Wednesday, February 13, 1985, in Washington, D.C. Additional public meetings on formaldehyde may be scheduled and appropriate notice with

dates and locations will be published in the Federal Register.

ADDRESSES: Written comments should be submitted in quadruplicate to the Docket Office, Occupational Safety and Health Administration, Docket No. H-225, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-7894.

Notices of intention to appear at the meeting, statements, and documentary evidence should be submitted to Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3662, Washington, D.C. 20210. Telephone (202) 523-8024.

The informal meeting will begin at 10:00 a.m. on Wednesday, February 13, 1985, in room N-5435 A, B, C, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C., and is expected to continue for approximately one week. Representatives of the Department of Labor, and anyone filing a timely notice of intention to appear, may question witnesses at the meetings.

FOR FURTHER INFORMATION CONTACT:
Notice: Mr. James Foster, Occupational Safety and Health Administration, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8148.

Meeting: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8024.

SUPPLEMENTARY INFORMATION: The present standard for formaldehyde is an 8-hour time-weighted average (TWA) of 3 parts per million (ppm), with a ceiling limit of 5 ppm and a maximum peak concentration of 10 ppm for a 30-minute period. This standard is codified at 29 CFR 1910.1000, Table Z-2, and was adopted in 1971 under the authority of Section 6(a) of the Occupational Safety and Health Act from an American National Standards Institute (ANSI) Z37.16 standard established in 1967. Both the ANSI standard and the standard adopted by OSHA were based on concern for the irritant effects of formaldehyde in unsensitized persons and were not established on the basis of any carcinogenic or allergic responses.

On October 26, 1981, the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) petitioned OSHA to issue an Emergency Temporary Standard (ETS) on the ground that occupational exposure to formaldehyde posed a grave danger to exposed employees. OSHA denied this petition on January 29, 1982, based on the Agency's determination that the data then available to the Agency was not sufficient to warrant a finding of "grave danger" and resulting emergency action.

The United States District Court for the District of Columbia subsequently remanded this petition to OSHA for reconsideration, based on presently available evidence, of its denial of the ETS petition, and also asked OSHA to reconsider its decision not to initiate regular rulemaking proceedings under section 6(b) of the Act. At the request of the court, OSHA developed a timetable for completing various phases of the reconsideration. After carefully reviewing all the evidence available to the Agency on formaldehyde, OSHA determined that there was not sufficient evidence in the record presently before it to support emergency action. On January 7, 1985 OSHA announced the dneial of the ETS petition in a letter to the petitioners. OSHA will decide by April 15, 1985 whether to initiate rulemaking to reduce the permissible exposure level for formaldehyde.

As part of the review process, the Court required OSHA to update its information on the health effects and associated risk of exposure to formaldehyde. On November 5, 1984, OSHA's Office of Risk Assessment (ORA) completed a report entitled, "Preliminary Assessment of the Health Effects of Formaldehyde" (The ORA Report, Ex. 43), which reviewed all recent studies and review articles pertaining to formaldehyde. The ORA Report characterized the risk of formaldehyde exposure, using as partial guidance the report published by the consensus Workshop on Formaldehyde (Convened by the National Center for Toxicological Research in response to a request by the White House Office of Science and Technology Policy). At present, however, the Agency has not adopted the ORA report as Agency policy, and the Agency has not reached final conclusions concerning the effects of human exposure to formaldehyde. The ORA Report was circulated for peer review to officials of various government, industry, union, advisory, and educational organizations (Ex. 44). In addition, the Agency has received numerous unsolicited comments concerning this report (Ex. 45). To assist in the evaulation of the controversial and sometimes contradictory evidence concerning the risk posed by exposure to formaldehyde, OSHA has scheduled an informal information-gathering meeting on formaldehyde. These efforts are being undertaken in response to the Court's order that OSHA decide by April 15, 1985, whether to proceed with regular rulemaking under section 6(b) of the Act.

Occupational exposure to formaldehyde has been associated with an increased risk of cancer, irritation, and sensitization. Cancer risk is based on the assumption that exposures in humans will cause adverse health effects similar to those observed in experimental animals exposed to formaldehyde. The ORA Report assesses in some detail the health effects associated with exposure to formaldehyde. This assessment includes a review of various available quantitative risk assessments for formaldehyde, an evaluation of the weight of evidence concerning the carcinogenicity of formaldehyde, a characterization of the risk for specific worker populations, and OSHA's quantitative risk assessment (QRA). The risk assessment component of the report was based on a rat inhalation study conducted by the Chemical Industry Institute of Toxicology (CIIT). The use of CIIT data as the basis for OSHA's QRA is consistent with the respective evaluations of risk considered by the Consumer Product Safety Commission, the Environmental Protection Agency, and the Consensus Workshop.

In questions below, OSHA seeks information, data, and analyses on the health effects and risks faced by employees occupationally exposed to formaldehyde.

1. OSHA requests the submission of medical reports and epidemiologic and toxicologic studies related to the potential health effects of formaldehyde exposure that have been completed since 1979. For studies in progress, the Agency requests study protocols, interim or preliminary reports, and expected completion dates of the studies. OSHA particularly solicits information related to studies that address cancer, respiratory sensitization, human mutagenic and cytogenic effects, reproductive effects, and neurological effects.

2. Risk estimates based on polypoid adenomas contribute signficantly to the overall estimate of human cancer risk in the ORA Report. OSHA requests information on the appropriateness of using these data in the Quantitative Risk Assessment (QRA).

3. Should 95% upper confidence limits (UCLs) be used for QRA purposes? If so, for what purposes? In addition OSHA requests recommendations on the correct methodology for adjusting the animal at risk data to take into account

sacrifices and deaths before the end of a study. Is the multistage model the best risk model to use in predicting the risk of occupational exposure to formaldehyde? If it is, how many stages is it appropriate to include in the model?

4. OSHA is aware of epidemiological data that show that persons exposed to tissue preservatives (these contain formalin which is 37% to 50% formaldehyde by weight) are at higher risk of developing systemic tumors. These data may be inconsistent with other animal or epidemiological data that suggest that formaldehyde is a locally acting carcinogen. OSHA requests data demonstrating differential effects for formaldehyde and formalin exposure in humans or animals.

5. OSHA solicits data and information on any interaction between particulates and formaldehyde exposure.

6. OSHA requests quantitative risk assessments that have been performed to date on the basis of epidemiologic or experimental study results. These submissions should include the underlying assumptions and the consequences these assumptions may have on the results as well as any results and conclusions by the author(s).

7. OSHA requests comments on the ORA Report, entitled "Preliminary Assessment of the Health Effects on Formaldehyde" (Ex. 43). In addition, OSHA requests comments on other quantitative risk assessments contained in the OSHA docket.

8. What types of medical tests, if any, are appropriate for formaldehyde-exposed employees? Are there medical tests currently available that are effective in the early detection of formaldehyde-related acute or chronic illnesses?

Public Participation

Written Comments

Interested persons are invited to submit comments on these and other pertinent issues relating to occupational exposure to formaldehyde by March 1, 1985. Comments should be sent in quadruplicate to the Docket Officer, OSHA, Docket H-225, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. All written comments submitted in response to this notice will be available for inspection and copying at the Docket Office weekdays between 8:15 a.m. and 4:15 p.m.

Public Meeting

In order to provide an informal forum in which interested persons can orally present comments and information and ask questions regarding the issues discussed in this notice, OSHA has scheduled a public meeting to begin at 10 a.m., on February 13, 1985 in room N-5435 A, B, C, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210. Additional public meetings at other locations concerning occupational exposure to formaldehyde may be scheduled and appropriate notice with dates and locations will be published in the **Federal Register**.

Any person wishing to make an oral presentation must submit a notice of intention to appear by February 1, 1985. Notices, together with statements and documentary evidence, should be addressed to Mr. Tom Hall, Division of Consumer Affairs, Room N-3662, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Washington, D.C. 20210. The notice should identify the person and/or the organization intending to testify, the amount of time requested for oral presentation, the specific subject to be addressed, and a brief summary of the intended oral presentation. All persons giving written advance notice will have time reserved for oral presentations. As long as time permits, and at the discretion of the hearing officer, all persons who wish to be heard will be allowed to make oral presentations. However, priority will be given to those who register in advance.

The meeting will be presided over by a representative of the U.S. Department of Labor, designated by the Assistant Secretary, and this representative will have the necessary authority to regulate the conduct of the meetings. Representatives of the Department of Labor, and anyone filing a timely notice of intention to appear, may question witnesses at the meetings.

All written submissions, the transcript of the meeting, as well as all other information in Docket H-225 will be considered by OSHA in reviewing the hazard of occupational exposure to formaldehyde.

List of Subjects in 29 CFR Part 1910

Cancer, Chemicals, Formaldehyde, Genetic diseases, Hazardous materials, Health, health records, Occupational safety and health, Risk assessment, Reporting and recordkeeping requirements, Signs and symbols.

This document was prepared under the direction of Robert A. Rowland, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

(Sec. 6 Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655) 29 CFR Part 1911; Secretary of Labor's Order No. 9-83 (48 FR 35736)

Signed at Washington, D.C., this 7th day of January 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

[FR Doc. 85-879 Filed 1-10-85; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulfur Operations in the Outer Continental Shelf

Correction

FR Doc. 85-461, beginning on page 838 in the issue of Monday, January 7, 1985, was published without its file line. It should have appeared at the end of the document, on page 858, and should have read:

"[FR Doc. 85-461 Filed 1-4-85; 8:45 am]."

In addition, on page 844, the position of the two columns should be reversed.

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Reports of Unsatisfactory Progress

AGENCY: Veterans Administration.

ACTION: Proposed regulation amendment.

SUMMARY: The Veterans Administration proposes to amend the regulation dealing with reports of a veteran's or eligible person's unsatisfactory progress in training under the GI Bill. The amended regulation makes clear that only the school's regularly prescribed standards of progress will be used in determining if a veteran's or eligible person's progress is unsatisfactory. The change should eliminate misunderstandings concerning VA policy in this area.

DATE: Comments must be received on or before February 11, 1985. It is proposed to make this regulation amendment effective the date of final approval.

ADDRESS: Send written comments to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in room 132, Veterans Services

Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 26, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (2) 389-2092.

SUPPLEMENTARY INFORMATION: Section 21.4203, Title 38, Code of Federal Regulations is amended to delete reference to any standards of progress other than a school's regularly prescribed standards. The VA considers any standards prescribed through the school's regular procedures to be the school's regularly prescribed standards, even if they were prescribed at the behest of another Federal agency, or a State agency.

The VA has determined that this regulation is not a major rule as that term is defined by Executive Order 12291, Federal Regulation. The proposal will not cause a major increase in costs or prices for anyone. It will have no 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.

The Administrator of Veterans Affairs has certified that amendment of this regulation, if made final, will not have a significant economic impact on a substantial number of small entitites as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed amendment of this regulation therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the other sections which deal with standards of progress already state that satisfactory progress will be determined by the regularly prescribed standards and practices of a school. The amended regulation should affect only those veterans and eligible persons who are attending schools where a misunderstanding has arisen concerning the VA's policy with respect to unsatisfactory progress.

The Catalog of Federal Domestic Assistance number for the program affected by this proposal is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 19, 1984.

By Direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION is amended by revising the introductory text of § 21.4203(h)(1) to read as follows:

§ 21.4203 Reports—requirements.

* * * * *

(h) * * *

(1) A veteran's or eligible person's progress may become unsatisfactory according to the regularly prescribed standards and practices of the school as a result of the grades he or she received. The school shall report such unsatisfactory progress to the VA in time for the VA to receive it before the earlier of the following dates is reached: (38 U.S.C. 1674)

* * * * *

[FR Doc. 85-905 Filed 1-10-85; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Subtitle A

Natural Resource Damage Assessment

AGENCY: Department of the Interior.

ACTION: Notice requesting additional comment on the development of regulations.

SUMMARY: The Department of the Interior is in the process of drafting natural resource damage assessment regulations under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as delegated to the Department by Executive Order 12316, August 14, 1981. This document requests additional comments on the development of those regulations.

DATE: Additional and supplemental comments or information on matters pertaining to the content of the proposed regulations are requested, and will be accepted through May 31, 1985; however, the Department would appreciate receiving such comments or information at the earliest possible time. Comments received after this date may not be considered during the decision making process for the issuance of a proposed rule.

ADDRESS: Written comments or inquiries may be addressed to CERCLA 301 Project, Room 4354 Main Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Keith E. Eastin, Associate Solicitor, (202) 343-4344.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking (ANPR) was published January 10, 1983 (48 FR 1084). It announced the Department's intent to develop proposed regulations and sought information to aid in their development. A second advance notice of proposed rulemaking published on August 1, 1983 (48 FR 34768), provided information on the nature of the responses to the first notice and solicited relevant input and identification of additional information resources. A number of written comments have been received in response to these previous ANPRs. By this notice, interested persons and organizations are invited to present their views, either orally, through presentations, or in writing to representatives of the Department who are preparing the regulations. Resubmission of earlier comments by submitting parties is not encouraged or necessary.

Anyone wishing to meet with representatives of the Department preparing the regulations should contact the office listed. Meetings will be arranged as appropriate. A brief written summary of each such meeting will be made part of the administrative record.

Dated: January 7, 1985.

Mary L. Walker,

Deputy Solicitor.

[FR Doc. 85-875 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-19-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 150

[CGD 83-047]

Compatibility of Cargoes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: 46 CFR Part 150 contains requirements for compatible stowage of bulk liquid hazardous materials on tank vessels. This proposed rule updates 46 CFR Part 150 by adding recently authorized exceptions to the compatibility chart and cargoes approved for carriage since the final rule

was published on April 14, 1983 (48 FR 16059). This NPRM also incorporates CHRIS codes into Table 1, corrects typographical errors, specifies reactivity differences within chemical groups, and deletes descriptive phrases, such as, "inhibited", "stabilized", and "%" when these have no effect on the compatibility classification of the material. (CHRIS codes are three letter codes that have been assigned to every chemical contained in the Coast Guard's Chemical Hazards Response Information System (CHRIS).)

DATE: Comments on the proposed rule must be received on or before February 11, 1985.

ADDRESSES: Comments should be mailed to Commandant (G–CMC) (CGD 83–047), U.S. Coast Guard, Washington, D.C. 20593. The comments will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday, except holidays at the Marine Safety Council (G–CMC), Room 2110, US. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. Comments may also be hand delivered to this office.

FOR FURTHER INFORMATION CONTACT: Dr. Michael C. Parnarouskis, (202) 426–1577.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include names and addresses, identify this notice as CGD 83–047 and the specific section of the proposal to which the comments apply, and give reasons for the comments. If the acknowledgement of receipt of a comment is desired, a self-addressed postcard should be enclosed. The proposal may be changed in light of comments received. All comments received will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in drafting this document are Dr. Michael C. Parnarouskis, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Office of the Chief Counsel.

Regulatory Evaluations

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979).

The addition of commodities to the table in Part 150 neither authorizes nor prohibits the carriage of a particular cargo. Authorized cargoes are listed in 46 CFR 30.25, 46 CFR 151.01–10, Table I of 46 CFR Part 153, Appendix I of 46 CFR Part 154, and Appendicies A and B of 46 CFR Part 154a. The regulations in Part 150 identify those cargoes which are not compatible and prescribe minimum standards for keeping incompatible cargoes separated while being carried, thus, the rules in this part have only minimal economic impact. Because the economic impact of this proposal has been found to be so minimal, further evaluation is unnecessary.

Regulatory Flexibility Act

Since the economic impact of this proposal is expected to be minimal, in accordance with paragraph 605(d) of the Regulatory Flexibility Act (94 Stat 1164), the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

Discussion of the Proposed Regulations

46 CFR Part 150 lists the requirements for compatible stowage of bulk liquid hazardous cargoes on tank vessels. This part, published on October 23, 1980 (45 FR 70262), contains a "Compatibility Chart" that a person, involved in loading a bulk liquid chemical cargo, can reference to determine whether any two classes of liquid chemical cargoes will react dangerously if accidentally mixed and, if so, arrange the stowage of those cargoes to minimize the possibility of such a reaction.

A summary of the proposed changes to 46 CFR Part 150 included in this NPRM are as follows:

(1) Revision of Figure 1, Compatibility Chart, to remove all letters other than X from the matrix and to delete the footnote. All exceptions to the Chart will be indicated in Tables I and II with a description of the exception listed in Appendix I, Exceptions to the Chart.

(2) Revision of Table I to include the Chemical Hazards Response Information System (CHRIS) code. This code will identify all cargoes that are included in, or proposed for inclusion in the CHRIS system. This code can be used by personnel involved in the handling of cargoes to:

a. cross reference cargoes listed on the Certificate of Inspection for U.S. vessels,

b. provide an alternate to the chemical name, which is often long and difficult to pronounce, for use in verbal communications with Goast Guard personnel, and

c. aid in accessing information within the Coast Guard's Chemical Hazards Response Information System (CHRIS) and Hazard Assessment Computer System (HACS).

(3) Revison of Tables I and II to include a Group O, Unassigned Cargoes. Cargoes in this group have not been included in the Compatibility Chart because of very high reactivity or unusual conditions of carriage. Compatibility information required for shipment of these cargoes can be obtained from the U.S. Coast Guard.

(4) Revision of Tables I and II to include identification of cargoes that exhibit exceptions to the Compatibility Chart. A description of the exception for such cargoes can be found in Appendix I, Exceptions to the Chart.

(5) Revison of Tables I and II to include additional cargoes. All new cargoes, added since the final rule was published on April 14, 1983, are indicated by an asterisk (*) after the cargo name.

The compatibility chart and its companion tables listing chemicals alphabetically and by group will be updated periodically as the Coast Guard approves new chemical cargoes for carriage.

List of Subjects in 46 CFR Part 150

Hazardous materials transportation, Marine safety.

Accordingly, it is proposed to amend Part 150 of Title 46 of the Code of Federal Regulations as follows:

PART 150—COMPATIBILITY OF CARGOES AND OPERATIONAL REQUIREMENTS FOR BULK LIQUID HAZARDOUS WASTE CARGOES

1. By revising the authority citation for Part 150 to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46.

2. By revising § 150.120 to read as follows:

§ 150.120 Definition of incompatible cargoes.

Except as described in § 150.150, a cargo of hazardous material is incompatible with another cargo listed in Table I if the chemical groups of the two cargoes have an "X" where their columns intersect in figures 1 and are not shown as exceptions in Appendix I. (See also § 150.140.)

3. By revising § 150.140 to read as follows:

§ 150.140 Cargoes not listed in Table I or II.

A cargo of hazardous material not listed in table I or II must be handled as if incompatible with all other cargoes until the Commandant (G–MTH) (tel. no. (202) 426–1577) assigns the hazardous

material to a compatibility group. (Table I lists cargoes alphabetically while Table II lists cargoes by compatibility group).

4. By revising § 150.150 to read as follows:

§ 150.150 Exceptions to the compatibility chart.

The Commandant (G–MTH) authorizes, on a case by case basis, exceptions to the rules in this subpart under the following conditions:

(a) when two cargoes shown to be incompatible in figure 1 meet the standards for a compatible pair in Appendix III, or

(b) when two cargoes shown to be compatible in figure 1 meet the standards for an incompatible pair in Appendix III.

Appendix I contains cargoes which have been found to be exceptions to figure 1, the Compatibility Chart.

5. By revising § 150.160 introductory text to read as follows:

§ 150.160 Carrying a cargo as an exception to the compatibility chart.

The operator of a vessel having on board a cargo carried as an exception under § 150.150 but not listed in Appendix I, Exceptions to the Chart, shall make sure that—

* * * * *

6. By removing all occurrences of the letters A to I in columns 1 to 22 of Figure 1—Compatibility chart.

7. By deleting the entire contents of the Footnotes to Figure 1.

8. By revising Table I, including the footnote, as follows:

TABLE I—ALPHABETICAL LIST OF CODES

Chemical name	Group No.	Chris code	Related Chris codes
Acetaldehyde	19	AAD	
Acetic acid	4	AAC	
Acetic anhydride	11	ACA	
Acetone	18	ACT	
Acetone cyanohydrin	*[3]0	ACY	
Acetonitrile	37	ATN	
Acetophenone	18	ACP	
Acetyl tribut l citrate	34		
Acrolein	*19	ARL	
Acrylamide solution	10	AAM	
Acrylic acid	*4	ACR	
Acrylonitrile	*15	ACN	
Adiponitrile	37	ADN	
Alcohols (mixed)	20		
Alkyl benzene sulfonic acid	*[1]0	ABS	
Alkid phthalates	34		
Allyl alcohol	*15	ALA	
Allyl chloride	15	ALC	
2-(2-Aminoethoxy)ethanol	8	AEX	
Aminoethylethanolamine	8	AEE	
N-Aminoethylpiperazine	*7	AEP	
Ammonia, anhydrous	6	AMA	
Ammonium hydroxide (28 pct. or less Ammonia).	6	AMH	
Ammonium nitrate, Urea solution (containing Ammonia).	6	UAS	
Ammonium nitrate, Urea solution (not containing Ammonia).	43	ANU	
Ammonium polyphosphate solution.	43		
Ammonium sulfate solution	43		AMS
Ammonium sulfide solution	*5	ASS	
Amyl acetate	34		IAT/AML/AAS/AYA
Amyl alcohol	20		IAA-AAN
Amylene	*30		
Amyl methyl ketone	*18	AMK	
Amyl tallate	34		
Aniline	9	ANL	
Asphalt	33	ASP	
Asphalt blending stocks, roofers flux.	33	ARF	
Asphalt blending stocks, straight run residue.	33	ASR	
Behenyl alcohol	20		
Benzene	32	BNZ	
Benzene, Hydrocarbon mixture (10 pct. Benzene or more).	*32	BHB	
Benzenesulfonyl chloride	*[3]0	BSC	
Bornzene, Toluene, Xylene mixture.	32	BTX	
Benzyl alcohol	*21	BAL	
Benzyl chloride	*36	BCL	
Butadiene	30	BDI	
Butadiene, Butene mixtures (cont. Acetylenes).	*30	BBM	
Butane	31	BMX	IBT/BUT
Butene	30	BTN	IBL
Butyl acetate	34		IBA/BCN/BTA/BYA
Butyl acrylate	14	BAR	BAI/BTC
Butyl alcohol	20		IAL/BAN/BAS/BAT
Butylamine	7	BTY	IAM/BAM/BTL/BUA
Butyl benzyl phthalate	34	BPH	
Butylene	30		BTN/IBL
1,3-Butylene glycol	*20		
Butylene oxide	16	BTO	
Butyl ether	41	BTE	
Butyl formate	*34	BFN	BFI
Butyl heptyt ketone	18		
Butyl methacrylate	14	BMH	BMI/BMM
Butyl methacrylate, Decyl methacrylate, Cetyl eicosyl methacrylate mixture.	14	DER	
Butyraldehyde	19	BAE	BAD/BTR/BFA
Butyric acid	4	BRA	
gamma-Butyrolactone	*[4]0	BLA	
Calcium bromide solution	43		
Calcium sulfonate, Calcium carbonate Hydrocarbon solvent mixture.	*33		
Calcium chloride solution	43		CLC
Camphor oil	18	CPO	
Caprolactam solution	22	CLS	
Carbolic oil	21	CBO	
Carbon black base	33		
Carbon disulfide	38	CBB	
Carbon tetrachloride	36	CBT	
Cashew nut shell oil (untreated).	4	OCN	
Caustic potash solution	*5	CPS	
Caustic soda solution	*5	CSS	
Cetyl eicosly methacrylate	*14	CEM	
Chlorine	[1]0	CLX	
Chloroacetic acid solution	*4	CHM	CHL/MCA
Chlorobenzene	36	CRB	
Chlorodifluoromethane	*36	MCF	
Chloroform	36	CRF	
Chloronitrobenzene, see o-Nitrochlorobenzene			CNO/CNP
Chlorosulfonic acid	[1]0	CSA	
Chlorotoluene	*36	CHI	CTM/CTO/CRN
Choline chloride solutions	20		
Corn syrup	43	CSY	
Creosote	21	CCW	CCT
Cresols	21	CRS	CRL/CSL/CSO
Cresylate spent caustic	5	CSC	
Cresylic acid	21	CRY	
Cresylic acid tar	*21	CRX	
Crotonaldehyde	*19	CTA	
Cumene	32	CUM	
Cycloaliphatic resins	31		
Cyclohexane	31	CHX	
Cyclohexane oxidation product acid water.	*4		
Cyclohexanol	20	CHN	
Cyclohexanone	18	CCH	
Cyclohexanone, Cyclohexanol mixture.	*[2]18	CYX	
Cyclohexylamine	7	CHA	
Cyclopentadiene polymers	30		
Cyclopentadiene, Styrene, Benzene mixture.	30	CSB	
Cymene	32	CMP	
Decaldehyde	19		IDA/DAL
Decane	31	DDC	
Decene	30	DCE	
Decyt acrylate	14	DAT	IAI/DAR
Decyl alcohol	20		ISA/DAN
Decyl benzene	32	DBZ	
Dextrose solution	43	DTS	
Diacetone alcohol	20	DAA	
Diammonium salt of Zinc EDTA solution	43	DSZ	
Dibutylamine	7	DBA	
Dibutyl phthalate	34	DPA	
Dichlorobenzene	36		DBM/DBO/DBP
Dichlorodifluoromethane	36	DCF	
1,1-Dichloroethane	36	DCH	
2,2'-Dichloroethyl ether	41	DEE	
2,2'-Dichloroisopropyl ether	36	DCI	
Dichloromethane	36	DCM	
2,4-Dichlorophenol	21	DCP	
Dichloropropane	36	DPX	DPB/DPP/DPC/DPL
Dichloropropane, Dichloropropene mixtures.	15	DMX	
1,3-Dichloropropene	15	DPS	DPF/DPU
2,2-Dichloropropionic acid	4	DCN	
Dicyclopentadiene	30	DPT	
Diethanolamine	8	DEA	
Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution.	*43	DZZ	
Diethylamine	7	DEN	
Diethylbenzene	32	DEB	
Diethylene glycol	40	DEG	
Diethylene glycol monobutyl ether.	40	DME	
Diethylene glycol monobutyl ether acetate.	34	DEM	
Diethylene glycol monoethyl ether.	40	DGE	
Diethylene glycol monomethyl ether.	40	DGM	
Diethylene glycol monophenyl ether.	40		
Diethylenetriamine	7	DET	
Diethylethanolamine	8	DAE	
Di-(ethylhexyl)phthalate	*34		
Diethyl sulfate	34	DSU	
Diglycidyl ether of Bisphenol A	41	BDE	BPA
Diheptyl phthalate	34	DDHP	
Di-n-hexyl adipate	*34		
Diisobutylamine	*7	DBU	
Diisobutyl carbinol	20	DBC	
Diisobutylene	30	DBL	
Diisobutyl ketone	18	DIK	
Diisodecyl phthalate	34	DID	
Diisononyl adipate	*34		
Diisononyl phthalate	34	DIN	
Diisooctyl phthalate	34	DIO	
Diisopropanolamine	8	DIP	
Diisopropylamine	7	DIA	
Diisopropyl benzene	32		
Diisopropyl naphthalene	32		
Dimethyl acetamide	10	DAC	
Dimethyl adipate	*34		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Dimethylamine	7	DMA	DMC/DMG/DMY
Dimethyl ammonium-2,4-dichlorophenoxyacetate solution.	*[3]0	DOA	
Dimethylcyclicsiloxane hydrolyzate.	*34		
N,N-Dimethylcyclohexylamine	7	DXN	
Dimethylethanolamine	8	DMB	
Dimethylformamide	10	DMF	
Dimethyl furan	*41		
Dimethyl glutarate	*34		
Dimethyl hydrogen phosphite	*[3]34	DPI	
2,2-Dimethyloctanoic acid	4	DMO	
Dimethyl phthalate	34	DTL	
Dimethyl polysiloxane	34	DMP	
2,2-Dimethylpropane-1,3-diol	20		
Dimethyl succinate	*34		
Dinonyl phthalate	34		
Dioctyl phthalate	34	DOP	
1,4-Dioxane	41	DOX	
Dipentene	30	DPN	
Diphenyl, Diphenyl oxide	*33	DDO	DTH
Diphenylmethane diisocyanate.	12	DPM	
Diphenyl oxide, Biphenyl phenyl ether mixture.	41		
Di-n-Propylamine	7	DNA	
Dipropylene glycol	40	DPG	
Dipropylene glycol dibenzoate.	34		
Distillates, flashed feed stocks.	33	DFF	
Distillates, straight run	33	DSR	
Diundecyl phthalate	34	DUP	
Dodecane	31		
Dodecanol	20	DDN	LAL
Dodecene	30	DOD	DDC
Dodecylamine, Tetradecylamine mixture.	[2]7	DTA	
Dodecylbenzene	32	DDB	
Dodecyl diphenyl oxide disulfonate solution.	43	DOS	
Dodecyl methacrylate	*14	DDM	
Dodecyl, Pentadecyl methacrylate.	14	DDP	
Epichlorohydrin	17	EPC	
Epoxy resin	18		
Ethane	31	ETH	
Ethanolamine	8	MEA	
Ethoxylated alcohols, C11-C15.	20		EOD/ENP/EOP/EOT/ETD
Ethoxy triglycol	40	ETG	
Ethyl acetate	34	ETA	
Ethyl acetoacetate	*34	EAA	
Ethyl acrylate	14	EAC	
Ethyl alcohol	20	EAL	
Ethylamine	7	EAM	
Ethylamine Solution	*7	EAN	
Ethyl benzene	32	ETB	
Ethyl butanol	20	EBT	
N-Ethyl-n-butylamine	7	EBA	
Ethyl butyrate	*34	EBR	
Ethyl chloride	36	ECL	
N-Ethyl cyclohexylamine	*7	ECC	
[illegible]	30	ETL	
[illegible]	20	ECH	
Ethylene cyanohydrin	20	ETC	
Ethylenediamine	[2]7	EDA	EMX
Ethylene dibromide	36	EDB	
Ethylene dichloride	36	EDC	
Ethylene glycol	20	EGL	
Ethylene glycol monobutyl ether.	40	EGM	
Ethylene glycol monobutyl ether acetate.	34	EMA	
Ethylene glycol monethyl ether.	40	EGE	
Ethylene glycol monethly ether acetate.	34	EGA	
Ethylene glycol monisopropyl ether	40		
Ethylene glycol monomethyl ether	40	EME	
Ethylene glycol phenyl ether	40		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Ethylene oxide	[1]0	EOX	
Ethylene oxide, Propylene oxide mixture.	*16	EPM	
Ethylene, Vinyl acetate copolymer emulsion.	*43		
Ethyl ether	41	EET	
Ethylhexaldehyde	19	EHA	
2-Ethylhexanol	20	EHX	
2-Ethylhexanoic acid	4		
2-Ethylhexyl acrylate	14	EAI	
2-Ethyl hexylamine	7	EHM	
Ethyl hexyl tallate	34	EHT	
Ethlidene norbornene	[3]30	ENB	
Ethyl methacrylate	14	ETM	
2-Ethyl-6-methyl-N-(1-methyl-2-methoxyethyl)aniline.	9	EEM	
Ethyl propionate	*34	EPR	
2-Ethyl-3-propylacrolein	[3]19	EPA	
Fatty acid amides	33		
Formaldehyde, Methanol mixtures.	[3]19		
Formaldehyde solution	19	FMS	
Formamide	*10	FAM	
Formic acid	4	FMA	
Furfural	19	FFA	
Furfuryl alcohol	33	FAL	
Gas oil, cracked	33	GOC	
Gasoline blending stock, alkylates.	33	GAK	
Gasoline blending stock, reformates.	33	GRF	
Gasolines:			
Automotive (not over 4.23 grams lead per gal.).	33	GAT	
Aviation (not over 4.86 grams lead per gal).	33	GAV	
Casinghead (natural)	33	GCS	
Polymer	33	GPL	
Straight run	33	GSR	
Glutaraldehyde solution	19	GTA	
Glycerine	20	GCR	
Glyceryl triacetate	34		
Glycidyl ester of Versatic acid.	34		
Glycol diacetate	34		
Glycols, Resins, and Solvents mixture.	33		
Glyoxal solutions	19	GOS	
Heptane	31	HPT	
n-Heptanoic acid	4	HEP	
Heptanol	*20	HTN	
1-Heptene	30	HTE	
Herbicide (C15-H22-N02-C1)	33		
Hexamethylenediamine solution.	*7	HMC	HMD
Hexamethylenetetramine	*7	HMT	
Hexamethylenimine	7	HMI	
Hexane	31	HXA	IHA/HXA
Hexanol	20	HXN	
Hexene	30	HXE	
Hexylene glycol	20	HXG	
Hydrochloric acid	1	HCL	
Hydrochloric acid, spent	*1	HCS	
Hydrofluroic acid	1	HFA	
Hydrofluorosilicic acid	1	HFS	
Hydrogen peroxide solutions	[1]0		HPN/HPS/HPO
2-Hydroxyethyl acrylate	[2]0(2)	HAI	
Industrial waste (containing Dimethyldisulfied, Methyl mercaptan, and Methomyl).	*32	INW	
Isophorone	[3]18	IPH	
Isoprene	30	IPR	
Jet fuels:			
JP-1	33	JPO	
JP-3	33	JPT	
JP-4	33	JPF	
JP-5	33	JPV	
Kaolin clay slurry	43		
Kerosene	33	KRS	
Ketone residue	*18		
Kraft black liquor	*5		
Latex, liquid synthetic	43	LLS	
Lignin liquor	43		
Magnesium chloride solution	*[2]0		
Magnesium nonyl phenol sulfide.	33		

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Maleic anhydride	11	MLA	
Maleic anhydride copolymer	33		
Mesityl oxide	[1]18	MSO	
Methacrylic acid	4	MAD	
Methacrylonitrile	*15	MET	
Methane	31	MTH	
Methoxy triglycol	40	MTG	
Methyl acetate	34	MTT	
Methyl aceloacetate	34		
Methyl acetylene, Propadiene mixture.	30	MAP	
Methyl acrylate	14	MAM	
Methyl alcohol	20	MAL	
Methylamine	7	MTA	
Methylamine solutions	7	MSZ	
Methyl amyl acetate	34	MAC	
Methyl amyl alcohol	20	MAA	
Methyl bromide	36	MTB	
Methyl tert-butyl ether	[3]41	MBF	
3-Methyl butyraldehyde	19		
Methyl butyrate	*34	MBU	
Methyl chloride	36	MTC	
4,4' Methylenedianiline, plus o-Dichlorobenzene.	*9	MDB	
2-Methyl-6-ethyl aniline	9	MEN	
Methyl ethyl ketone	18	MEK	
2-Methyl-5-ethyl pyridine	9	MEP	
Methyl formal	41	MTF	
Methyl formate	*34	MFM	
Methyl heptyl kelone	18	MHK	
2-Methyl-1-2-hydroxy-3-butyne.	20	MHB	
Methyl isoamyl ketone	16		
Methyl isobutyl carbinol	20	MIC	
Methyl isobutyl ketone	18	MIK	
Methyl methacrylate	14	MMM	
Methyl naphthalene	32	MNA	
Methylolureas	19	MUS	
Methyl pyridine	9		MPE/MPF/MPR
N-Methyl pyrrolidone	9	MPY	
alpha-Methyl styrene	30	MSR	
Mineral spirits	33	MNS	
Molasses	20		
Monochlorodifluoromethane	36	MCF	
Morpholine	7	MPL	
Motor fuel antiknock compounds containing lead alkyls.	[1]0	MFA	
Naphtha:			
Coal tar	33	NCT	
Cracking fraction	[3]33		
Petroleum	33	PTN	
Solvent	33	NSV	
Stoddard solvent	33	NSS	
Varnish makers' and painters'.	33	NVM	
Naphthalene (molten)	32	NTM	
Naphthenic acid	4	NTI	
Nitric acid (70 pct. or less)	3	NCD	
Nitric acid (greator than 70 pct.).	[1]0		NAC
Nitrobenzene	42	NTB	
o-Nitrochlorobenzene	42	CNO	CNP
Nitroethane	*42	NTE	
o-Nitrophenol (molten)	*[1]0	NTP	NIP/NPH
Nitropropane	42	NPM	NPN/NPP
Nitropropane, Nitroethane mixture.	*42	NNM	
Nitrotoluene	42	NIT	NIE/NTT/NTR
Nonane	31	NAN	
Nonene	30	NON	NNE
Nonyl alcohol	20	NN	
Nonyl phenol	21	NNP	
Nonyl phenol (ethoxylated)	40		
Nonyl phenol sulfide solution	33		NPS
1-Octadecene	30		
Octadecenoamide	10		
Octane	31	OAN	IOO
Octene	30	OTE	
Octyl alcohol	20	OTA	IOA
Octyl aldehyde	19		IOC
Octyl epoxytallate	34	OET	
Octyl nitrates	*[1]34		
Octyl phenol	*21		
Oils:			
Clarified	33	OCF	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Coal	33		
Crude	33	OIL	
Diesel	33	ODS	
Residual	33		
Road	33	ORD	
Transformer	33	OTF	
Edible oils, including:			
Babassu	34		
Castor	34	OCA	
Coconut	34	OCC	
Coconut, methyl ester	34		
Corn	34		
Cotton seed	34	OCS	
Cotton seed fatty acid	34		
Fish	34	OFS	
Lard	34	OLD	
Olive	34	OOL	
Palm	34	OPM	
Peanut	34	OPN	
Rapeseed	34		
Rice bran	34		
Safflower	34	OSF	
Soya bean	34	OSB	
Soybean (epoxidized)	40		EVO
Sunflower seed	34		
Tacum	34	OTC	
Edible oils, including:			
Vegetable	34	OVG	
Fuel oils:			
No. 1	33	OON	
No. 1-D	33	OOD	
No. 2	33	OTW	
No. 2-D	33	OTD	
No. 4	33	OFR	
No. 5	33	OFV	
No. 6	33	OSX	
Miscellaneous oils, including:			
Absorption	33	OAS	
Aliphatic	33		
Aromatic (5 pct. or less Benzene)	33		
Coal tar	33	OCT	
Heartcut distillate	33		
Linseed	33	OLS	
Lubricating	33	OLB	
Mineral	33	OMN	
Mineral seal	33	OMS	
Motor	33	OMT	
Neatsfoot	33	ONF	
Oticica	34		
Penetrating	33	OPT	
Range	33	ORG	
Rosin	33	ORS	
Resinous petroleum	33		
Rosin	33	ORN	
Seal	34		
Soapstock	34		
Sperm	33	OSP	
Spindle	33	OSD	
Spray	33	OSY	
Tall	34	OTL	
Talt, fatty acid	*34		
Tanner's	33	OTN	
Tung	34		
Turbine	33	OTB	
White (mineral)	33		
Oleic acid	4	OLA	
Oleum	1 * 0	OLM	
Oxyalkylated alkyl phenol formaldehyde	*33		
Pentachloroethane	36	PCE	
Pentadecanol	20	PDC	
1,3,-Pentadiene	30	PDI	PDN
Pentaethylenehexamine, Tetraethylenepentamine mixture	*7	PEP	
Pentane	31		IPT/PTA
1-Pentene	30	PTE	
Pentene, Miscellaneous hydrocarbon mixture	* * 30		
3-Pentenenitrile	37	PNT	
Pentyl aldehyde	19		
Perchloroethylene	36	PER	
Petrolatum	33	PTL	
Phenol	21	PHN	
Phosphoric acid	1	PAC	
Phosphorus	* 0		PPW/ PPR/ PPB

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
Phthalic anhydride (molten)	11	PAN	
Pinene	30		
Polyalkenyl succinic anhydride amine	*33		
Polybutadiene, hydroxyl terminated	*20		
Polybutene	30	PLB	
Polydimenthylsiloxane	*34		
Polyethylene glycols	40		
Polyethylene polyamines	7	PEB	
Polymethyhlene polyphonyl isocyanate	12	PPI	
Polymethylsiloxane	*34		
Polypropylene	30	PLP	
Polypropylene glycol methyl ether	40	PGM	
Polypropylene glycols	40	PGC	
Polyvinylbenzyltrimethyl ammonium chloride solution	43	PVB	
Propane	31	PRP	
Propanolamine	8		MPA/PLA/ PRM
Propionaldehyde	19	PAD	
Propionic acid	4	PNA	
Propionic anhydride	11	PAH	
Propionitrile	37	PCN	
Propyl acetate	34		IAC/PAT
Propyl alcohol	20		IPA/PAL
Propylamine	7		IPO/IPP/ PRA
Propylene	30	PPL	
Propylene butylene polymer	30	PBP	
Propylene glycol	20	PPG	
Proplene oxide	18	POX	
Propylene tetramer	30	PTT	
Propyl ether	41	PMM	IPE
Pseudocumene	32		TME
Pyridene	9	PRD	
Rum	*20		
Salicylaldehyde	*19	SAL	
Sewage sludge	43		
Sodium borohydride, Sodium hydroxide solution	5	SBX	SBH/SBI
Sodium carbonate solutions	5		
Sodium chlorate solution	* * 0	SDD	SDC
Sodium cyanide solution	5	SCS	SCN
Sodium dichromate solution	* * 0	SDL	SCR
Sodium dimethyl naphthalene sulfonate solution	* 34		
Sodium hydrosulfide solution	5	SHR	
Sodium hypochlorite solution	5	SHP	SHC
Sodium 2-mercaptobenzothazol solution	*5	SMB	
Sodium Polyacrylate solution	* 43		
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution	*43	STA	
Sodium silicate solution	* 43	SSC	
Sodium sulfide, hydrosulfide solution	* * 0		SSH/SSI/ SSJ
Sodium thiocyanate solution	* * 0	STS	SCY
Sorbitol solutions	20		SBT
Stearic acid	4	SRA	
Styrene	30	STY	
Sulfolane	39	SFL	
Sulfur (molten)	* 0	SXX	
Sulfuric acid	# 2	SFA	
Sulfuric acid, spent	2	SAC	
Tallow	34	TLO	
Tallow fatty acid	* 34		
Tallow fatty alcohol	20	TFA	
Tallow nitrile	37		
1,1,2-Tetrachloroethane	36	TEC	
Tetradecanol	20	TTN	
Tetradecene	30	TTD	
Tetradecylbenzene	32	TDB	
Tetraethylene glycol	40	TTG	
Tetraethylenepentamine	7	TTP	
Tetrahydroluran	41	THF	
Tetrahydronaphthalene	32	THN	
Tetrasodium salt of EDTA solution	43		
Titanium tetrachloride	* 2	TTT	
Toluene	32	TOL	
Toluenediamine	9	TDA	
Toluene diisocyanate	12	TDI	
o-Toluidine	9	TLI	
Triarylphosphate	34		
Tributyl phosphate	34	TBP	

TABLE I—ALPHABETICAL LIST OF CODES—Continued

Chemical name	Group No.	Chris code	Related Chris codes
1,2,4-Trichlorobenzene	36	TCB	
1,1,1-Trichloroethane	36	TCE	
1,1,2-Trichloroethane	36	TCM	
Trichloroethylene	* 36	TCL	
1,2,3-Trichloropropane	* 36	TCN	
1,1,2-Trichloro-1,2,2-trifluoroethane	36		
Tridecane	34		
Tridecanol	20	TDN	
Tridecene	30	TDC	
Tridecylbenzene	32		
Triethanolamine	8	TEA	
Triethylamine	7	TEN	
Triethyl benzene	32	TEB	
Triethylene glycol	40	TEG	
Triethylene glycol ether mixture	40		
Triethylene glycol ether mixture	40		
Triethylenotetramine	7	TET	
Triethyl phosphate	34		
Triethyl phosphite	* # 34	TPI	
Triisooctyl trimellitate	34		
Triisopropanolamine	* 8	TIP	
Triisopropanolamine salt of 2,4-Dichloro-phenoxy acetic acid solution	* 43	TSA	
Trimethyl benzene	32		TMD/ TME/ TMB
2,2,4-Trimethyl pentanediol-1,3-disobutyrate	34		
2,2,4-Trimethyl-3-pentanol-1-1-isobutyrate	34		
Tripropylene	30		
Tripropylene glycol	40	TGC	
Trisodium nitrilotriacetate	* 34		
Turpentine	30	TPT	
Undecanol	20	UND	
Undecene	30	UDC	
Undecylbenzene	32	UDB	
Urea, Ammonium nitrate solution (containing Ammonia)	6	UAS	
Urea, Ammonium nitrate solution (not containing Ammonia)	43	ANU	
Valeraldehyde	* 19	VAK	IVA/VAL
Vanillin black liquor	* 5	VBL	
Vinyl acetate	13	VAM	
Vinyl acetate, fumarate copolymer	34		
Vinyl chloride	35	VCM	
Vinyl ethyl ether	* 13	VEE	
Vinylidene chloride	35	VCI	
Vinyl neodecanate	13	VND	
Vinyl toluene	13	VNT	
Waxes:			
Carnauba	* 34	WCA	
Paraffin	* 31	WPF	
Xylene	32		XLM/ XLO/ XLP
Zinc bromide, calcium bromide solution	43		

* New addition to 46 CFR Part 150.

[1] Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH-3), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1577.

[2] See Appendix I—Exceptions to the Chart.

9. By revising Table II to read as follows:

Table II—Grouping of Cargoes

0. *Unassigned Cargoes*

Acetone cyanohydrin *(2)
Alkyl benzene sulfonic acid *(1 2)
Benzenesulfonyl chloride *(2)
gamma-Butyrolactone *(2)
Chlorine (1)
Chlorosulfonic acid (1)

Dimethyl ammonium-2,4-dichlorophenoxyacetate solution *(2)
Ethylene oxidce (1)
2-Hydroxyethyl acrylate *(2)
Magnesium chloride solution *(2)
Motor fuel antiknock compounds containing Lead alkyls (1)
Nitric acid (greater than 70 pct.) (1)
o-Nitrophenol (molten) *(2)
Oleum (1 2)
Phosphorus (1)
Sodium chlorate solution *(2)
Sodium dichromate solution *(2)
Sodium sulfide, hydrosulfide solution *(1)
Sodium thiocyanate solution *(2)
Sulfur (molten) (1)

1. *Non-Oxidizing Mineral Acids*
Hydrochloric acid
Hydrochloric acid, spent *
Hydrofluoric acid
Hydrofluorosilicic acid
Phosphoric acid

2. *Sulfuric Acids*
Sulfuric acid
Sulfuric acid, spent (2)
Titanium tetrachloride *

3. *Nitric Acid*
Nitric acid (70 pct. or less)

4. *Organic Acids*
Acetic acid
Acrylic acid (2)
Butyric acid
Cashew nut shell oil (untreated)
Chloroacetic acid solution *
Cyclohexane oxidation product acid water*
2,2-Dichloropropionic acid
2,2-Dimethyloctanoic acid
2-Ethylhexanoic acic
Formic acid
n-Heptanoic acid
Methacrylic acid
Naphthenic acid
Oleic acid
Propionic acid
Stearic acid

5. *Caustics*
Ammonium sulfide solution *
Caustic potash solution (2)
Caustic soda solution (2)
Cresylate spent caustic
Kraft black liquor *
Sodium borohydride, Sodium hydroxide solution
Sodium carbonate solutions
Sodium cyanide solution
Sodium hydrosulfide solution
Sodium hypochlorite solution
Sodium 2-mercaptobenzothiazol solution *
Vanillin black liquor *

6. *Ammonia*
Ammonia, anhydrous
Ammonium hydroxide (28 pct. or less Ammonia)
Ammonium nitrate, Urea solution (containing Ammonia)
Urea, Ammonium nitrate solution (containing Ammonia)

7. *Aliphatic Amines*
N-Aminoethylpiperazine *
Butylamine
Cyclohexylamine
Dibutylamine
Diethylamine
Diethylenetriamine
Diisobutylamine *
Diisopropylamine
Dimethylamine
N,N-Dimethylcyclohexylamine
Di-n-propylamine
Dodecylamine, Tetradecylamine mixture (2)
Ethylamine
Ethylamine solution *
N-Ethyl-n-butylamine
N-Ethyl cyclohexylamine *
Ethylenediamine (2)
2-Ethyl hexylamine
Hexamethylenediamine solution *
Hexamethylenetetramine *
Hexamethylenimine
Methylamine
Methylamine solutions
Morpholine
Pentaethylenehexamine, Tetraethylenepentamine mixture*
Polyethylene polyamines
Propylamine
Tetraethylenepentamine
Triethylamine
Triethylenetetramine

8. *Alkanolamines*
2-(2-Aminoethoxy)ethanol
Aminoethylethanolamine
Diethanolamine
Diethylethanolamine
Diisopropanolamine
Dimethylethanolamine
Ethanolamine
Propanolamine
Triethanolamine
Triisopropanolamine*

9. *Aromatic Amines*
Aniline
2-Ethyl-6-methyl-N-(1-methyl-2-methoxyethyl)aniline
4,4'-Methylenediamine, plus o-Dichlorobenzene*
2-Methyl-6-ethyl aniline
2-Methyl-5-ethyl pyridine
Methyl pyridine
N-Methyl pyrrolidone
Pyridine
Toluenediamine
p-Toluidine

10. *Amides*
Acrylamide solution
Dimethyl acetamide
Dimethylformamide
Formamide*
Octadecenoamide

11. *Organic Anhydrides*
Acetic anhydride
Maleic anhydride
Phthalic anhydride (molten)
Propionic anhydride

12. *Isocyanates*
Diphenylmethane diisocyanate
Polymethylene polyphenyl isocyanate
Toluene diisocyanate

13. *Vinyl Acetate*
Vinyl acetate
Vinyl ethyl ether*
Vinyl neodecanate
Vinyl toluene

14. *Acrylates*
Butyl acrylate
Butyl methacrylate
Butyl methacrylate, Decyl methacrylate, Cetyl eicosyl methacrylate mixture
Cetyl eicosyl methacrylate*
Decyl acrylate
Dodecyl methacrylate*
Dodecyl, Pentadecyl methacrylate
Ethyl acrylate
2-Ethylhexyl acrylate
Ethyl methacrylate
Methyl acrylate
Methyl methacrylate

15. *Substituted Allyls*
Acrylonitrile (2)
Allyl alcohol (2)
Allyl chloride
Dichloropropane, 1,3-Dichloropropene mixtures
1,3-Dichloropropene
Methacrylonitrile*

16. *Alkylene Oxides*
Butylene oxide
Ethylene oxide, Propylene oxide mixture
Propylene oxide

17. *Epichlorohydrin*
Epichlorohydrin

18. *Ketones*
Acetone
Acetophenone
Amyl methyl ketone*
Butyl heptyl ketone
Camphor oil
Cyclohexanone
Cyclohexanone, Cyclohexanol mixture* (2)
Diisobutyl ketone
Epoxy resin
Ketone residue*
Isophorone (2)
Mesityl oxide (2)
Methyl ethyl ketone
Methyl heptyl ketone
Methyl isoamyl ketone
Methyl isobutyl ketone

19. *Aldehydes*
Acetaldehyde
Acrolein (2)
Butyraldehyde
Crotonaldehyde (2)
Decaldehyde
Ethylhexaldehyde
2-Ethyl-3-propylacrolein (2)
Formaldehyde, Methanol mixtures (2
Formaldehyde solution
Furfural
Glutaraldehyde solution
Glyoxal solutions
3-Methyl butyraldehyde
Methylolureas
Octyl aldehyde
Pentyl aldehyde
Propionaldehyde
Salicylaldehyde *
Valeraldehyde *

20. *Alcohols, Glycols*
Alcohols (mixed)
Amly alcohol
Behenyl alcohol
Butyl alcohol
1,3-Butylene glycol (2)
Choline chloride solutions
Cyclohexanol
Decyl alcohol
Diacetone alcohol
Diisobutyl carbinol
2,2-Dimethylpropane-1,3-diol
Dodecanol
Ethoxylated alcohols, C11-C15
Ethyl alcohol
Ethyl butanol
Ethylene chlorohydrin

Ethylene cyanohydrin
Ethylene glycol
2-Ethylhexanol
Furfuryl alcohol
Glycerine
Heptanol
Hexanol
Hexylene glycol
Methyl alcohol
Methyl amyl alcohol
2-Methyl-2-hydroxy-3-butyne
Methyl isobutyl carbinol
Molasses
Nonyl alcohol
Octyl alcohol
Pentadecanol
Polybutadiene, hydroxyl terminated
Propyl alcohol
Propylene glycol
Rum
Sorbitol solutions
Tallow fatty alcohol
Tetradecanol
Tridecanol
Undecanol

21. *Phenols, Cresols*
Benzyl alcohol *
Carbolic oil
Creosote
Cresols
Cresylic acid
Cresylic acid tar *
2,4-Dichlorophenol
Nonyl phenol
Octyl phenol *
Phenol

22. *Caprolactam Solutions*
Caprolactam solution

23–29. *Unassigned*

30. *Olefins*
Amylene *
Butadiene
Butadiene, Butene mixtures (cont. Acetylenes) *
Butene
Butylene
Cyclopentadiene polymers
Cyclopentadiene, Styrene, Benzene mixture
Decene
Dicyclopentadiene
Diisobutylene
Dipentene
Docecene
Ethylene
Ethylidene norbornene (2)
1-Heptene
Hexene
Isoprene
Isoprene raffinate *
Methyl acetylene, Propadiene mixture
alpha-Methyl styrene
Nonene
1-Octadecene
Octene
1,3-Pentadiene
1-Pentene
Pentene, Miscellaneous hydrocarbon mixture * (2)
Pinene
Polybutene
Polypropylene
Propylene
Propylene butylene polymer
Propylene tetramer
Styrene
Tetradecene
Tridecene
Tripropylene
Turpentine
Undecene

31. *Paraffins*
Butane
Cycloaliphatic resins
Cyclohexane
Decane
Dodecane
Ethane
Heptane
Hexane
Methane
Nonane
Octane
Pentane
Propane
Waxes:
Paraffin*

32. *Aromatic Hydrocarbons*
Benzene
Benzene, Hydrocarbon mixture (10 pct. Benzene or more)*
Benzene, Toluene, Xylene mixture
Cumene
Cymene
Decyl benzene
Diethylbenzene
Diisopropyl benzene
Diisopropyl naphthalene
Dodecylbenzene
Ethyl benzene
Industrial waste (containing Dimethyldisulfide, Methyl mercaptan, and Methomyl)*
Methyl naphthalene
Naphthalene (molten)
Pseudocumene
Tetradecylbenzene
Tetrahydronaphthalene
Toluene
Tridecylbenzene
Triethyl benzene
Trimethyl benzene
Undecylbenzene
Xylene

33. *Miscellaneous Hydrocarbon Mixtures*
Asphalt
Asphalt blending stocks, roofers flux
Asphalt blending stocks, straight run residue
Calcuim sulfonate, Calcium carbonate, Hydrocarbon solvent mixture*
Carbon black base
Diphenyl, Diphenyl oxide
Distillates, flashed feed stocks
Distillates, straight run
Fatty acid amides
Fuel oils:
No. 1
No. 1-D
No. 2
No. 2-D
No. 4
No. 5
No. 6
Gas oil, cracked
Gasoline blending stock, alkylates
Gasoline blending stock, reformates
Gasolines:
Automotive (not over 4.23 grams lead per gal.)
Aviation (not over 4.86 grams lead per gal.)
Casinghead (natural)
Polymer
Straight run
Glycols, Resins, and Solvents mixture
Herbicide ($C_{15}H_{22}NO_2Cl$)
Jet Fuels:
JP-1
JP-3
JP-4
JP-5
Kerosene
Magnesium nonyl phenol sulfide
Maleic anhydride copolymer
Mineral spirits
Miscellaneous oils, including:
Absorption
Aliphatic
Aromatic (5 pct. or less Benzene)
Coal Tar
Heartcut distillate
Linseed
Lubricating
Mineral
Mineral seal
Motor
Neatsfoot
Penetrating
Range
Resin
Miscellaneous oils, including:
Resinous petroleum
Rosin
Sperm
Spindle
Spray
Tanner's
Turbine
White (mineral)
Naphtha:
Coal tar
Cracking fraction (2)
Petroleum
Solvent
Stoddard solvent
Varnish Makers' and Painters'
Nonyl phenol sulfide solution
Oxyalkylated alkyl phenol formaldehyde*
Oils:
Clarified
Coal
Crude
Diesel
Residual
Road
Transformer
Petrolatum
Polyalkenyl succinic anhydride amine*

34. *Esters*
Acetyl tributyl citrate
Alykl phthalates
Amyl acetate
Amyl tallate
Butyl acetate
Butyl benzyl phthalate *
Butyl formate
Dibutyl phthalate
Diethylene glycol monobutyl ether acetate
Di-(ethylhexyl)phthalate*
Diethyl sulfate
Diheptyl phthalate
Di-n-hexyl adipate*
Diisodecyl phthalate
Diisononyl adipate*
Diisononyl phthalate
Diisooctyl phthalate
Dimethyl adipate*

Dimethylcyclicsiloxane hydrolyzate*
Dimethyl glutarate*
Dimethyl hydrogen phosphite*(2)
Dimethyl phthalate
Dimethyl polysiloxane* (2)
Dimethyl succinate*
Dinonyl phthalate
Dioctyl phthalate
Dipropylene glycol dibenzoate
Diundecyl phthalate
Edible oils, including:
Babassu
Castor
Coconut
Coconut, methyl ester
Corn
Cotton seed
Cotton seed fatty acid
Fish
Lard
Olive
Palm
Peanut
Rapeseed
Rice bran
Safflower
Soya bean
Sunflower seed
Tucum
Vegetable
Ethyl acetate
Ethyl acetoacetate*
Ethyl butyrate*
Ethylene glycol monobutyl ether acetate
Ethylene glycol monobutyl ether acetate
Ethyl hexyl tallate
Ethyl propionate*
Glyceryl triacetate
Glycidyl ester of Versatic acid
Glycol diacetate
Methyl acetate
Methyl acetoacetate
Methyl amyl acetate
Methyl butyrate*
Methyl formate*
Miscellaneous oils, including:
Oiticica
Miscellaneous oils, including:
Seal
Soapstock
Tall
Tall, fatty acid*
Tung
Octyl epoxytallate
Octyl nitrates* (2)
Polydimethylsiloxane*
Polymethylsiloxane*
Propyl acetate
Sodium dimethyl naphthalene sulfonate solution (2)
Tallow
Tallow fatty acid (2)
Triarylphosphate
Tributyl phosphate
Tridecane
Triethyl phosphate
Triethyl phosphite * (2)
Triisooctyl trimellitate (2)
2,2,4-Trimethyl pentanediol-1,3-diisobutyrate
2,2,4-Trimethyl-3-pentanol-1-isobutyrate
Trisodium nitrilotriacetate *
Vinyl acetate, fumarate copolymer
Waxes:
Carnauba

35. *Vinyl Halides*
Vinyl chloride
Vinylidene chloride
36. *Halogenated Hydrocarbons*
Benzyl chloride *
Carbon tetrachloride
Chlorobenzene
Chlorodifluoromethane
Chloroform
Chlorotoluene *
Dichlorobenzene
Dichlorodifluoromethane
1,1-Dichloroethane
2,2'-Dichloroisopropyl ether
Dichloromethane
Dichloropropane
Ethyl chloride
Ethylene dibromide
Ethylene dichloride
Methyl bromide
Methly chloride
Monochlorodifluoromethane
Pentachloroethane
Perchloroethylene
1,1,2,2-Tetrachloroethane
1,2,4-Trichlorobenzene
1,1,1-Trichloroethane
1,1,2-Trichloroethane
Trichloroethylene (2)
1,2,3-Trichloropropane *
1,1,2-Trichloro-1,2,2-trifluoroethane
37. *Nitriles*
Acetonitrile
Adiponitrile
3-Pentenenitrile
Propionitrile
Tallow nitrile
38. *Carbon Disulfide*
Carbon disulfide
39. *Sulfolane*
Sulfolane
40. *Glycol Ethers*
Diethylene glycol
Diethylene glycol monobutly ether
Diethylene glycol monoethyl ether
Diethylene glycol monomethly ether
Diethylene glycol monophenyl ether
Dipropylene glycol
Edible oils, including:
Soybean (epoxidized)
Ethoxy triglycol
Ethylene glycol monobutyl ether
Ethylene glycol monoethyl ether
Ethylene glycol monoisopropyl ether
Ethylene glycol monomethly ether
Ethylene glycol Phenyl ether
Methoxy triglycol
Nonyl phenol (ethoxylated)
Polyethylene glycols
Polypropylene glycol methyl ether
Polypropylene glycols
Tetraethylene glycol
Triethylene glycol
Triethylene glycol butyl ether mixture
Triethylene glycol ether mixture
Tripropylene glycol
41. *Ethers*
Butyl ether
2,2'-Dichloroethyl ether
Digylcidyl ether of Bisphenol-A
Dimethyl furan *
1,4-Dioxane
Diphenyl oxide, Biphenyl phenyl ether mixture *
Ethyl ether
Methyl-tert-butyl ether (2)
Methyl formal
Propyl ether
Tetrahydrofuran
42. *Nitrocompounds*
Chloronitrobenzene, see o-Nitrochlorobenzene
Nitrobenzene
o-Nitrochlorobenzene
Nitroethane
Nitropropane
Nitropropane, Nitroethane mixture *
Nitrotoluene
43. *Miscellanous Water Solutions*
Ammonium nitrate, Urea solution (not containing Ammonia)
Ammonium polyphosphate solution
Ammonium sulfate solution
Calcium bromide solution
Calcium chloride solution
Corn syrup
Dextrose solution
Diammonium salt of Zinc EDTA solution
Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution *
Dodecyl diphenyl oxide disulfonate solution
Ethylene, Vinyl acetate copolymer emulsion *
Kaolin clay slurry
Latex, liquid synthetic
Lignin liquor
Polyvinylbenzyltrimethyl ammonium chloride solution
Sewage sludge
Sodium polyacrylate solution (2)
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution *
Sodium silicate solution (2)
Tetrasodium salt of EDTA solution
Triisopropanolamine salt of 2,4-Dichlorophenoxy acetic acid solution *
Urea, Ammonium nitrate solution (not containing Ammonia)
Zinc bromide, Calcium bromide solution

(*) New addition to 46 CFR Part 150.

(1) Because of very high reactivity or unusual conditions of carriage or potential compatibility problems, this product is not assigned to a specific group in the Compatibility Chart. For additional compatibility information, contact Commandant (G-MTH-3), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1577.

(2) See Appendix I—Exceptions to the Chart

10. By revising Appendix I, to read as follows:

Appendix I—Exceptions to the Chart

a. The binary combinations listed below have been tested as prescribed in Appendix III and found not to be dangerously reactive. These combinations are exceptions to the Compatibility Chart (Figure 1) and may be stowed in adjacent tanks.

Member of reactive group	Compatible with
Acetone cyanohydrin (O)	Acetic acid (4).
Acrylonitrile (15)	Triethanolamine (8).
1,3-Butylene glycol (20)	Morpholine (7).

Member of reactive group	Compatible with
Caustic potash, 50 pct. or less (5).	Ethyl alcohol (20).
	Methyl alcohol (20).
	iso-Octyl alcohol (20).
Caustic soda, 50 pct. or less (5).	Butyl alcohol (20).
	tert-Butyl alcohol, Methanol mixture.
	Decyl alcohol (20).
	Diacetone alcohol (20).
	Diethylene glycol (40).
	Ethyl alcohol (20).
	Ethylene glycol (20).
	Ethylene glycol, Diethylene glycol mixture (20).
	Ethyl hexanol (Octyl alcohol) (20).
	Methyl alcohol (20).
	Nonyl alcohol (20).
	Propyl alcohol (20).
	Propylene glycol (20).
Dodecyl and Tetradecylamine mixture (7).	Tall oil fatty acid (34)
Ethylenediamine (7)	Butyl alcohol (20).
	Butylee glycol (20).
	Creosote (21).
	Diethylee glycol (40).
	Ethyl alcohol (20).
Ethylenediamine (7)	Ethylene glycol (20).
	Ethyl hexanol (20).
	Glycerine (20).
	Isononyl alcohol (20).
	Isophorone (18).
	Methyl butyl ketone (18).
	Methyl iso-butyl ketone (18).
	Methyl ethyl ketone (18).
	Propyl alcohol (20).
	Propylene glycol (20).
Oleum (O)	Hexane (31).
	Methylene chloride (36).
Sulfuric acid (2)	Coconut oil (34).
	Coconut oil acid (34).
	Palm oil (34).
	Tallow (34).
Sulfuric acid, 98 pct. or less (2).	Choice white grease tallow (34).

b. The binary combinations listed below have been determined to be dangerously reactive, based on either data obtained in the literature or on laboratory testing which has been carried out in accordance with procedures prescribed in Appendix III. These combinations are exceptions to the Compatibility Chart (Figure 1) and may not be stowed in adjacent tanks.

Acetone cyanohydrin (0) is not compatible with Groups 1–12, 16, 17 and 22.

Acrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Acrylic acid (4) is not compatible with Group 9, Aromatic Amines.

Alkyl benzene sulfonic acid (0) is not compatible with Group 1–3, 5–9, 15, 16, 18, 19, 30, 34, 37, and strong oxidizers.

Allyl alcohol (15) is not compatible with Group 12, Isocyanates.

Benzenesulfonyl chloride (0) is not compatible with Group 5–7, and 43.

gamma-Butyrolactone (0) is not compatible with Group 1–9.

Cortonaldehyde (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Cyclohexanone, Cyclohexanol mixture (18) is not compatible with Group 12, Isocyanates.

Dimethyl ammonium-2,4-dichlorophenoxyacetate (70% or less) (0) is not compatible with Groups 1–5, 11, 12, and 16.

Dimethyl hydrogen phosphite (34) is not compatible with Groups 1 and 4.

Ethylenediamine (7) is not compatible with Ethylene dichloride (36).

Ethylidene norbornene (30) is not compatible with Groups 1–3 and 5–8.

2-Ethyl-3-propylacrolein (19) is not compatible with Group 1, Non-Oxidizing Mineral Acids.

Formaldehyde (over 50%) in Methyl alcohol (over 30%) (19) is not compatible with Group 12, Isocyanates.

Furfuryl alcohol (20) is not compatible with Group 1, Non-Oxidizing Mineral Acids and Formic acid (4).

2-Hydroxyethyl acrylate is not compatible with Groups 2, 3, 5–8 and 12.

Isophorone (18) is not compatible with Group 8, Alkanolamines.

Magnesium chloride solution (0) is not compatible with Groups 2, 3, 5, 6 and 12.

Mesityl oxide (18) is not compatible with Group 8, Alkanolamines.

Methyl tert-butyl ether (41) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Naphtha, cracking fraction (33) is not compatible with strong acids, caustics or oxidizing agents.

o-Nitrophenol (0) is not compatible with Groups 2, 3, and 5–10.

Octyl nitrates (mixed) (34) is not compatible with Group 1, Non-oxidizing Mineral Acids.

Pentene, Miscellaneous hydrocarbon mixtures (30) is not compatible with strong acids or oxidizing agents.

Sodium chlorate solution (50% or less) (0) is not compatible with Groups 1–3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dichromate solution (70% or less) (0) is not compatible with Groups 1–3, 5, 7, 8, 10, 12, 13, 17 and 20.

Sodium dimethyl naphthalene sulfonate solution (34), is not compatible with Groups 2, 3, Formaldehyde and strong oxidizing agents.

Sodium polyacrylate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium silicate solution (43) is not compatible with Group 3, Nitric Acid.

Sodium thiocyanate (56% or less) (0) is not compatible with Groups 1–4.

Sulfuric acid (2) is not compatible with Fish oil (34), or Oleum (0).

Tallow fatty acid (34) is not compatible with Group 5, Caustics.

Trichloroethylene (36) is not compatible with Group 5, Caustics.

Triethyl phosphite (34) is not compatible with Groups 1, and 4.

11. By revising the first paragraph of the Procedure in Step 2 of Appendix III to read as follows:

Procedure—Three separate mixes of the proposed binary combination will be tested. These are 2 ml : 18 ml, 10 ml : 10 ml, and 18 ml : 2 ml, respectively, to result in a final mixture of about 20 ml in each case.

Dated: January 7, 1985.

E. G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-742 Filed 1-10-85; 8:45 am]

BILLING CODE 4910-14-M

46 CFR Part 160

[CGD 80-113]

Lifesaving Equipment; Improved Standards for the Stability of Inflatable Liferafts

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: This notice proposes regulations for improving the stability of inflatable liferafts used aboard merchant vessels and drill rigs of U.S. registry. The need for improved stability in these rafts arises from the extensive use made of them as primary lifesaving equipment aboard ships and drill rigs operating world-wide under all conditions of weather and geography. The proposed regulations would make the rafts more resistant to capsizing from upsetting forces produced by wind and waves.

DATE: Comments must be received on or before April 11, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21), (CGD 80-113) U.S. Coast Guard, Washington, DC 20593. Comments, draft evaluation, and other materials referenced in this notice will be available for examination and copying between 7 a.m. and 4 p.m., Monday through Friday, except holidays, at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. M.R. Daniels, Jr., Merchant Vessel Inspectin Division, (202) 426-1444.

SUPPLEMENTARY INFORMATION: This notice is a followup to the Advance Notice of Proposed Rulemaking (ANPRM) published in the **Federal Register** of June 29, 1981 (46 FR 33341) and a Public Hearing held on Sept. 1, 1981, both pertaining to the subject of raft stability. A summary of the comments produced by these previous actions appears below as a part of this notice. In addition, test results and other information relevant to this notice are available in the following foreign publications:

A. "Siglingamal" (Shipping), No. 12 of December 1980 by the Directorate of Shipping, Government of Iceland.

B. "Siglingamal" (Shipping), No. 13 of July 1981 by the Directorate of Shipping, Government of Iceland.

Copies of the above and the ANPRM have been placed in the docket and are available for examination at the Marine Safety Council (G-CMC/21) at the

address and at the hours listed above. A limited number of free copies are available from the Commandant (G-MVI-3/12), U.S. Coast Guard Headquarters, Washington, D.C. 20593 as long as the supply lasts (one copy per person or organization).

The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person submitting them, identify this notice (CGD 80-113) and the specific section of the proposal to which the comment applies, and give the reasons for the comments. 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 at a time and place to be set in a later notice in the **Federal Register** if it is requested in writing by an interested person raising a genuine issue and desiring to comment orally at the public hearing.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Mr. M.R. Daniels Jr., Project Manager, Office of Merchant Marine Safety, and Mr. Michael N. Mervin, Project Attorney, Office of the Chief Counsel.

Discussion of Comments

The Coast Guard received written comments about liferaft stability from the following group of 28 individuals and associations:

Developers of Patents for Lifesaving Equipment	3
Associations of Vessel Operators	4
Associations of Offshore Drilling Rig Operators	2
Vessel Operators	4
Drilling Rig Operators	2
Hydrofoil-Aircraft Manufacturer	1
Trade Association of Liferaft Manufacturers	1
Liferaft Manufacturers	5
Professional Association of Naval Architects	1
Naval Architects and Consulting Engineers	3
Associate of a Foreign Maritime Research Institution	1
Member of a U.S. Government Department	1

The commenters directed the major part of their attention to the technical issues raised in Paragraphs (a) through (k) of Page 33344 and (a) through (l) of Page 33345 of the Advance Notice, summaries of which follow:

A. Comments directed to Paragraphs (a) through (k) of Page 33344 and in the same sequence

(a) *Volume of Water Ballast.*

One comment suggested the need for a water ballast requirement, another argued against any move for requiring an identical volume of water in the appendages without regard to the rafts' sizes. For this "specified range" concept the Coast Guard position is that the volume of water in a raft's stability appendages should be proportionate to its size: large rafts would have large appendages, small rafts, smaller appendages. This is the basis for the proposal given below in "Stability Appendages".

(b) *Time to Fill.*

Two comments argued that a time of 3 to 4 minutes for stability appendages to deploy and fill with water would be excessive. Two comments favored a filling time of one minute as more appropriate in order to deter the capsizing of a raft after its initial inflation and before survivors could board it from the water. In the judgement of the Coast Guard, a measurement of the deployment times of stability appendages would require elaborate underwater instrumentation in order to avoid the subjective judgements of observing personnel. Although such measurements are technically possible, the resulting data would not be critical for improving liferaft stability and the effort of obtaining such results is not believed justifiable in light of the limited technical resources available to the majority of raft manufacturers. Accordingly, a filling time requirement has not been included in the proposals appearing below.

(c) *Freeboard and Skirt.*

One comment saw no necessity in a requirement for a "skirt", seeing it as germane only to the hemispherical appendage of a particular raft manufacturer and, therefore, an unacceptable restriction on other designs of stability appendages if made a requirement. On reconsideration of the concept, the Coast Guard has concluded that a skirt requirement would not be consonant with the majority of existing designs for stability appendages. A raft making use of a skirt for its stability would continue to be permissible, but a requirement for skirts in all designs of rafts has been omitted from the proposals appearing below.

(d) *Lifting Force Test.*

Two comments favored a requirement for a lifting force test but not to an angle of 45 degrees. One of them stated that an angle of 20 degrees would be more representative of actual ocean conditions with the purpose of the test being to ensure (1) even distribution of the stabililty appendages and (2) pockets that would not permit excessive spillage of water during a raft's lifting. The measurement of the lifting force gives an indication of the adherence of a raft to the water, that is the initial stabililty of a raft in the water but without the influence of wave action tending to overturn it. Accordingly, a "lift-out force test" appears in this notice below as one of the proposed requirements.

(e) *Designed Weak Point.*

One comment dealt with the need for a tear-away feature in the attachment of a large stability appendage to a raft because of its capacity to trip and overturn a raft in shallow water during beaching. Another comment argued that considerations for the strength of a stability appendage are of equal importance to all other components intended to stabilize a raft. In view of the many drain holes and openings found in stability appendages which weaken the fabric, any measurement of tear-away strength would be inconsistent. Also, even if it were measured there is no known method of relating tear-away strength to the conditions that a raft would face in heavy weather. The regulations proposed below include at-sea testing, one of the purposes of which is to examine the rafts after their testing for damage. This method of assessing the strength of the attachments of the stability appendages is believed superior to any testing by direct loading. Therefore, the Coast Guard has omitted from this notice any proposals for a strength measurement of the attachment of stability appendages to their rafts.

(f) *Ballast System Subdivision.*

Two comments made observations about requirements for a two-part division of the stability appendages of liferafts. One of these supported the two-part concept as a minimum; the other agued that such a division was inadequate, that five would be better because a two-part minimum would give no assurance of a reasonable distribution of the remaining weight of ballast in the event of failure of one of the compartments. Recognizing the need for a reasonable minimum, the Coast Guard in the requirements proposed below has stipulated two compartments as one of the design conditions for stability appendages.

(g) *Towing Speed.*

One comment found a 5 knot towing speed acceptable because it would expedite departure of a raft from a burning or sinking vessel. Another comment was against a requirement for 5 knots unless it also defined the sea state that would apply, a condition that would be more significant for the designs of heavily ballasted rafts. The

Coast Guard believes the best resolution of this detail lies in the adoption of the 3-knot towing speed now appearing in the latest revision of Chapter III (Life-Saving Appliances and Arrangements) of the International Convention for the Safety of Life at Sea (SOLAS 1974), scheduled to become effective July 1, 1986. The requirements proposed below, therefore, include the condition of a towing speed of 3 knots.

(h) *Paddled Maneuvering.*

One comment noted a contradiction existing between a requirement for enlarged stability appendages and another directed to maneuvering the raft by paddling. Another comment saw paddling of the raft by two persons as essential in order to escape a burning vessel. The Coast Guard, mindful of the need for paddling in an emergency, has chosen to made paddling the purpose of the proposed "Maneuvering Test" given below in this notice.

(i) *Self-Righting.*

One comment saw a requirement for self-righting as desirable if providing for it does not also necessitate packing the raft with closed entrances of the canopy which could then impede quick access of survivor into the raft. Another comment stated a belief that further investigation of the concept is necessary because of a lack of answers to such questions as: would self-righting occur with personnel inside; strapped in place or not; assisting or not assisting the raft's rerighting; and with or without water inside of the raft? The Coast Guard has opted to put self-righting aside for the present because it is absent from the requirements for inflatable liferafts now appearing in the revision of Chapter III of the SOLAS 1974. Accordingly, this notice does not include a requirement for self-righting.

(j) *Personnel Restraints.*

One comment favored hand grips to supplement the addition of safety belts or tie-down straps. Another comment stated that the presently required interior lifelines are satisfactory and that the effect of safety belts on the occupants of an overturned raft should be taken into account before changing the regulations. The Coast Guard sees the internal lifelines now installed in the rafts as both adequate and reflective of the current requirements for inflatable liferafts given in Chapter III of SOLAS 1974. A requirement for safety belts or tie-downs is, therefore, not included in this porposal.

(k) *Canopy Entrances.*

One comment was of the opinion that packing a raft with closed entrances raises the possibility of preventing quick access of survivors into the raft, which under cold conditions could stop boarding of the raft altogether. The Coast Guard, in light of the uncertainty of the benefits resulting from this packing concept, has concluded that the requirement is unrealistic and has made no provisions for it in the requirements given below.

B. Comments directed to Paragraphs (a) through (l) of Page 33345:

(a) *Survival Platforms.*

One comment saw the "platform concept" of liferafts as resulting from their superior buoyancy, convenience of handling, and ease of installation so that a raft of optimum design would provide a sheltered platform without compromising these three essentials. A second comment stated that the platform concept was valid only as long as a raft remains in one piece and is not torn apart. Another comment noted a conflict between the "platform" idea and the proposal for closed entrances as discussed above. The Coast Guard does not consider any of the requirements proposed below as being in conflict with the platform principle as discussed in the ANPRM.

(b) *Increase of Weight.*

All comments received were in agreement that increased weight, volume and costs would follow the inclusion of larger stability appendages on the rafts. Two comments noted the relevance of heavier rafts to weight-sensitive craft such as hydrofoils, whose operation differs from vessels coming under SOLAS 1974. Another party saw a need to keep the weight of rafts at a minimum in order to facilitate their being moved over the deck for launching in heavy weather with uncertain footing. In response to these observations the Coast Guard has concluded that the problem of increased weight will bear only on the 25-person sizes of "ocean service"-equipped rafts so that, for the most part, the requirements proposed below will not pose any insurmountable obstacles.

(c) *Reduction of Drift.*

One comment stated that reduced drifting resulting from larger stability appendages would be more important to survivors in the water in contrast to any influence that it might have on search and rescue operations. Three comments stated that sea anchors would be equally as effective as heavy ballasting for reducing the drifting of rafts. One comment made the observation that on the Great Lakes the drifting of rafts from an area of probable detection for search and rescue efforts would be less significant than the same event on the ocean because the rafts would ultimately reach land. On the whole the Coast Guard considers the inclusion of improved stability appendages as a generator of a number of benefits of which drift reduction is but one, the importance of which is subject to varying circumstances. The requirements proposed below will promote the design of stability appendages by establishing reasonable performance standards that may be met by a variety of methods.

(d) *Seakindliness.*

One comment made the point that a lightly ballasted raft moving with the seas provides a much "kinder" ride, with an easier motion than that of rafts having large stability appendages, and is less conducive to seasickness, a debilitating affliction that a raft designer aims to eliminate. Another party suggested that a desire for "seakindliness" in a raft should not be attained at the expense of its stability. Another comment stated a moderate amount of water ballast is acceptable and useful, but as is so often the case in a design endeavor, it is possible to reach a point of diminshing returns, of which excessive water ballasting might be a case in point. The position of the Coast Guard is that stability of the raft is more important than comfort of the occupants. Therefore, this proposal does not contain any requirements based on "seakindliness".

(e) *Wind Effects.*

One comment argued that it is not the "skirt" of the raft with the hemispherically-shaped appendage depicted in the ANPRM that resists the wind but rather the massive quantity of water within the appendage. Furthermore, helicopter rescue pilots have had no difficulty picking up survivors from conventional liferafts by using the correct approach. Another comment agreed that helicopter downdraft could create difficulties but stated that this should not receive overemphasis because when a helicopter is overhead, a liferaft can be said to have completed its intended function. Another comment stated that the emphasis given helicopter rescues exclusively from rafts having hemispherically-shaped stability appendages is overdone and overlooks the fact that one purpose of a raft is to permit survival and rescue at sea in areas out of range of helicopters. The requirements for stability appendages proposed below reflect the position of the Coast Guard that helicopter rescues are now sufficiently routine as to require more attention to the helicopter-to-raft relationship in the design and approval of rafts. Furthermore, the proposed helicopter rescue compatibility test is an excellent method of generating high speed winds which are known to be a

significant factor in capsizing inflatable liferafts.

(f) *Sea Anchors.*

Two comments pointed out the importance that sea anchors had demonstrated in two successive years of heavy-weather testing of liferafts in Iceland, particularly for their ability in positioning canopy openings to leeward. Another comment did not agree with the premise made in the ANPRM and saw sea anchors as still mandatory, a view reinforced by another comment that stated that sea anchors are necessary regardless of whether a raft is fully or lightly ballasted. Another party gave a five point summary of the overall advantages of sea anchors, including the view that they can provide stability in a raft to an extent equal to if not greater than that achieved in rafts with large ballast chambers. In summary, the Coast Guard does not deny the necessity for sea anchors in rafts (two are presently required) but considers that arguments for sea anchors as raft stabilizers overlook the fact that a sea anchor requires a period of possibly 5 to 10 minutes to stream and exert its maximum influence in keeping a raft upright in wind and waves. The requirements proposed below place the burden of improving the stability of the rafts on the functioning of their underwater appendages.

(g) *Stability Calculations.*

One comment was in agreement with the premise of the ANPRM that the evaluation of liferaft stability by calculations would be desirable but also foresees difficulties because rafts are of flexible fabrication with many variable characteristics. On the other hand, another comment saw no difficulties resulting from the same flexibility, noting that tank testing of models in another country had been able to confirm the results attained in sea trials with full-sized rafts. A third comment observed that the inability of participants in sea trials to control conditions and attain repeatable results makes sea trials a less than ideal method for verifying compliance of rafts with requirements. In the opinion of the same party there is a need for a procedure productive of results that are measurable, repeatable and capable of specification by administrative authority. The Coast Guard, mindful of the difficulties associated with sea trials, in the requirements below proposes to evaluate raft stability by a combination of simple calculations, pool testing, and one sea trial of six hours duration. The Coast Guard considers this to be a reasonable standard that should be possible of execution with resources now available to the raft manufacturers.

(h) *Physical Measurements.*

One comment was in favor of the possibilities of evaluating raft stability by means other than sea trials or calculation if the adopted stability criteria relates to overall performance of the raft and is not a physical standard isolated from realistic levels of performance. Another comment, noting the extensive use made of model testing in aircraft and ship designing, saw no reason why it could not also be applied to liferafts by techniques now available that simulate the characteristics of inflatables. The requirements proposed below calling for calculations, pool testing, and a minimum of at-sea testing will yield data indicative of the stability of a raft without the expense and scaling problems attendant to more elaborate testing with scale models.

(i) *Relief Valves.*

Four comments noted a tendency for higher tube pressures of rafts to make them harder riding in a seaway, a trait conducive, according to another comment, to making the rafts more prone to damage in heavy weather. One comment stated that the more rigid a raft the more it approaches the behavior of a rigid boat and thus sacrifices the advantage of flexibility found in the inflatable, which is a rather "caterpillarlike" action. Another comment saw a hazard in higher tube pressures because they make the rafts' inflation at low temperature more difficult and expensive because of higher gas cylinder charging. The Coast Guard does not contest the validity of the above views other than noting the possibility for gas to escape via the tubes' relief valves with the flexing of the raft in a seaway. That point aside, the Coast Guard sees the subject of tube pressures as a facet of the rafts' design that is best determined by the raft manufacturers. Therefore, the requirements proposed below do not include provisions affecting tube pressures and relief valve settings.

(j) *Larger Stability Appendages.*

There was a general agreement among all comments that larger stability appendages would increase the weight, volume, and expense of the rafts. One comment stated that a need for larger deck stowage areas will result from larger stability appendages. Another party argued that larger stability appendages, when seen on the bottom of an overturned raft, would cause the observer to assume that the canopy had collapsed and that something was wrong with the raft. The position of the Coast Guard on the first of these comments is that the inclusion of larger stability appendages is not going to change the physical characteristics of the rafts or their manufacture and distribution to a degree that will be insurmountable for the average liferaft manufacturer. The second comment is not of concern since the liferaft canopy must be orange and the stability appendages will invariably be made of black material, the same or similar to the body of the raft. It would, therefore, be obvious that the raft was either upright of capsized.

(k) *Benefits of Heavy Ballasting.*

A preponderance of the comments advocated a further investigation of the various ramifications of raft stability as a necessary step before the Coast Guard adopts new rules making heavily-ballasted rafts mandatory. One party sees a necessity for the Coast Guard to interview the survivors of casualties involving inflatable liferafts but not restricted to incidents involving the rafts of any particular manufacturer. One comment sees a need for unbiased testing of the various designs, but such results, in the opinion of yet another party, should be made requirements only for rafts of future production. Another comment saw the Coast Guard as having failed to prove a case for the superiority of heavily-ballasted rafts over those now predominantly available. And two other comments dealt with the necessity for investigating the performance of a heavily-ballasted raft in a damaged condition and a need for stability requirements to emanate from the recently revised Chapter III of the SOLAS 1974. In response to all of the above, the Coast Guard sees the desirability of further investigation of raft stability and will undertake the task when resources for it become available. But for the present, enough data is available to provide a basis for proposing performance standards for rafts' stability appendages. This is the general intent of the proposals made below.

(l) *Alternatives to Ballasting.*

The comments gave a general assent to the idea that the rules for raft stability should not depend exclusively on requirements for heavy ballasting. Rather, in the view of one party, the rules should be performance-based and involve a number of broad design parameters. One comment saw a need for an interim solution that would gain time for developing support for the idea of more ballasting and the evaluation of other concepts. Another comment advocated consideration of multiple sets of stability rules that would be consonant with the number of stability

systems ultimately permitted. The Coast Guard has the intention to make the final rules as broad as possible and not restricted to the features of any particular system of stabilizing rafts. This intention should be apparent in the requirements proposed below that involve design parameters adaptable to a number of different stability methods.

C. The twelve operators and associations representing vessels and drill rigs shown on the list of participants contributed to the comments of 'A' and 'B' above and also discussed their concern about the difficulties and expenses that they anticipate if liferaft stability is made the subject of a regulation. The summary following discusses the special concerns of these operators:

1. Seven comments recommended the exclusion of existing rafts from any regulations that would require the rafts' alteration by the addition of improved stability appendages. Included with these grandfather-clause recommendations were opinions about the possibility of expenses for stability appendages coming too soon after the previous requirements for improving the inflation system of the rafts, the details of which appeared in the **Federal Registers** of March 13, 1974 and December 30, 1974. (These earlier inflation improvements were known as the "Mod Temp" alterations as that was the terminology and the marking specified in the **Federal Register** to be shown on a raft as an indication that it had been retrofitted with the required improvement.) These same comments also touched on the feasibility of excluding drill rigs in the Gulf of Mexico from raft stability requirements because a company's evacuation plans would enable it to remove all personnel from a drill rig long before a hurricane would arise in that area. The belief was also stated that more requirements to alter the rafts would "* * * sow the seeds of distrust * * *" among drill rig personnel. The Coast Guard has concluded that requirements calling for the retrofitting of existing rafts are an impractical proposition in light of the wide variation existing in the conditions of their fabrics, coupled with the years of service remaining to them. Also, as to the concern about stability exclusion on the basis of geographical location, the Coast Guard sees this as an unacceptable argument because of the casualties that have occurred in the area referenced. As for the distrust of seamen about equipment changes, the Coast Guard considers this as another difficulty to be overcome by more intensive training with rafts, an imporfant subject but not germane to this particular regulation change.

2. Two comments addressed the need for regulatory exemptions in circumstances where stabilized rafts would be unnecessary or hindered in their function as lifesaving equipment. The first of these came from the operator of a passenger vessel on inland rivers where waves sufficient in magnitude to capsize rafts would be unlikely. The second comment expressd the concern of a drill rig operator about the possibility of an underbody appendage of a raft becoming fouled on the "* * * pipes, manholes, or random junk * * * protruding upward from the top deck of the (underwater) mat" on which a jackup drilling rig would be supported. The Coast Guard does not agree with either of these two comments. In the first case, inflatable liferafts on passenger vessels operating on inland rivers are not mandatory: such rafts are but one of the several options of lifesaving equipment available to vessels in this category. The regulations proposed below, therefore, do not pose an added burden on the operations of such passenger vessels, particularly because the proposals would not entail any retrofitting of existing rafts. In the case of the second comment concerning jackup drilling rigs: the Coast Guard considers the entanglement of a raft's stability appendages with the mat portion of such rigs highly unlikely because of the considerable depth of water existing over the top deck of an underwater mat that would prevent contact of a raft with any portions of the mat.

3. Four comments responded to the questions posed on Page 33345 of the Advance Notice concerning the cost-benefit relationship for improved rafts and the feasibility of permitting the actions of the marketplace to determine the interest of the public in the purchase of rafts possessing improved stability appendages. Two of these comments, one from a drill rig operator and another from an association, favored the marketplace approach; a third, from an inventor of lifesaving equipment, believed the Coast Guard should take regulatory action; and a fourth party gave related observations about marketplace aciton. With regard to the costs that could be incurred, one drilling rig operator gave a figure of $500,000 for the replacement of the company's 76 rafts ranging in size from 6 to 25-person capacity if there replacement becomes necesary under a regulatory change. Other estimates, from an association of drill rig operators, fixed the cost at $46,000,000 for the replacement of 6,800 rafts of various sizes, or $7,000,000 if the same rafts were altered to include large ballast chambers at an averge cost of $1,000 per raft.

The Coast Guard evaluates the above cost considerations as follows: Regulations are not being proposed here to require the replacement of existing rafts aboard vessels and drill rigs. All proposed improvements for the stability of the rafts given below would apply to rafts of future production; the Coast Guard does not consider the retrofitting of existing rafts with improved stability appendages a practical proposition because of the wide variation that esists in the condition of their tube fabrics and the varying lengths of time that they will remain in service before they are worn out. Retrofiting an old raft would be a futile exercise. For these reasons the regulations proposed below leave existing rafts unaltered and they may remain in use as long as they are in satisfactory condition. Rules proposed below for the improvement of liferaft stability will be limited to rafts produced in the future, after a reasonable period afforded the manufacturers for making the change.

Discussion of the Proposed Regulations

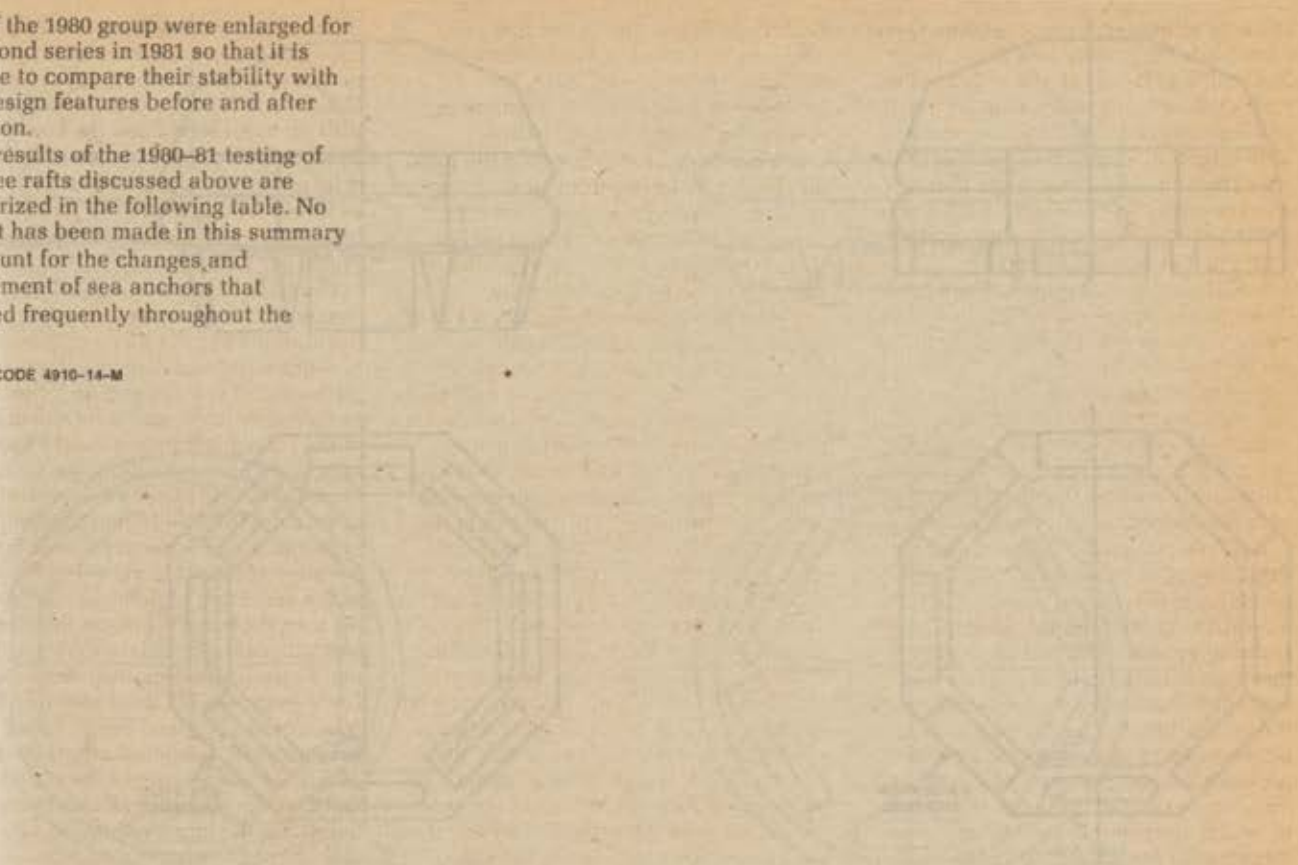
The Coast Guard proposes to revise the requirements dealing with the stability of rafts in 46 CFR 160.051 (Code of Federal Regulations, Title 46—Shipping, Subpart 160.051, "Inflatable Liferafts"). This proposal consists of two parts: the first fixing the minimum volumes of the underwater appendages of the rafts as a percentage of their tube volumes as determined under existing rules, and the second dealing with the performance requirements that must be met by liferafts with such appendages.

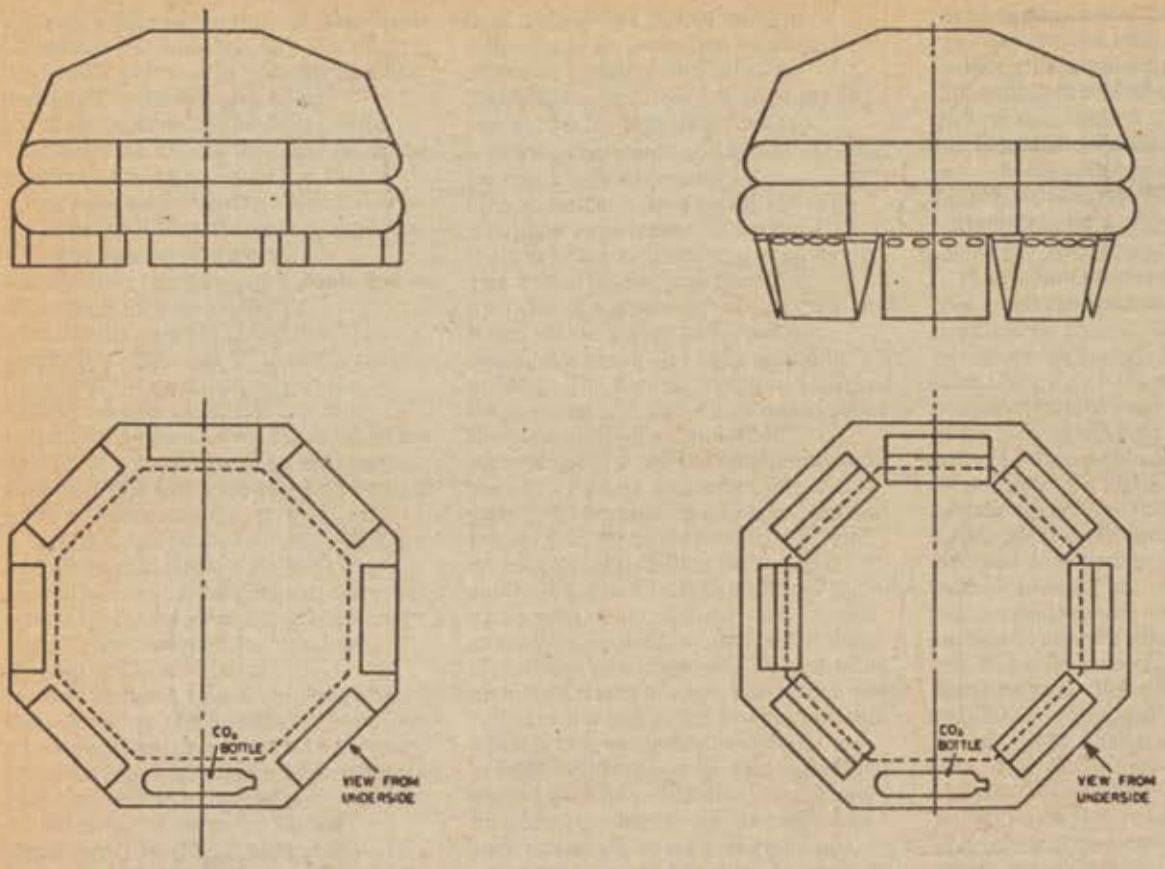
The proposals in this notice are based in part on the results of tests conducted by the Shipping Directorate of the Government of Iceland as described in its publicaton "Siglingamal" (Shipping), No. 13 of July 1981. These tests were conducted in March 1981 with various sizes of 10 person rafts set adrift in heavy weather in waters adjacent to Iceland. One aspect of the Icelandic sea trials was the continuity of previous work started in 1980 using essentially the same makes and sizes of rafts. The stability appendages of three particular

rafts of the 1980 group were enlarged for the second series in 1981 so that it is possible to compare their stability with their design features before and after alteration.

The results of the 1980–81 testing of the three rafts discussed above are summarized in the following table. No attempt has been made in this summary to account for the changes and replacement of sea anchors that occurred frequently throughout the series.

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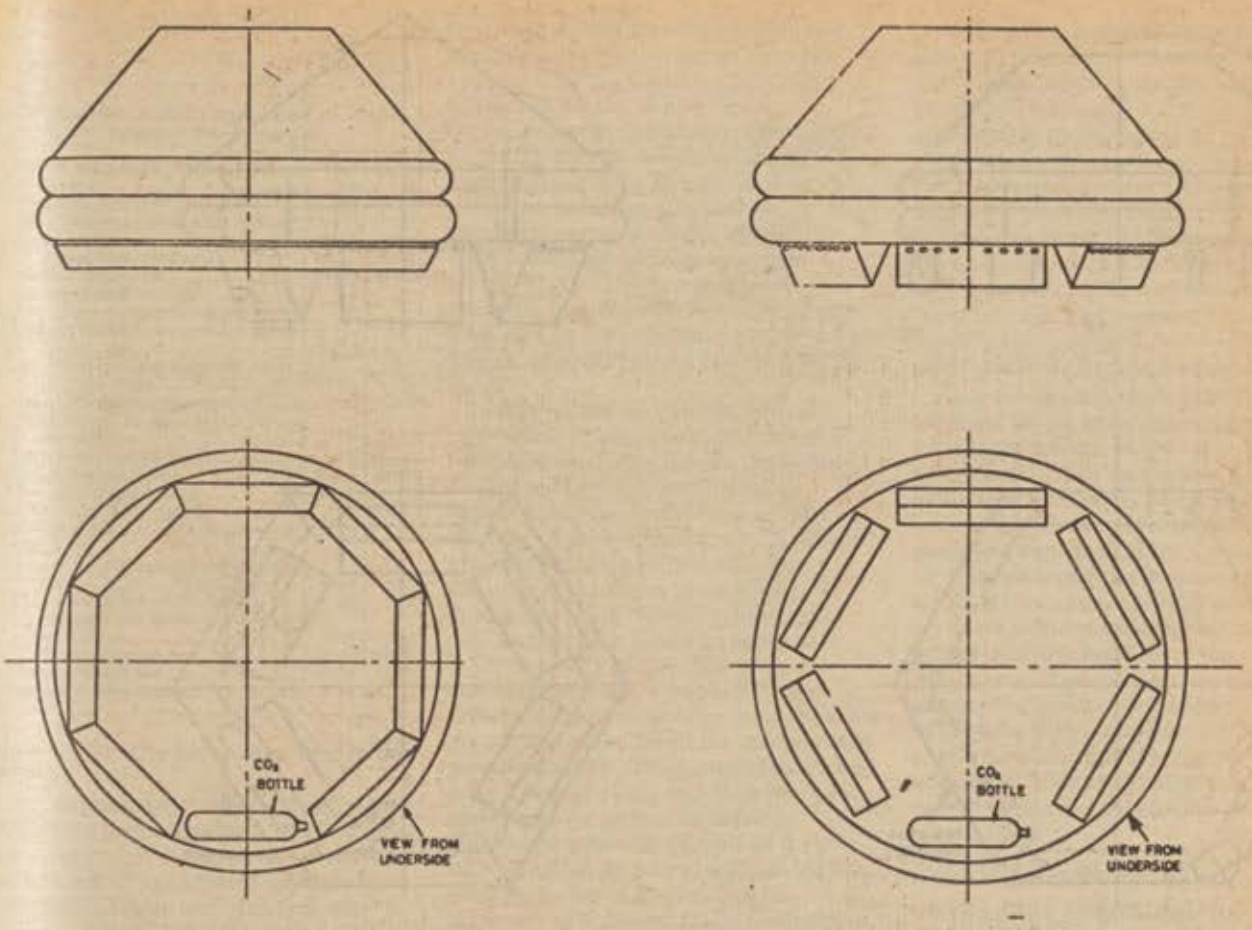




1980 Stability Appendage

1981 Stability Appendage

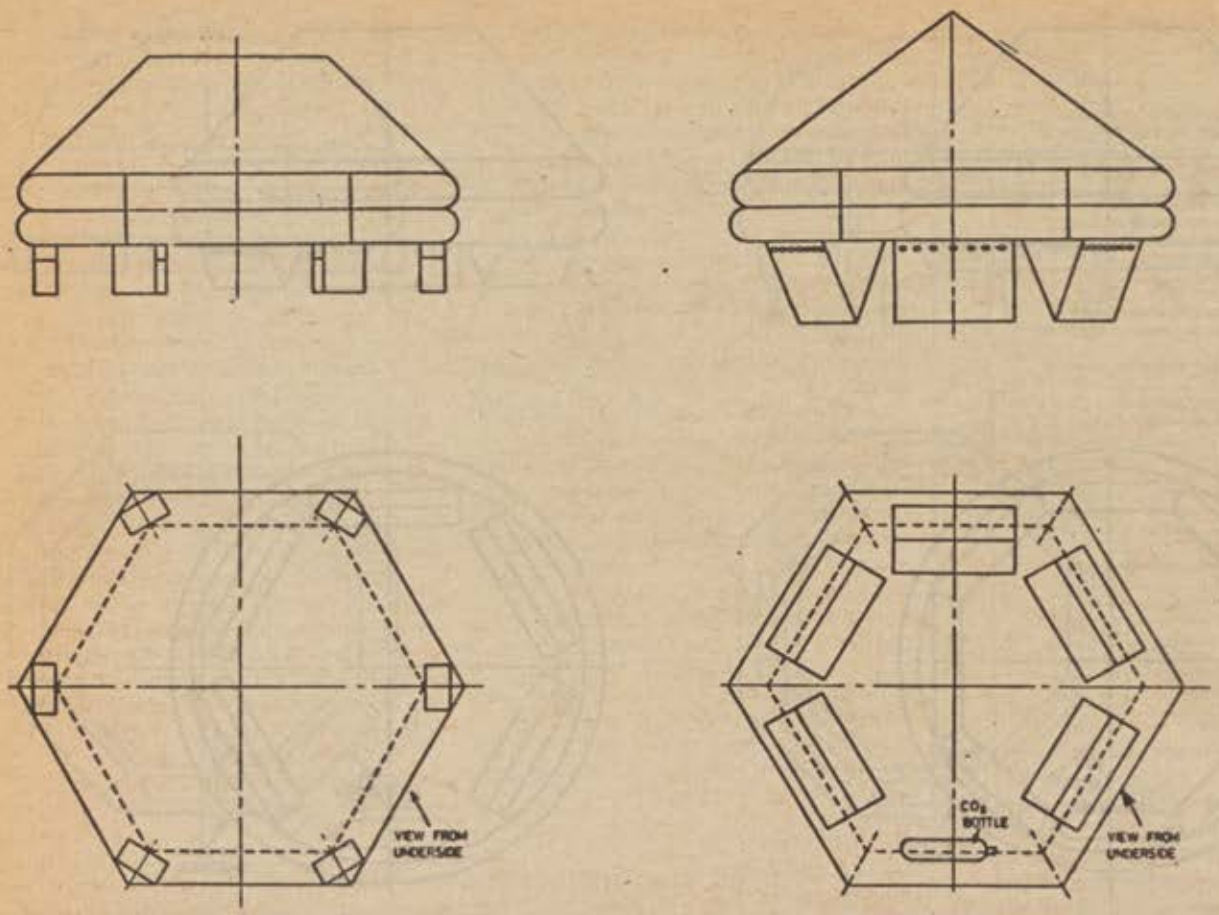
Figure 1 Raft "A"



1980 Stability Appendage

1981 Stability Appendage

Figure 2 Raft "B"



1980 Stability Appendage

1981 Stability Appendage

Figure 3 Raft "C"

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ICELANDIC SEA TRIALS

	1980	1981
Raft "A": 10-person capacity; octagonal waterplane; water pockets as show in Figure 1:		
Volume of principal buoyancy tubes, cubic ft.	34	34
Total water pocket volume, cubic ft.	8.2	12.4
Water pockets as percentage of buoyancy tubes	24.2	36.3
Wind force, miles per hour	47–54	55–63
Height of waves, feet	23–33	17–33
Number of times capsized	1	
Raft "B": 10-person capacity; circular waterplane, water pockets as shown in Figure 2:		
Volume of principal buoyancy tubes, cubic ft.	34	34
Total water pocket volume, cubic ft.	5.6	4.6
Water pockets as percentage of buoyancy tubes	16.4	13.5
Wind force, miles per hour	99	40–46
Height of waves, feet	33–36	10–13
Number of times capsized	1	
Raft "C": 10-person capacity; hexagonal waterplane; water pockets as shown in Figure 3:		
Volume of principal buoyancy tubes, cubic ft.	34	34
Total water pocket volume, cubic ft.	5.3	16.6
Water pockets as percentage of buoyancy tubes	15.6	48.8
Wind force, miles per hour	47–54	55–63
Height of waves, feet	13–16	17–33
Number of times capsized	1	

Other test results are summarized in the ANPRM.

The improved stability demonstrated in the 1981 Icelandic series resulted from an expansion of the sizes of the 1980 water pockets in conjunction with the streaming of large and elaborate sea anchors. Although the improved sea anchors may have contributed to the stability improvement, such devices do not perform effectively until they are fully streamed, a condition that might take as long as 5 to 10 minutes to attain. Also, capsizing wind and wave forces may not always act along the same line of force as the sea anchor. Although sea anchors are important, the more optimum line of development for improving raft stability will result from a mechanism or element which would become operative almost immediately after a raft's inflation. To accomplish this, the Coast Guard proposes rapid-deploying water pockets of a large size.

From the results of the Icelandic testing, it is evident that a large water volume can improve the stability of liferafts. The Coast Guard now proposes a new requirement for a total stability appendage volume of a raft to equal 100 percent of the volume now required for its buoyancy tubes, that is 3.4 cubic feet of volume for each person of rated carrying capacity. This significant increase of volume to a level greater than the appendage volumes of the Icelandic rafts noted above is feasible because it applies solely to the rafts' stability appendages and does not, as in the case of the other country, also require sea anchors of larger size and complication. By this action the rafts approved by the Coast Guard in the future can attain, at one move, beneficial sizes of stability appendages in contrast to the more incremental approach applying in Iceland. The proposed revisions also include requirements for a simple stability calculation and performance-type testing of the rafts as a means of verifying that the stability appendages proposed by their designers in the future will be adequate for an assumed wind force.

In light of the deterioration that is reasonable to expect in the aging of a raft's fabrics, the proposals made here are judged by the Coast Guard as suitable only for application to rafts at the time of their manufacture. A retrofit program for the addition of better stability appendages to existing rafts during annual and overhaul testing is not considered a feasible proposition.

The majority of the rafts now manufactured and approved by the Coast Guard have smaller water pockets than those called for in the amendments proposed below. The manufacturers will need a period of not less than one year after these amendments become effective to alter the designs of their rafts. A one-year period will enable the manufacturers to accomplish the sequence of redesign, Coast Guard plan review, performance testing, and final approval.

For the proposed change of design, the Coast Guard would limit the testing of existing approved rafts to requirements specifically connected with the fitting of improved stability appendages, that is, the raft's performance testing. The proposed requirements should not be interpreted as requiring the rafts now approved to undergo a second series of prototype tests under the requirements of 46 CFR 160.051–5(c).

Regulatory Evaluation

The regulations proposed here have been reviewed under the following requirements:

E.O. 12291 and DOT Regulatory Policies and Procedure

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the docket. This draft evaluation indicates the economic impact that will result from this proposal is minimal. The regulation changes proposed here are expected to produce a 10 percent increase in the prices of rafts manufactured in the future. Eventually these would be purchased by vessel and drill rig operators to replace existing rafts that wear out. The average annual cost increase would be about $136 per inspected vessel as a result of these rules. Since some smaller vessels only have one liferaft, the average annual cost increase could be as little as $50 for these vessels. The continued use of existing rafts would be unchanged by the regulation changes proposed here.

Future economic impacts of this proposal would affect an estimated annual production of 300 rafts, each now estimated to have an average sales price of $5,000. Other economic impacts will involve such intangibles as the reduced operating expenses of the Coast Guard for intangibles as the reduced operating for its air-sea rescue sorties as the rafts involved in marine casualties become easier to locate because of the reduced drifting and capsizing produced by their improved stability appendages. The use of liferafts with improved stability characteristics should result in additional lives saved, however, the extent of this benefit can not be established.

Regulatory Flexibility Act

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The increased costs of producing liferafts should not be influenced by the size of the manufacturer, since inflatable liferafts are largerly built by hand and there is little unit cost advantage in being a large business. Since liferafts are purchased to meet mandated safety standards, the increased costs resulting from these regulations will be passed on to the consumers.

Approximately 1,100 inspected merchant vessels on which rafts purchased in the future will be installed, will be affected by this proposed rulemaking. As discussed previously, an average annual cost increase of about $136 per inspected vessel is expected as a result of these rules. Since some smaller vessels only have one liferaft, the average annual cost increase could be as little as $50 for these vessels. These costs are not considered to be significant for any of the affected entitles.

List of Subjects for 46 CFR Part 160

Marine safety.

In consideration of the above, the Coast Guard proposes to amend Chapter

I of Title 46—Shipping of the Code of Federal Regulations as follows:

SUBCHAPTER Q—SPECIFICATIONS

PART 160—LIFESAVING EQUIPMENT

1. The authority citation to 46 CFR Part 160 is revised to read as follows:

Authority: 46 U.S.C. 3306(a); CFR 1.46(b)

2. By adding paragraph (k) to § 160.051–4 to read as follows:

§ 160.051–4 Design.

* * * * *

(k) *Stability Appendages.* Each liferaft must have stability appendages on its underside for the reduction of drifting and capsizing from wind and wave forces. These appendages must meet the following requirements:

(1) The total volume of water-filled appendages must be not less than the volume of the principal buoyancy compartments of the liferaft as calculated under the capacity requirements of paragraph (i) of this section.

(2) The appendages must be distributed around the periphery of the exterior bottom of the liferaft except that appendages may be omitted at locations taken by the inflation cylinder(s).

(3) The system of stability appendages must consist of at least two separate parts so that damage to one part will leave at least half of the minimum volume required in paragraph (k)(1) of this section intact.

(4) Openings in the sides of the appendages or gaps between appendages must be provided to permit the passage of air from under the liferaft.

(5) The appendages must be designed to deploy underwater. If weights are used for this purpose, they must be of noncorrodible metal.

3. By revising paragraphs (e)(6) and (e)(8) and adding paragraphs (e)(13) through (e)(16) to § 160.051–5 to read as follows:

§ 160.051–5 Inspection and Tests.

* * * * *

(e) *Preapproval Inspections and Tests.*

* * * * * *

(6) *Righting Test.* It must be demonstrated that the liferaft is capable of being righted by one person if it inflates in an inverted position by conducting a test as follows:

(i) The inflatable liferaft must be fully equipped for ocean service.

(ii) All of the entrances, ports, and other openings for the liferaft canopy during this test must be open in order to allow the infiltration of water into the canopy of the liferaft when capsized.

(iii) The liferaft must be placed in a body of water, in the inverted position, such that the canopy of the liferaft is either submerged or resting upon the water.

(iv) The canopy of the liferaft must then be filled with water until the volume of water entering the liferaft canopy is equal to the volume of water exiting the liferaft canopy.

(v) The liferaft is then allowed to rest in the water for at least 10 minutes in the capsized position.

(vi) The liferaft being tested must then be righted by one person weighing no more than 75 kg (165 lb.).

(vii) The liferaft after righting must not show evidence of damage either to the structure or to the equipment stored in the liferaft.

* * * * *

(8) *Towing test.* The liferaft must be loaded with weight equal to the weight of the "ocean service" equipment described in § 160.051–7(b) and –7(c), plus 75 kg (165 lb.) for each person the liferaft is intended to carry. The liferaft must then be towed at a speed of 3 knots for a distance of 1km (0.62 mi.). The liferaft must not be damaged in a way that would adversely affect its performance.

* * * * *

(13) *Lift-Out Force Test.* This test is to demonstrate that the restraining forces exerted by the stability appendages of an inflatable liferaft are sufficient to restrain the capsizing effect produced on the liferaft by hurricane force winds (63 knots).

(i) *Test Equipment.* The following test equipment is required:

(A) Spring scale or tension load dynamometer.

(B) Stop watch.

(C) Inclinometer.

(D) Linear scales.

(E) Bridle or straps for attachment to liferaft for application of load.

(ii) *Environmental Conditions.* The liferaft must be tested in a pool or body of water free of wind exceeding 8 knots and current exceeding 1 knot.

(iii) *Procedure.* The fully-equipped "Ocean Service" liferaft, complete with bridle for tension loading, must be inflated and deployed afloat on the water at the test site with its stability appendages freely deployed. When the floating liferaft has become stabilized, a tension load must be applied to the liferaft as shown in Figure 160.051–5(e)(13)(iii) as follows:

(A) The liferaft must be lifted at a speed of 5.5 x b (ft./min.) (±5%) where "b" is the width of the liferaft in ft. as shown in Figure 160.051–5(e)(13(iii), and the force "F" is continuously measured while the liferaft is being lifted;

(B) The liferaft must be tested about both the major and minor axes of its waterplane when fully-loaded;

(C) About either of the above axes, the calculated value of Fx b in ft.-lbs.; using the peak values of the tension load "F" must be demonstrated to exceed the overturning moment of the force of the wind as shown on Figure 160.051–5(e)(13)(iii)(C). The overturning moment produced by the wind is estimated as follows:

$M_w = W \times d$

where:

M_w = Overturning moment of wind in lb.-ft.
W = Wind force in lb. (see below)
d = Distance from waterline to centroid of projected area facing wind, in ft.

The wind force is estimated as follows:

$W = 0.004 \times V^2 \times A$

where:

V = Wind velocity = 69 mi./hr.
A = Projected area facing wind, in ft^2.

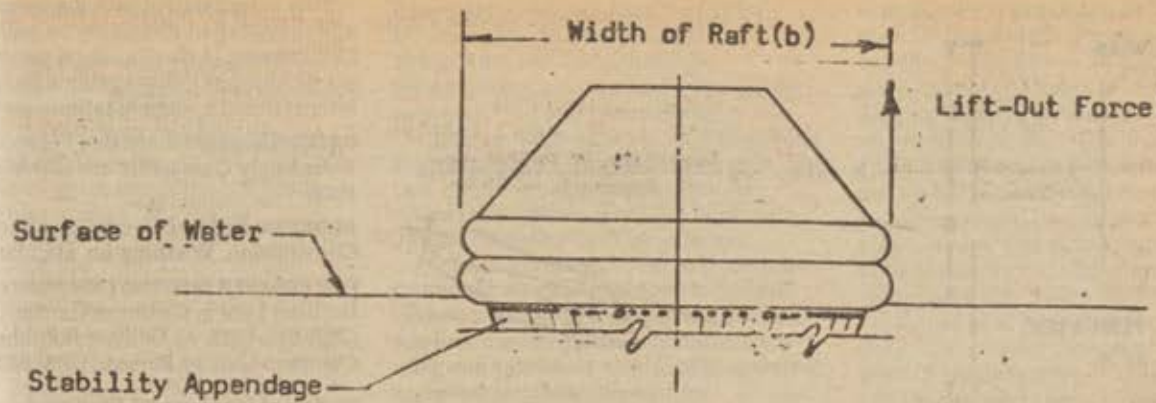


Figure 160.051-5(e)(13)(iii)

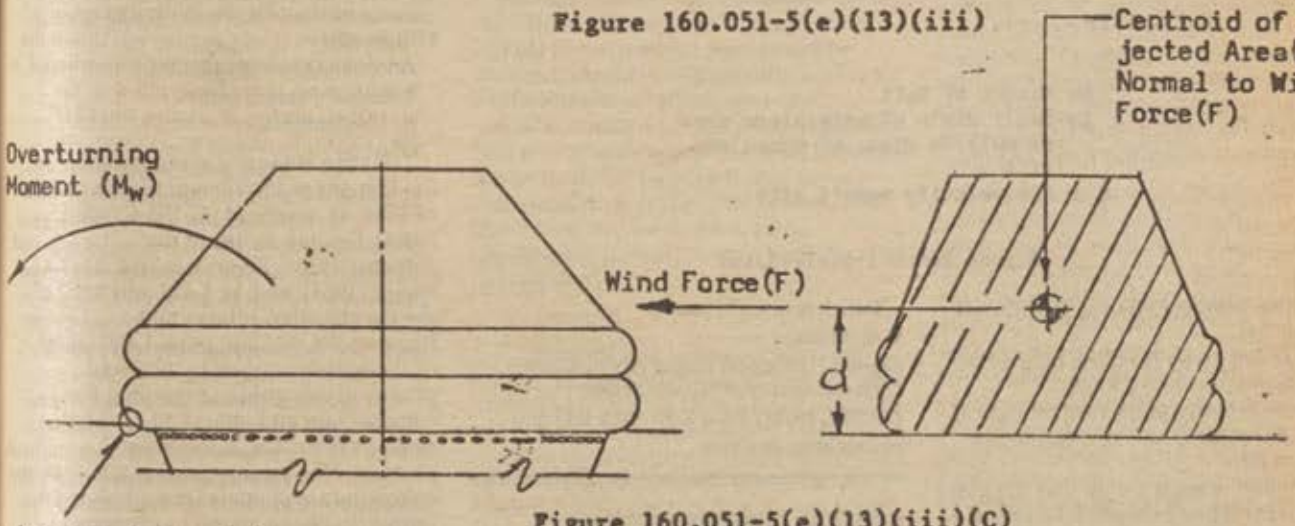


Figure 160.051-5(e)(13)(iii)(C)

(iv) *Exceptions from Test Requirements.* This test is not required for a liferaft of 10 persons capacity or less if a liferaft of the same design and in the same size range has previously passed the test. This test is also not required for a liferaft of more than 10 persons capacity if a liferaft of the same design between 20 and 25 persons capacity has previously passed the test.

(14) *Maneuverability test.* The liferaft must be paddled for a distance of 25 m (82 ft.) in calm water, by two persons using the paddles required in § 160.051-7(b)(7). The liferaft must cover this distance in less than 2.5 min.

(15) *Helicopter Rescue Compatability Test.* This test is to demonstrate that personnel can, without entering the water, be removed from the liferaft by a helicopter of characteristics comparable to a Coast Guard HH-3.

(i) *Test Equipment.* The following test equipment is require:

(A) A helicopter capable of creating wind velocities as specified in paragraph (e)(15)(v) of this section.

(B) Wind velocity measurement equipment capable of measuring the velocities specified in paragraph (e)(16)(v) of this section with an accuracy of ±5 knots.

(C) Inclinometer.

(D) Raft velocity measurement equipment.

(E) Helicopter velocity and altitude measurement equipment.

(ii) *Test Site.* The liferaft must be tested on an open body of water with no significant obstructions within 100 m (330 ft.).

(iii) *Environmental Conditions.* The wind velocity at the test site must not exceed 8 knots in any direction and 3 knots toward the direction of helicopter approach. The water must not be moving at greater than 1 knot perpendicular to the direction of helicopter approach and 0.1 knot toward or away from the direction of helicopter approach.

(iv) *Exceptions from Test Requirements.* This test is not required under the conditions specified in paragraph (e)(13)(iv) of this section.

(v) *Procedure.* The fully equipped ocean service liferaft must be deployed and allowed to stabilize on the water as specified in paragraph (e)(15)(ii) of this section. All canopy entrances must be open and the sea anchor must not be deployed. Air velocity measurement apparatus must be set up to simultaneously measure velocities at the locations specified in Figure 160.051-5(e)(15)(v). The helicopter must be flown to and stationed over a canopy opening at an altitude of between 5 and 10 m above the water surface. The approach must create an average air velocity of at least 63 knots through the measurement plane. The rate of approach must not be greater than 5 knots.

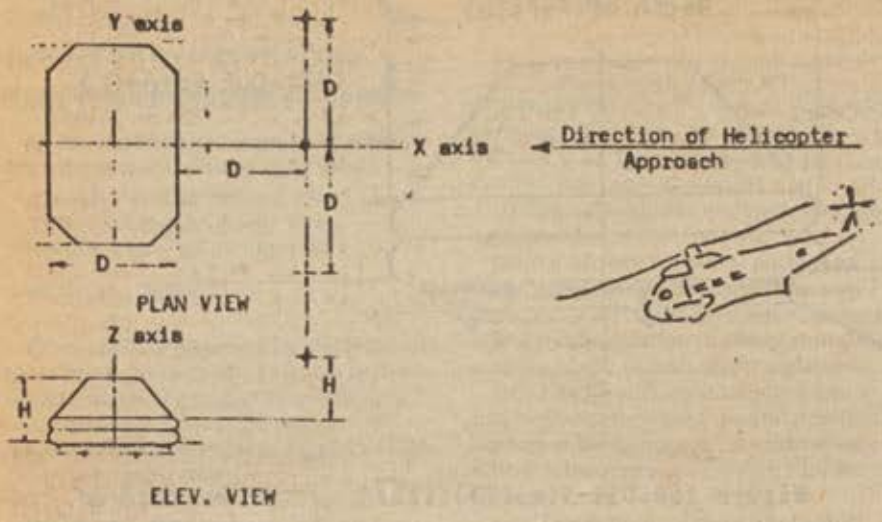


Figure 160.051-5(e)(15)(v)

(vi) *Acceptance Criteria.* The liferaft must not be—.

(A) moved away from the helicopter at a rate greater than 1 knot,

(B) rotated around its vertical axis at a rate of greater than 1 revolution per minute, and

(C) tipped in such a way that the plan of the main tubes exceeds an angle of greater than 20° from the horizontal.

(16) *At-Sea Test.* This test is to determine whether the liferaft can survive 6 hours in a seaway without sustaining damage that would adversely affect its performance.

(i) *Procedure.* The liferaft must be inflated and set afloat at sea for at least six hours, under a least sea state 6 conditions on the Douglas Scale of State of Sea. The liferaft must be empty, have its relief valves plugged, and not be equipped with a sea anchor or any other tethering device. The liferaft must be kept under observation during the test. At the end of the six hours, the liferaft must be recovered and examined for damage.

(ii) *Acceptance Criteria.* During the six hours afloat, the liferaft must not capsize. The liferaft must not be damaged in a way that would adversely affect its performance during the six hour period.

(iii) *Exceptions from Test Requirements.* This test is not required under the conditions specified in paragraph (e)(13)(iv) of this section.

Dated: January 7, 1985.

B. G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85-741 Filed 1-10-1985; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR CH. I

[CC Docket No. 84-1299; FCC 84-632]

Establishment of Satellite Systems Providing International Communications

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and proposed rulemaking.

SUMMARY: This action initiates an inquiry and proposed rulemaking regarding the construction and operation of satellite systems providing international communications services.

This action is taken by the Commission in its efforts to obtain comments and information on the recommendations, forwarded by the Departments of State and Commerce, on authorizing satellite systems, on the international communication services market, and on the communications satellite market.

This action will obtain the comments and information necessary to assist the Commission in developing a policy on establishing satellite systems providing international communications services.

DATES: Comments are due February 14, 1985. Reply Comments are due March 7, 1985.

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

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau, (202) 632-7265, or Colleen Boothby, Common Carrier Bureau, (202) 632-6917.

Notice of Inquiry and Proposed Rulemaking

In the matter of establishment of satellite systems providing international communications, CC Docket No. 84-1299, FCC 84-632.

Adopted: December 19, 1984.

Released: January 4, 1985.

By the Commission:

1. Notice is hereby given pursuant to Section 403 of the Communications Act of 1934, as amended, 47 U.S.C. 403 (1984), Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b) (1984), and §§ 1.412 and 1.430 of the Commission's Rules and Regulations, 47 CFR 1.412, 1.430 (1984), of the initiation of an inquiry and proposed rulemaking regarding the construction and operation of satellite systems providing international services. The purpose of this notice is to solicit data and analyses regarding issues that have arisen in connection with the filing of a series of applications for authority to establish communications satellites that would provide international services, and to obtain comments on the recent executive branch decision that such systems are "required in the national interest" subject to certain limitations.

2. These applications are those filed by the Orion Satellite Corporation ("Orion"), File No. CSS-83-002-P, on March 11, 1983; by International Satellite, Inc. ("ISI"), File Nos. CSS-83-004-P (LA), I-P-C-83-073, on August 12, 1983; by RCA American Communications, Inc. ("RCA"), File No. I-T-C-84-085, on February 13, 1984; by Cygnus Satellite Corporation ("Cygnus"), File No. CSS-84-002-P (LA), on March 7, 1984; and by Pan American Satellite Corporation ("PanAmSat"), File No. CSS-84-004-P (LA), on May 31, 1984.[1]

[1] Systematics General Corporation ("Systematics") filed two applications to construct, launch, and operate satellite systems providing

Continued

3. Communications Satellite Corporation ("Comsat") has filed petitions to deny each of the applications listed above. Several other parties have filed comments.

4. On April 6, 1983, the Department of State and the Department of Commerce sent a joint letter regarding the Orion application to the Commission requesting that the Commission refrain from taking any final action on the application until such time as an executive branch group could review and study the application's impact on the national interest and foreign policy of the United States.[2] On August 26, 1983, following the filing of ISI's application, the Department of Commerce sent a letter to the Commission which again requested that the Commission not take any final action on the applications.[3] The letter stated that the filing of a second application for international satellite services raised new considerations which would have to be included in the executive branch analysis.

5. On November 28, 1984, President Reagan signed a presidential determination that alternative satellite systems were "required in the national interest" within the meaning of sections 102(d) and 201(a) of the Communications Satellite Act. The President's determination states that the United States shall consult with Intelsat regarding such systems "as are authorized by the Federal Communications Commission." The determination is included as Attachment A to this Notice. At the direction of the President, the Department of State and Department of Commerce jointly informed the Commission, by letter, of the President's decision and the criteria necessary to ensure that the United States meets its international obligations and to further U.S. telecommunications and foreign policy interests.[4] A copy of the State/Commerce letter appears as Attachment B to this Notice. The letter proposes that two restrictions be imposed on the alternative systems prior to final authorization by the Commission:

(1) Each system is to be restricted to providing services through the sale of long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service); and,

(2) One or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the Intelsat Agreement to ensure technical compatibility and to avoid significant economic harm.

6. The executive branch has indicated that an executive branch report detailing the grounds for its action may be submitted as a part of this proceeding. Interested parties will have an opportunity to reply to any such submission.

I. Background

7. Orion's proposed system would consist of two in-orbit satellites and one ground spare, with each satellite having 22 transponders providing 36 MHz of useable bandwidth per transponder. The satellites' signals would cover the eastern portion of North America and the western portion of Europe and would transmit and receive in the 11/14 GHz frequency bands. The proposed satellites would be designed to provide video, data, and audio services using digital and analog modulation techniques. The video services would consist of both full-frame, full-speed video for television programming, and compressed, teleconferencing capabilities. Each satellite's capacity would exceed the equivalent of 20,000 voice-grade half-circuits, 22 full video signals, or 1.4 Gbps of data signals. Orion states in its application that it would not operate as a common carrier because it would sell or lease, over the life of the satellite, transponder capacity on a non-tariffed basis to users on either side of the Atlantic.

8. ISI's proposed system would consist of two in-orbit satellites and one ground spare, with each satellite having 32 receive and transmit channels (over 32 transponders) providing 54 MHz of useable bandwidth per channel. The satellites' signals would cover the contiguous 48 United States (CONUS) and the western portion of Europe as far as the Adriatic Sea. The proposed system would transmit and receive in the 11–12/14 GHz frequency bands. The satellites would be designed to provide video, audio, and data services using both digital and analog modulation techniques. The video services would consist of both high-speed and slow-scan video teleconferencing and, along with the audio services, would encompass every kind of television and radio programming currently available in the United States and Europe. The data services would include TWX/telex, newswires, facsimile, and electronic mail. ISI states in its application that it would use a portion of its capacity to provide services on a tariffed common carrier basis. ISI would sell or lease the remainder of its capacity in the same manner as that proposed by Orion.

9. Cygnus' proposed system would consist of two in-orbit satellites and one ground spare, with each satellite having 16 transponders providing 54 MHz of useable bandwidth per transponder. The satellites' signals would cover CONUS and the western portion of Europe. The system also would have a spot beam which would provide service to Puerto Rico, the U.S. Virgin Islands, the Caribbean Basin, and portions of Central America. The system would operate in the 11–12/14 GHz frequency bands and be able to operate with a variety of earth stations including the inexpensive "micro" earth stations (e.g., roof-top-antennas) as well as the larger "mini" and "main" earth stations.[5] The satellites would be designed to provide digital communications services including video teleconferencing, high-speed facsimile, computer-to-computer communications, remote printing, teletex, videotext, and data collection and distribution services. Cygnus states in its application that it would offer all of its transmission capacity on a non-common carrier basis through long-term leases or transponder sales.

10. PanAmSat's proposed system would consist of one in-orbit satellite and one ground spare. Twelve of the satellite's 36 transponders would be used for international traffic between North and South America. The remaining 24 would be used for

international services (File Nos. CSS–84–005–P (LA), CSS–84–006–P (LA)) on June 12, 1984. Systematics filed a motion to withdraw both applications on July 27, 1984. Under delegated authority, the Commission dismissed the applications without prejudice by letter dated August 6, 1984 pursuant to § 1.748(a) of the Commission's Rules and Regulations, 47 CFR 1.748(a) (1984).

In addition, Western Union Telegraph Co. requested, and was granted, a waiver to spend additional money to modify its previously authorized WESTAR VI–S domestic satellite (File No. 1144–DSS–P/LA–84) to allow 6 transponders to provide coverage of Central and South America. Letter from Chief, Domestic Facilities Division, Common Carrier Bureau, to Robert N. Green, Associate Counsel, Western Union Telegraph Company (July 20, 1984).

[2] Letter from David J. Markey, Assistant Secretary-Designate for Communications and Information, and Diana Lady Dougan, Coordinator, International Communications and Information Policy, to the Chairman of the Federal Communications Commission (April 6, 1983).

[3] Letter from David J. Markey, Assistant Secretary-Designate for Communications and Information, to the Chairman of the Federal Communications Commission (August 26, 1983).

[4] Letter from George P. Shultz, Secretary of State, and Malcolm Baldrige, Secretary of Commerce, to Mark S. Fowler, Chairman, Federal Communications Commission (November 28, 1984).

[5] Mini earth stations generally have antennas ranging in size from 2 to 4.5 meters. Main earth stations have antennas that are larger than 4.5 meters. *See* Cygnus Satellite Corporation application, File No. CSS–84–002–P(LA), at 6.

domestic service in South America. The twelve international transponders would have 72 MHz of useable bandwidth per transponder and would be used to provide links between New York, Miami, the South American continent, and parts of Central America, the Caribbean, and the Iberian pennisula. The system would uplink at 6.4–6.9 GHz and downlink at 10.7–11.2 GHz. The satellite would be designed to provide video and audio distribution services, specifically, distribution of television and radio programs from entities such as television networks, motion picture studios, cable systems, and news and wire services. PanAmSat proposes in its application to offer its transponder capacity on a non-common carrier basis for sale or long-term lease to both U.S. and foreign customers.

11. RCA's proposed system would consist of six transponders on its previously-authorized SATCOM VI domestic satellite.[6] The satellite would operate in the 4/6 GHz frequency band and have 36 MHz of useable bandwidth per transponder capable of covering CONUS and portions of Europe and Africa. The six transponders would be available for either domestic or international service because the satellite would be equipped with transfer components capable of switching the transponders' service areas to accommodate either service. The transponders would be used for video distribution, teleconferencing, private leased voice, and low-speed and medium speed data communications. RCA states in its application that it would provide its services on a tariffed, common carrier basis, but it also states that it would make whole transponders available for customers with high capacity needs.

12. These applications are the first to be filed with the Commission that propose to construct, launch, and operate satellite systems capable of international service, other than those filed by Comsat as the U.S. Signatory to the International Telecommunications Satellite Organization ("Intelsat"). The applications, and the comments and petitions that have been filed in response to them, raise a variety of legal, foreign policy, economic, trade, and technical issues which the Commission previously has had no occasion to address. The overarching issue presented by the applications is whether the public interest will be served by granting them. To resolve this issue, the Commission must consider a question of fundamental U.S. policy, namely, the extent to which United States telecommunications users should be required to use Intelsat exclusively to meet their future international communication satellite needs. Our concern in disposing of the applications will be to develop a policy which will assure that U.S. needs are met in the future.

13. The Communications Satellite Act of 1962, 47 U.S.C. 7701–744 (1984), is one of the primary expressions of United States' policy on international commercial satellite systems. The Act's stated purposes are: (1) to promote the establishment of a commercial communications satellite system in order to serve the needs of all countries and to improve the global communications network; and (2) to contribute to world peace and understanding by establishing a system, through the cooperation of all countries, that benefits the economically less developed countries as well as the economically developed countries. 47 U.S.C. 701(a) and (b). The Act provides that the United States will participate in the organization and operation of such a satellite system through a private corporation formed under the Satellite Act and subject to government oversight. 47 U.S.C. 701(c). In addition, the Act states that additional satellite systems are not precluded, if the systems are necessary to meet unique governmental needs or are otherwise required in the national interest. 47 U.S.C. 701(d).

14. The global communications satellite system envisioned by the Satellite Act is owned and operated by Intelsat, in independent self-supporting organization comprised of 109 member countries. The United States' signatory to Intelsat is Comsat, a private corporation created pursuant to the Satellite Act. The definitive arrangements which formally established Intelsat consist of two separate international agreements which set out the duties and obligations of the participating governments and of the actual investors and participants in Intelsat. These arrangements became effective in 1973, although Intelsat has been operational since 1964. Since its birth in 1964, Intelsat has grown rapidly, reporting $315 million in total revenues for 1982 and projecting $391 million in total revenues for 1983.[7]

15. The Intelsat global satellite system is composed of a space segment and a ground segment. The space segment consists of communications satellites and related equipment necessary to operate these satellites, all of which is owned by Intelsat. The ground segment consists of various earth stations, located throughout the globe, which transmit and receive signals from Intelsat satellites. The earth stations generally are owned and are operated by the telecommunications entities of the countries in which they are located. The Intelsat global system, as of July, 1984, consists of 15 satellites in geostationary orbit.[8] The system had 410 earth stations in 1982, and Intelsat projected that 652 earth stations would be operating in the system by the end of 1983.[9]

16. The purpose of this proceeding is to obtain data and analyses regarding the possible effects of establishing alternative international communications satellite systems. Through this Notice, we seek information that will assist us in resolving a number of issues raised by the applications. In the following discussion, we will outline the issues upon which we are requesting comment. We expect the analyses, recommendations, and positions of commenting parties to be supported by specific information and data. Unsupported assumptions and conclusory statements will receive such weight as they merit.

II. Legal Issues

A. Consistency with Communications Satellite Act of 1962

17. The Commission has previously found that § 102(d) of the Communications Satellite Act of 1962 contemplates the establishment of international satellite systems, in addition to the Intelsat global system, when necessary to meet U.S. needs or to respond to changing satellite technology.[10] Section 102(d) provides as follows:

> It is not the intent of Congress by this chapter to preclude the use of the communications satellite system for domestic communication services where consistent with the provision of this chapter *nor to preclude the creation of additional communications satellite systems*, if required to meet unique governmental needs or *if otherwise required in the national interest.*

[6] RCA American Communications, Inc., Mimeo No. 33200, released August 4, 1983.

[7] Intelsat, 1983 Annual Report 28 (1983).

[8] Intelsat Document, "Intelsat Satellites in Orbit: Technical Status for the month of July 1984," Addendum No. 1 to BGF-60-8E (August 15, 1984) (available in Public Reference Room [533], Federal Communications Commission).

[9] Intelsat, 1983 Annual Report 15 (1983).

[10] Transborder Satellite Video Services, 88 FCC 2d 258, 273 (1981).

47 U.S.C. § 701(d) (emphasis added). In addition, in language almost identical to that of Section 102(d), Congress provided in § 201(a)(6) of the Act that the president shall "take all necessary steps to insure the availability and appropriate utilization of the communications satellite system for general governmental purposes except where a separate communications satellite system is required to meet unique governmental needs, or *is otherwise required in the national interest.*" 47 U.S.C. § 721(a)(6) (emphasis added).

18. The applications before us, therefore, raise issues regarding the factors we should consider in determining when the "national interest" standard of these statutory sections has been met. In opposing the applications, Comsat has argued that the clause "required in the national interest" creates a high threshold standard which must be satisfied before the applications can be granted. Comsat maintains that the Commission's *Transborder Decisions* [11] and the views of the executive branch on the transborder applications [12] set forth the showing required of the applicants to satisfy the national interest standard. Comsat argues that the applications fail to make that showing. In contrast, the applicants generally maintain that the national interest standard is satisfied by the variety of benefits that they believe will result from authorization of alternative satellite systems, e.g., lower rates, new services, new markets for U.S. services and products, and a better U.S. defense.

19. As we noted in paragraph 5, *supra*, President Reagan has signed a presidential determination that alternative satellite systems are "required in the national interest" within the meaning of §§ 102(d) and 201(a) of the Communications Satellite Act. The executive branch's determination reflects its experience with, and responsibility for, foreign policy and international trade issues. The Commission recognizes that it is appropriate to defer to the executive branch on such issues. At the same time, our analysis of the "national interest" under the Communications Satellite Act must also include consideration of telecommunications policy issues. In addition, the Communications Act assigns responsibility to the Commission for determining where the ultimate public interest lies in telecommunications policy. Accordingly, the Commission may be required to consider factors in addition to the Presidential determination in order to assess whether the national interest would be served by authorization of alternative satellite systems. We invite comments on the additional factors, if any, we should consider in determining whether a grant of the applications before us would be in the national interest within the meaning of Section 102(d). We ask that comments consider the purpose and objectives of the Satellite Act in the context of the development of telecommunications technology and the communications satellite industry since enactment. Commenters should identify specifically any marketplace trends or structural features which we should take into account when we interpret the statute. Comments should also address whether the criteria identified in the *Transborder* decisions should apply to the applications before us, and if not, what criteria should be included in our consideration.

20. We also invite comments as to the applicability of *MCI Telecommunications Corp.* v. *FCC*, 561 F. 2d 1365 (1977), *cert. denied*, 434 U.S. 1040 (1978), to the restriction proposed jointly by the Departments of State and Commerce that the proposed systems only provide services "through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks." Comments should address the interaction of the Communications Satellite Act and the Intelsat Agreement with the usual standards for authorizing facilities and imposing service or other restrictions under Section 214 of the Communications Act. Commenters should consider the need for such a service restriction and the legal standards by which it may be imposed. In addition, if a service restriction is imposed, commentors should address whether there should be a time limit placed on the restriction and, if so, for what time period should the restriction be imposed. We caution commenters to be aware that some of the applications before us seek only Title III authority while others seek both Title III and Section 214 authority.

B. Obligations Under the Intelsat Agreement

21. The applications also raise issues concerning our obligations under the Intelsat Agreement.[13] Article XIV of the Intelsat Agreement sets out certain rights and obligations of the parties and signatories.[14] Subpart (a) of the article provides that the parties and signatories shall act consistently with, and in furtherance of, the principles in the Preamble and other provisions of the Agreement when exercising their rights and fulfilling their obligations.[15] The Preamble states that the parties to the agreement desire to achieve a single global commercial telecommunications satellite system as part of an improved global telecommunications network in order to provide telecommunications services throughout the world with the most efficient and economic facilities.[16] Article XIV recognizes the possibility that parties to the agreement may establish satellite systems in addition to that operated by Intelsat. Subpart (d) requires parties to coordinate with Intelsat the use of non-Intelsat space segment facilities for international public telecommunications services, stating as follows:

> To the extent that any Party or Signatory or person within the jurisdiction of a Party intends individually or jointly to establish, acquire or utilize space segment facilities separate from the INTELSAT space segment facilities *to meet its international public telecommunications services requirements*, such Party or Signatory, prior to the establishment, acquisition or utilization of such facilities, shall furnish all relevant information to and shall consult with the Assembly of Parties, through the Board of Governors, *to ensure technical compatibility* of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned INTELSAT space segment and *to avoid significant economic harm* to the global

[11] Transborder Satellite Video Services, 88 FCC 2d 258 (1981) *(Transborder I)*. *See also* Satellite Business Systems, 88 FCC 2d 195 (1981), and American Satellite Company, 88 FCC 2d 128 (1982), Eastern Microwave, Inc., File Nos. I-P-C-81-089, *et al.*, Mimeo No. 2617, released March 1, 1983 *(Transborder II)*; American Telephone and Telegraph Company, File Nos. I-P-C-82-046, *et al.*, Mimeo No. 6119, released August 26, 1983 *(Transborder III)*; Bonneville Satellite Corp., *et al.*, File Nos. I-T-C-83-148, *et al.*, Mimeo No. 1554, released December 29, 1983 *(Transborder IV)*; Western Union Telegraph Company, *et al.*, File Nos. I-T-C-83-068, *et al.*, Mimeo No. 3286, released April 4, 1984 *(Transborder V)*; Eastern Microwave, Inc., *et al.*, File Nos. I-T-C-84-095, *et al.*, Mimeo No. 8425, released September 17, 1984 *(Transborder VI)*.

[12] Letter from the James L. Buckley, Under Secretary of State for Security Assistance, Science and Technology, to Mark S. Fowler, chairman, Federal Communications Commission (July 23, 1981); *reprinted in* Transborder Satellite Video Services, 88 FCC 2d 258, 287 (1981).

[13] An international agreement not directly at issue in this proceeding is the International Telecommunication Union Radio Regulations, a treaty ratified by the United States in September 1983. That treaty establishes procedures and deadlines for the exchange of technical information necessary to coordinate characteristics of satellite networks prior to their implementation, in order to achieve technical compatibility with other networks, and to secure international recognition of frequency assignments to such networks.

[14] Intelsat Intergovernmental Agreement, August 20, 1971, 23 U.S.T. 3813, 3853, TIAS No. 7532.

[15] *Id.*

[16] *Id* at 3814.

system of INTELSAT. Upon such consultation, the Assembly of Parties, taking into the account the advice of the Board of Governors, shall express, in the form of recommendations, its findings regarding the considerations set out in this paragraph, and further regarding the assurance that the provision or utilization of such facilities shall not prejudice the establishment of direct telecommunication links through the Intelsate space segment among all the participants.

23 U.S.T. at 3854 (emphasis added). On several previous occasions, Intelsat has coordinated favorably, pursuant to this section, separate satellite facilities providing international public telecommunications services. Intelsat found that four alternative satellite systems—the PALAPA–B system serving Indonesia, Malaysia, Philippines, Singapore, and Thailand, the European Communications System (ECS) serving countries in western Europe, the ARABSAT system serving countries in the Near East, and the INTERSPUTNIK system for use between Algeria and several European countries, the U.S.S.R., and Cuba—were technically compatible with, and would not cause significant economic harm to, the global system.[17]

22. One of the applicants before this Commission has argued that Article XIV(d) does not apply to the system it proposes. Orion contends that it would not be providing "international public telecommunications services" within the meaning of Article XIV(d) [18] because it would be selling its transponders or leasing them on a long-term basis to users seeking to establish private systems.[19] Orion maintains that its proposal must be subjected only to the technical coordination mandated by Article XIV(e) of the Intelsat Agreement for "specialized telecommunications services." In its petition to deny Orion's application, Comsat disagrees with Orion's interpretation of Article XIV(d). In addition, the Commission has received from the Department of State a "Memorandum of Law" concluding that Orion would be providing "public international satellite telecommunications services" under Article XIV(d). The memorandum appears as an enclosure to Attachment B to this Notice. We invite comments on the legal analysis and conclusions contained in the memorandum.

23. We request comments as to whether the satellite equipment industry and the satellite services market have experienced changes or developments in technology or industry structure which affect the interpretation and application of Article XIV(d). In particular, commenters may wish to focus on the *Transponder Sales* decision [20] in which the Commission discussed the legal issues and factual circumstances relevant to its decision to permit sales in the domestic market like those contemplated by Orion. Commenters should address whether, and if so, how, the rationale of that decision may apply in conjunction with the Intelsat Agreement to the international market. Commenters should take into account the analysis contained in the Department of State's memorandum on this issue and their own analysis of that memorandum.

24. To the extent that the proposed U.S. systems would provide "international public telecommunication services," and would require coordination under Article XIV(d), the U.S. government, under the terms of Article XIV(d), would be required to consult with Intelsat to avoid, *inter alia*, "significant economic harm" to Intelsat. The criteria for assessing "significant economic harm" are currently the subject of considerable discussion within the international telecommuncations community.[21] The Commission invites comments as to the appropriate criteria for determining whether an alternative satellite system would cause economic harm to Intelsat and for measuring the degree of harm. Commenters are further invited to address the degree of harm which constitutes "significant" harm under Article XIV(d). Comments should focus on the language, intent, and drafting history of Article XIV and on technological or structural developments in the satellite industry and services market which may bear on this issue. Previous Intelsat coordinations of transborder applications and of alternative satellite systems will provide some guidance as to how Intelsat and its Signatories and Parties interpret and apply the term "significant economic harm." [22] Commenters should review these precedents and analyze the similarities and differences between the satellite systems which were the subject of past coordinations and the proposed satellite systems presently before the Commission.

25. One approach to defining and quantifying significant economic harm, as proposed in a report done for Intelsat, defines economic harm as the "calculated effect of [alternative satellite] systems on Intelsat's realized cost per unit of utilized space segment capacity"[23] and quantifies significant harm in terms of Intelsat's revenue requirements. There are, however, several problems with this approach. For example, the information and data requirements that will be needed to apply this approach on a prospective basis are formadiable. Because many assumptions will be necessary to apply the concept, the reliability of the results may be questionable. We invite comments on the report. Commenters should focus on the definition of economic harm. Commenters also should evaluate the use of revenue requirements as the criteria for estimating economic harm to Intelsat. Commenters also should consider the criteria that are recommended in the Intelsat report for distinguishing significant economic harm from economic harm. The data that are needed to apply the approach that is recommended in the Intelsat report should be discussed with a view toward judging the reliability of the estimates. In addition, commenters should discuss the appropriateness of using a concept of economic harm that does not allow for changes in Intelsat's investment plans, operating procedures, and other steps that it could take to improve its economic efficiency. Drawing on their discussions of economic harm, commenters should propose other alternatives that could be used to assess the impact upon Intelsat, either overall or on a route-by-route basis, of both the entry of alternative systems and the measures Intelsat is able to take to maintain its financial viability.

26. The Commission is aware that there is some overlap between the issues surrounding the interpretation of "significant economic harm" in Article XIV(d) and those addressed by the inquiries set forth below regarding the broader economic impact of alternative satellite systems. We will expect

[17] *See* Transborder Satellite Video Services, 88 FCC 2d 258, 275–276 (1981). Intelsat also has authorized the provision of international services via domestic satellite systems finding that such service would not cause significant economic harm. Intelsat Document, "Policies, Criteria and Procedures for the Evaluation of Separate Systems Under Article XIV(d)," BG–60–69E, W/9/84 (August 22, 1984) (available in Public Reference Room (533), Federal Communications Commission).

[18] Orion also relies on the definition for public telecommunications services appearing in Article I(k) of the Intelsat Agreement.

[19] *See generally* Orion Application, FCC File No. CSS–83–002–P, Petition to Deny of Comsat, filed on April 15, 1983, Orion's Response, filed on April 28, 1983, and Comsat's Reply, filed on May 10, 1983.

[20] Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), *aff'd sub nom.*, Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984).

[21] *See, e.g.*, Intelsat Document, *supra*, note 17.

[22] See note 17, *supra*, and text accompanying.

[23] Intelsat Document, "Report on the Study of Significant Economic Harm," BG–60–63E, W/9/84, p. 21 (August 15, 1984).

commenters to integrate the economic data, analyses, and positions they may develop in response to the inquires below with their interpretation of "significant economic harm."

27. We also invite comments regarding the meaning of Articles III and V of the Intelsat Agreement, Intelsat Intergovernmental Agreement, August 20, 1971, 23 U.S.T. 3813, 3819 and 3823, TIAS No. 7532. Some observers maintiin that these Articles require Intelsat to charge a uniform price, throughout the globe, for satellite circuits. We invite comments as to whether Intelsat is required by the Agreement to charge globally-averaged rates. Commenters should support their positions with specific references to the Agreement and its drafting history.

III. Economic Considerations

28. In order to assess the economic impact that any authorization of alternative satellite systems might have, we seek comments, information, data, and analyses on a number of economic issues, outlined in detail below. We ask parties submitting comments to concentrate their efforts on the issues we identify. Estimates of quantitative economic impact must be supported fully by the inclusion of the data, assumptions, hypotheses, models, and procedures used to develop them. Such material must be discussed in complete detail. Similar material used to estimate underlying costs, revenues, changes in demand (including demand elasticities), and impact on rates also must be included to support the estimates.

29. As we noted in paragraph 11, above, the fundamental issue presented to the Commission by the alternative satellite applications is whether the public interest would be served by granting the applications. To resolve this issue, the Commission must identify the advantages of granting these applications and weigh them against any disadvantages. Specifically, the Commission seeks to identify the benefits to the public which would result from granting these applications. Would the applicants offer new and/or innovative services? Would prices be lowered? Are there network efficiencies to be gained? We ask commenters responding to the inquiries below to conclude by addressing how the public interest, as opposed to the interests of the various participants in the marketplace, would be affected by a grant of these applications.

A. Economic Impact on Intelsat

30. Intelsat is presently the principal supplier of international satellite circuits. If alternative satellite systems are authorized, Intelsat would be affected most directly by the entry of these firms into the market. To assist us in identifying the nature and extent of the potential impact on Intelsat, we invit comments on three areas of concern: (1) traffic diversion; (2) revenue impact; and (3) competitive response.

1. Traffic Diversion

31. Alternative satellite systems may compete with Intelsat for the same traffic and attract business away from Intelsat. On the other hand, the systems might serve primarily new users of international satellite services who are not currently, or would never be, Intelsat customers. The Commission seeks information that would help it determine whether, and to what extent, the alternative systems would carry traffic that would otherwise have been carried by Intelsat. In order to make this assessment, the Commission must consider a number of underlying issues which commenters should address.

32. First, the services offered by alternative systems may or may not be the same as those offered by Intelsat. They may also include some, but not all, of the services currently offered by Intelsat. Proponents of alternative satellite systems contend that the new systems would provide services different from those Intelsat offers. Other observers have argued that the proposed services are complementary to Intelsat's and this would stimulate demand for them. On the other hand, opponents of the alternative systems argue that the proposed systems would provide the same services as Intelsat and, therefore, any traffic obtained by these new services would be traffic diverted from Intelsat. We invite comments on these arguments. Commenters should identify the differences and similarities between the services available from Intelsat and those proposed by the alternative systems. Specifically, commenters should also identify their bases for differentiating one service from another. Can services be defined by technical characteristics? If so, what are the technical dividing lines? Can services be grouped according to the characteristics of the user and, if so, what are those characteristics? Should we differentiate services for high-volume use from those for low-volume or occasional use? To what degree are services substitutable? Are services distinguishable where a system is fully digital? Commenters should also address whether the services can be differentiated on the basis of pricing techniques, marketing strategies, or geographic areas.

33. Second, as noted in paragraph 5, above, the Commission has received a letter signed jointly by the Secretary of Commerce and the Secretary of State setting forth "criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests." The letter states that, prior to "final authorization by the Commission," the alternative satellite systems are "to be restricted to providing services * * * for communications not inter-connected with public-switched message networks." We invite comments on these "criteria." Commenters should address whether and to what extent such a restriction could be implemented in actual practice. Commenters should also attempt to identify the specific services which would fall within and outside the scope of the restriction and state the basis for so classifying such services. For example, many users of "public-switched message networks" employ private branch exchanges ("PBX's") capable of routing incoming traffic back out over the switched network. Would the restriction recommended by the State and Commerce Departments prohibit service by alternative systems to customers using PBX's at both ends of the satellite communication and, if so, how should such a prohibition be enforced?

34. Commenters should also focus on the effect such a restriction could have on the competitive viability of the alternative systems. In particular, we seek comments as to whether the recommended restriction would give Intelsat an incentive to engage in price discrimination between circuits that it leases to provide non-switched services like IBS, when it would face competition from alternative systems, and circuits that it leases to provide switched services. In addition, comments should include information and current data on the traffic volume of non-switched services, the projected demand for such services, the proportions of total international services represented by switched and non-switched services, the revenues attributable to each, the number of satellite transponders currently devoted to offering each service, and the amount of non-switched traffic the alternative systems can expect to carry, factoring in any projected increases in current traffic levels.

35. Third, if the new systems would offer services that are substantially equivalent to Intelsat's, there may be a potential for traffic diversion. The Commission seeks information

regarding the foreseeable extent of the potential diversion. We solicit comments analyzing the amount of additional capacity that the alternative systems would introduce, with an explanation of the method used to measure that capacity, as compared to Intelsat's current (operational) capacity as well as its planned capacity over the useful life of each alternative system. Commenters should identify the alternative systems' capacity as a percentage of the increase in traffic projected during the useful lives of the alternative systems' satellites, with an explanation of the methodology underlying any projections.[24]

36. Besides the alternative systems' capacity, other factors will determine whether such systems divert traffic, such as price-quality trade-offs between the services offered, the degree of differentiation between services, consumer responsiveness to price variations in the offerings of the various services, and the specific geographic and service markets selected for entry by the alternative systems. Comments should take these factors into account. Finally, commenters should specifically address how the level of potential diversion would be affected by restricting alternative systems to the non-switched market, as proposed in the State/Commerce letter.

37. Fourth, the new systems may stimulate demand for satellite services if price competition between systems develops and drives down prices. If demand is stimulated, the resulting increase in traffic may offset any shift of Intelsat's traffic to the alternative systems so that there is no overall decrease in Intelsat's traffic base. The Commission invites comments regarding the ability of new entrants to engage in price competition and the effect of such competition on Intelsat's prices and the demand for satellite services. Commenters should submit any traffic projections and analyses of changes in demand which take into account the possible stimulation of demand by the entry of alternative satellite systems. Commenters should also explain their method for identifying Intelsat's "prices." Specifically, commenters should address whether Intelsat's "prices" have the same function as other prices in the marketplace in terms of their impact on demand and resource allocation given that Intelsat's users are also owners who receive an annual revenue distribution from Intelsat.

38. Finally, the new systems may capture a part of the market previously served not by Intelsat but by submarine cables. With the introduction of fiber optic digital cables, satellites and cables will become increasingly interchangeable for many services (such as wide-band services or data transmissions) previously suitable only to provision via satellite. The Commission seeks assessments of the amount of traffic that could be attracted by the alternative satellite systems which would otherwise have been carried by submarine cables.

2. Revenue Impact

39. Each of the factors and possible scenarios regarding Intelsat's traffic base outlined in the preceding paragraphs will have a revenue impact on Intelsat. The Commission seeks all available data that would assist it in quantifying the overall impact of each on Intelsat's net revenues including data regarding changes Intelsat could effect in its costs in the long run. In addition, we solicit analyses of the relationship between changes in Intelsat's revenues and its ability to provide service. Comments should address the effect authorization of additional satellite systems would have on Intelsat's ability to provide global service as well as service in specific regions and markets. Commenters should include discussion of the revenue level at which Intelsat could be expected to curtail expansion of its system, but retain its existing level of service, and the level at which Intelsat would be unable to continue providing its existing service. We emphasize that comments and analyses on this topic must be fully supported by the data, models, assumptions, and methodologies used to develop them.

3. Competitive Response.

40. If alternative satellite systems are established, competition between the new systems and Intelsat might prompt Intelsat to take responsive action, such as changing its rate levels, rate structure and service offerings or reconfiguring its satellites or transponders. The Commission seeks to identify Intelsat's options in terms of responding to competition as well as the constraints on Intelsat's behavior resulting from such factors as its sunk capital investments, technological inflexibilities, and the pricing elasticities of demand for the services it offers. We ask commenters to focus in particular upon the extent of Intelsat's ability to change its rate structure in response to competition taking into account the legal barriers, if any, commenters may have identified in response to paragraph 26, supra. Is Intelsat able to vary its prices to meet actual or potential competition? Commenters should identify any constraints on Intelsat's pricing flexibility which may exist and the modification of Intelsat's pricing structure, if any, which would be necessary to ensure that Intelsat remains a viable competitive entity. In particular, would Intelsat have an incentive to engage in price discrimination between the geographic markets where entry occurs and those where no entry is anticipated? If such price discrimination occurs how will it affect Intelsat's revenues and the sharing of Intelsat's cost among signatories? We invite comments as to each of these factors as well as any other marketplace realities which would limit Intelsat's competitive response.

41. There are other ways in which Intelsat could respond to competition. Intelsat could improve its economic efficiency by reducing its costs and by better meeting its customer service requirements. For example, Intelsat may be able to reduce its costs by modifying its investment program, reducing the amount of unused satellite capacity or taking greater advantage of technological change. Commenters should consider these factors in assessing Intelsat's response to new entr.

B. Impact on Users of International Communication Links

42. The establishment of alternative satellite systems will also affect users of satellite facilities, both the international service carriers who obtain satellite circuits to provide service to the public and consumers or end users. The Commission must insure that the policy it develops regarding alternative satellite systems takes into account the interests of both of these user groups. As discussed more fully below, we are seeking comments on the issues we have identified as pertinent to these groups.[25]

1. Service Providers

43. Satellite capacity is purchased by several U.S. international service carriers to provide their various services to the public. Changes in the suppliers of satellite circuits and in the available capacity will have, therefore, a significant effect upon U.S. service providers. We invite comments on the nature of that effect. We recognize,

[24] Commentors may wish to consult the demand forecasts submitted by U.S. international carriers in the Commission's international facility planning proceedings.

[25] We invite parties to address the potential effects of new entry on foreign consumers, carriers, and service providers as well as U.S. consumers, carriers, and service providers.

however, that the international service carriers have interests which may diverge. Thus, different carriers or groups of carriers could be affected differently by the entry of alternative satellite systems. For example, some international carriers have substantial investments in submarine cable facilities which might influence their choice of facility without regard to pricing differences which may exist between Intelsat and the proposed systems. In addition, some carriers may purchase capacity in any new systems while others would prefer to obtain tariffed, short-term services like those available from Intelsat. Accordingly, commenters should address these differences between service providers when they respond to the points raised below.

44. We believe there are a number of potential effects of new entry that would be relevant to carriers and international service providers. The most obvious potential effect is that competition between Intelsat and the new systems could drive down the prices that service providers pay to obtain satellite capacity. Competition may also stimulate changes in the quality or range of satellite services offered to carriers in ways that would affect various carriers differently. The availability and reliability of satellite circuits may also change as a result of competition. We invite comments on the likelihood that competitive entry by alternative systems would produce changes such as these and on the nature and extent of such changes. We are interested specifically in receiving estimates of the rates that the alternative systems would charge for each of the various offerings they propose in their applications, including tariffed services and transponder sales or leases. Such estimates should be accompanied by comparisons of the rates proposed by the alternative systems and those currently available for similar offerings. Commenters should also address whether the introduction of these satellite systems would promote or hinder the ability of service providers to offer new or innovative services.

45. Several of the applicants before the Commission have proposed to sell transponders or lease them on a long-term basis. We invite comments on the benefits and disadvantages of permitting carriers to purchase transponders or lease them on a long-term basis. Commenters should consider such factors as the benefits of capitalizing costs versus treating them as expenses and the differences in terms of cost predictability between owning capacity and obtaining it on a tariffed basis. In addition, we invite comments regarding the effect of transponder purchases on the availability, price, quality, and reliability of satellite circuits.[26]

2. Consumers

46. We invite comments on the impact of authorizing alternative satellite systems upon consumers of international communication services. Will consumers, on balance, be better off if additional systems are authorized? Because certain users may be affected differently from other users by the entry of these new satellite systems, we ask that commenters address these differences. Comments should address whether the entry of these systems would increase or decrease the availability, price, quality, and reliability of satellite services provided to end users. In addition, we invite comments on whether the sale or long-term lease of transponders by the alternative satellite systems would create a "bypass" problem, i.e., whether end users would purchase transponders in such high numbers that the carriers would be left with too small a number of remaining users to price their services competitively.

C. Equipment Manufacturers

47. Satellite equipment, including that associated with the launch vehicle, space segment, and ground segment, is manufactured by a number of U.S. and foreign firms. Changes in the international satellite services market would have an impact on the world-wide satellite equipment industry. In order to assess impact, the Commission requests comments containing information on the revenues of companies in the satellite equipment market. We seek data and analyses that will assist us in determining the revenues earned by United States, European, Japanese and other satellite manufacturers, individually and as a group, from the sale of satellite equipment.[27] We request that the information provided break down the revenue data into the space segment, launch vehicle and earth station equipment categories. We are particularly interested in receiving comments regarding the size of the world-wide equipment manufacturing industry and the percentage of the sales and revenues of equipment manufacturing companies which are attributable to Intelsat purchases.

48. In addition, we invite comments as to whether the authorization of alternative satellite systems would increase the demand for satellite equipment. Authorization of the alternative systems could increase demand for two reasons. First, the new systems themselves would purchase satellite equipment. Second, if the introduction of competition between Intelsat and the alternative systems stimulates demand for satellite services (because competition has driven prices down or has stimulated innovative services), both Intelsat and the alternative systems may require additional equipment. We invite comments on these points. We also ask commenters to address whether there would be a quantifiable relationship between the increase in satellite equipment sales and the increase in demand for international communications services which might be created by the alternative satellite systems.

49. Commenters should also address the impact alternative systems may have on the price and technological development of satellite equipment. The introduction of these systems could produce scale economies or stimulate manufacturing innovations that would permit lower prices overall for satellite equipment, which could, in turn, enable systems with smaller or specialized capacity to provide service at competitive prices. In addition, an expanded, competitive market for equipment may stimulate technological innovation in the design and performance of satellite equipment. The Commission solicits data and analyses regarding these possibilities and their effect on equipment manufacturers.

50. Finally, commenters should address the steps that the Commission could take to ensure that the market for such equipment is vigorously competitive. Specifically, commenters should identify the policies, rules, or other action required to protect domestic manufacturers from the anti-competitive actions, if any, of foreign entities. Commenters should also discuss the limitations on the Commission's ability to take such steps.

D. Alternative Methods for Promoting Efficiency

51. In addition to the introduction of alternative satellite systems, other mechanisms may exist which would increase efficiency in the provision of international satellite services. The Commission invites comments on

[26] See note 17, *supra* and text accompanying.

[27] Satellite equipment companies who respond to this Notice but are reluctant to provide such information because they believe it to be proprietary are advised to consult the Commission's Rules regarding requests for confidential treatment of submissions. See 47 CFR 0.459 (1984).

possible options to increase efficiency. One option which commenters may wish to address is the role that direct access by U.S. carriers to the Intelsat space segment could play in the future. The Department of State and the Department of Commerce have indicated their belief that affording companies in addition to Comsat the option of dealing directly with Intelsat for competitive services is a necessary step to ensure that additional facilities are constructed only where economically and technically justified. Commenters are invited to address whether such an option would be economically and technically feasible in the environment which would be created through the entry of alternative satellite systems. Commenters addressing that issue may wish to consider the record in the Commission's proceeding on direct access. *See* Regulatory Policies Concerning Direct Access to Intelsat Space Segment for the U.S. International Service Carriers, 90 FCC 2d 1446 (1982) (notice of inquiry); FCC No. 84–129, 49 FR 19132 (1984) (report and order terminating the proceeding). While the decision on direct access was settled in the context of today's environment, the potential for separate international systems introduces new factors that may make direct access more feasible.

E. Marketplace Trends

52. The applicants before this Commission are not the first to propose the establishment of satellite systems other than Intelsat to provide international services. As we noted in paragraph 20, above, Intelsat has previously coordinated four systems providing service between countries served by Intelsat. In addition, there are a number of newly-proposed satellite systems which would be capable of providing international as well as domestic service. The United Kingdom has proposed the UNISAT system whose beam would cover the U.S. eastern seaboard and most of western Europe. France has proposed the TELECOM satellite whose beam would cover most of Europe and the French Caribbean, Eastern Canada, and the Indian Ocean. Spain has proposed the IBEROAMERICAN satellite whose beam would cover Spain and Latin America. Other systems have also been proposed by Japan for the Pacific Basin, by Sweden for all of Scandanavia, and by Luxembourg for western Europe and possible transatlantic service.

53. The satellite systems listed above are not the only proposed or existing facilities which could have an impact on Intelsat's position in the market for international telecommunications service. Fiber optic cables are capable of providing many of the services that were previously available only via satellite due to the limitations inherent in analog cable technology. Moreover, fiber optic cables will introduce low cost, high capacity facilities into the international marketplace.

54. The Commission invites comments analyzing whether the structural and technological initiatives identified above represent an inexorable trend away from preservation of Intelsat's unique position as a provider of international satellite services. Are alternative satellite systems an inevitability? What forces in the global market confronting Intelsat contribute to this proliferation in alternative systems? What indications are there that other countries, besides the United States and the six countries identified above, are likely to establish alternative systems? Commenters are invited to submit all available data and analyses that would be helpful in characterizing the marketplace context in which satellite services are offered.

IV. Technical Issues

55. We also seek comment on certain technical issues regarding the efficient use of the electromagnet spectrum and the geostationary-satellite orbit. Recently, the projected demand for orbital positions over the Atlantic Ocean has increased markedly for satellite networks, such as those proposed by the alternative systems, that would be operated in the 4/6 GHz and 11–12/14 GHz frequency bands. In particular, Intelsat has indicated that it plans to use a number of orbital positions over the Atlantic to provide its Intelsat Business Services as well as its more traditional services. In some cases, Intelsat's projected requirements would be in conflict with orbital positions requested by applicants for domestic and alternative international satellite systems.

56. Some observers have argued that a common-user system such as Intelsat's would more efficiently use the spectrum/orbit resources. However, other observers have argued that the use of individual networks, such as those proposed in the pending applications, would not necessarily be less efficient. Furthermore, these observers contend that in order for any satellite system to satisfy user demand for particular types of services—such as high-speed data services without intervening terrestrial links—the system would have to use satellite and earth station configurations or operational techniques which would be less efficient than other configurations, regardless of whether they are common-user systems. We believe that, in many cases, the extent to which a satellite network includes features which make it more spectrum/orbit efficient is determined by the economic incentives of the network operator, whether the network is a common-user network of one of many individual networks. We request comments on the impact of the proposed systems on spectrum/orbit efficiency and seek, specifically, comments on the extent to which we can rely on economic incentives to achieve greater efficiency.

57. In licensing networks in the domestic fixed-satellite service, we have implemented technical standards intended to allow for the greatest number of satellites in the geostationary orbit and the greatest efficiency of those satellites.[28] In particular, these standards are designed to permit satellites operating in the same frequency bands to be located as close together as two degrees of orbital arc. We note that some of the applicants for authority to provide international service propose to engineer their networks to permit the location of other satellites, operating in the same frequency bands and having a common service area, within two degrees. The standards also require "full frequency re-use," to insure that the usable communications bandwidth on domestic satellities approaches 1000 MHx, and a minimum total transponder power capability for each satellite operating in a given band. The "full frequency re-use" and minimum power standards for domestic satellites cannot be directly applied to the proposed international systems because of the number of beams to be employed by those systems and the international treaty constraints on frequency use. However, some variation of these standards may be appropriate. Therefore, we also request comments on whether, and if so, to what extent, we should apply the standards developed for the domestic fixed-satellite service to any networks authorized for international service.

V. Conclusion

58. The Commission overriding concern is to develop a policy with respect to the establishment of alternative satellite systems that will be based on an accurate assessment of the legal and economic issues raised by such systems. The information solicited above will be used to insure that our assessment reflects current marketplace

[28] Licensing of Space Stations in the Domestic Fixed-Satellite Service, 48 F.R. 40, 233 (1983).

realities. We encourage interested parties to submit data that is responsive to these concerns. We believe that the schedule that we are setting up for the submission of comments and replies is sufficient for parties to develop complete, current, and responsive data and analyses. Accordingly, motions for extension of time or late-filed pleadings will be viewed disfavorably.

59. We instruct the Chief, Common Carrier Bureau, to supplement the record by obtaining any information necessary for the conduct of this proceeding.

60 For purposes of this non-restricted, informal inquiry and rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of inquiry and proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's rules, 47 CFR § 1.1231.[29]

61. It is ordered, pursuant to Sections 4(i), (j), 214(d), 303(r), 309 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154 (i), (j), 214(d), 303(r), 309, 403 (1984), Sections 102(d), 201(c)(3), (4), (9), and (11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701(d), 721(c)(3), (4), (9), (11) (1984) Section 553(b) of the Administrative Procedure Act, 5 U.S.C. § 553(b) (1984), and Sections 1.412 and 1.430 of the Commission's Rules and Regulations, 47 CFR 1.412, 1.430 (1984), that an inquiry and proposed rulemaking into the above-captioned matter is instituted.

62. It is further ordered that interested persons may file comments on matters raised herein on or before February 14, 1985 and reply comments on or before March 7, 1985.

63. It is further ordered that, in accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419 (1984), all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching a decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regular business hours in the Commission's reference room at its headquarters at 1919 M Street, N.W., Washington, D.C.

64. Pursuant to Section 605(b) of the Regulatory Flexibility Act (P. L. 96–354), it is certified, that Sections 603 and 604 of the Act do not apply because this proposed rule or policy will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C 603, 604, 605(b) (1984). The proposed rule or policy will not have a significant economic impact on a substantial number of small businesses or other small entities because the Commission has not received, and does not anticipate receiving, a substantial number of applications from small businesses for authority to construct and operate satellite systems providing international communications services.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[29] As provided in the Commission's public notice, Report No. I–3057, Mimeo No. 4716 (June 7, 1984), the satellite applications before us are governed by the *ex parte* rules which apply to restricted adjudicative proceedings, and therefore communications concerning those particular satellite applications will not be permitted in these proceedings. *See* 47 CFR 1.1223 (1984).

Attachment A

The White House, Washington, November 28, 1984

Presidential Determination No. 85–2

Memorandum For:

The Secretary of State

The Secretary of Commerce

By virtue of the authority vested in me by the Constitution and statutes of the United States, including Sections 102(d) and 201(a) of the Communications Satellite Act of 1962, as amended (47 U.S.C. 701(d), 721(a)), I hereby determine that separate international communications satellite systems are required in the national interest. The United States, in order to meet its obligations under the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532), shall consult with INTELSAT regarding such separate systems as are authorized by the Federal Communications Commission. You are directed jointly to inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests.

This determination shall be published in the **Federal Register.**

Ronald Reagan.

Attachment B

The Secretary of Commerce, Washington, D.C. 20230, November 28, 1984

Honorable Mark S. Fowler,
Chairman, Federal Communications Commission, Washington, D.C. 20554.

Dear Mr. Chairman: The President has determined that separate international communications satellite systems are required in the national interest. He has also directed that we inform the Federal Communications Commission of criteria necessary to ensure the United States meets its international obligations and to further its telecommunications and foreign policy interests. Prior to final authorization by the Commission of any systems, to assure that the United States meets its obligations as a Party to the Agreement Establishing the International Telecommunications Satellite Organization (INTELSAT) (TIAS 7532):

(1) each system is to be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service); and,

(2) one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the INTELSAT Agreement to ensure technical compatibility and to avoid significant economic harm.

The President's determination, its conditions, and these criteria are premised on our review of the issues

prompted by the applications now before the Commission. If proposals substantially different are forthcoming, further Executive Branch review may be required.

The Commission should afford interested parties an opportunity to submit timely comments on the pending applications in view of these Executive Branch recommendations.

A memorandum of law concerning Article XIV of the INTELSAT Agreement is enclosed.

Sincerely,

George P. Shultz,

Secretary of State.

Malcolm Baldrige,

Secretary of Commerce.

Enclosure.

Department of State, The Legal Adviser, Washington, DC. 20520

Memorandum of Law

The Orion Satellite Corporation and International Satellite, Inc. Applications for International Satellite Communication Facilities.

Background and Question Presented

The Orion Satellite Corporation (Orion) and International Satellite, Inc. have applied to the FCC for authority to provide privately owned international satellite communications facilities to customers on a commercial basis. Orion argues that its system, which would sell or lease transponders to major business users on both sides of the Atlantic, is subject to coordination with INTELSAT only for technical compatibility with the INTELSAT system. The essence of its argument is that it does not propose common carrier services and only such services are "public international telecommunications services" which require coordination with INTELSAT for avoidance of significant economic harm as well. Although International Satellite, Inc. (ISI) argues that its system will not cause significant economic harm to INTELSAT, it does not explicitly concede that its system is subject to coordination under Article XIV(d) of the INTELSAT Agreement.

These applications present the following threshold legal question under the INTELSAT Agreement of 1971, TIAS 7532:

Do the Orion and ISI proposals involve the use of non-INTELSAT space segment facilities for international "public telecommunications services" within the meaning of Article XIV(d), requiring coordination with INTELSAT for both technical compatibility *and* the avoidance of significant economic harm, or do they propose "specialized telecommunications services" under Article XIV(e) which require coordination for only technical compatibility?

Summary

While the issue is not free from doubt, the sounder view appears to be that Orion and ISI would provide public international satellite telecommunications services within the meaning of the INTELSAT Agreement. A non-profit satellite system to be used for in-house international telecommunications by the owner might not involve public services, but neither Orion nor ISI is proposing such a system. Nor would their proposals seem to fall within the intended scope of "specialized services", the other category of services requiring only technical coordination with INTELSAT. Thus the United States may authorize Orion and ISI consistently with its obligations under the INTELSAT agreement if they are coordinated under Article XIV(d) for technical compatibility *and* to avoid significant economic harm to INTELSAT.

A contrary reading would permit any INTELSAT party to authorize a commercial non-INTELSAT satellite system for international telecommunications services *despite serious anticipated economic harm* to INTELSAT, provided all transponders were dedicated to users by lease or sale. This would undermine the basic purpose of INTELSAT: to maintain a single global commercial telecommunications satellite system to provide worldwide expanded telecommunications services.

Analysis

1. *Authorization of a space segment to provide public international telecommunications services requires technical and economic harm coordination with INTELSAT.*

Under the definitive INTELSAT arrangements, the United States has an obligation, set out in the Agreement's preamble and made operative by Article XIV, to help maintain a single global commercial international telecommunications system as part of an improved global telecommunications network. The obligations extend to what is defined in the Agreement as the "space segment" of INTELSAT. This includes the satellites and related facilities and equipment which are required to support the operation of the satellites.

While available for other purposes, the INTELSAT Agreement contemplates use of the INTELSAT space segment essentially for international public telecommunications. It expressly permits parties to use non-INTELSAT space segment facilities to provide public domestic services [Article XIV(c)] or specialized services [Article XIV(e)] after coordination with INTELSAT solely for technical compatibility. The use of non-INTELSAT space segment for international public telecommunications services [Article XIV(d)] is contemplated after consultation with INTELSAT to ensure technical compatibility and to determine that the services will not cause significant economic harm to the INTELSAT system. Article XIV(g) totally excepts non-INTELSAT space segment facilities used solely for national security purposes. The XIV (d) and (e) provisions are the crux of the issue.

The coordination requirements of Article XIV are a key element of the general obligation of INTELSAT members to help maintain INTELSAT as a single telecommunications network. The INTELSAT Agreement negotiating history shows that Article XIV was a compromise between the desire of certain European countries, led by France, that the Agreement allow for possible "regional" satellite systems, and the desire of the United States that other international satellite systems be precluded. France, in fact, proposed that INTELSAT be only a federation of regional systems. Several definitions of what would constitute a regional system were put forward, but none was adopted in the final text. It appears that the negotiators felt that the economic harm test incorporated in Article XIV(d) for international public telecommunication services made a definition unnecessary.

2. *"Public telecommunications services" are not limited to "common carrier services".*

The INTELSAT Agreement, Article I(k), defines public telecommunications services as follows:

> "Public telecommunication services" means fixed or mobile public telecommunication services which can be provided by satellite and which are available for use by the public, such as telephony, telegraphy, telex, facsimile, data transmission, transmission of radio and television programs between approved earth stations having access to the INTELSAT space segment for further transmission to the public, and leased circuits for any of these purposes; but excluding those mobile services of a type not provided under the Interim Agreement and the Special Agreement prior to the opening for signature of this Agreement, which are provided through mobile stations operating directly to a satellite which is designed, in whole or in part, to provide services relating to the safety or flight control of aircraft or to aviation or maritime radio navigation.

The applicable rules of international law governing the interpretation of international agreements do not sustain the view that the term "public telecommunications services" means only services analogous to those considered "common carrier" in United States telecommunications law. In interpreting an international agreement, the general rule is that the texts of the agreement will be given their ordinary meaning in the context of the entire agreement and in light of its object and purpose, unless it can be established that the parties intended a special meaning to attach. The rules call for taking into account as well, *inter alia*, any subsequent practice in the application of the treaty. Secondary sources of interpretation can be resorted to in order to confirm the resulting interpretation or to resolve ambiguities. These secondary sources include the agreement's preparatory work and the circumstances of its conclusion. The purpose of all the rules is to establish the agreed intent of the parties, as reflected in the text. (See the Vienna Convention on the Law of Treaties, Articles 31 and 32, which the United States accepts as a generally accurate statement of the applicable international law on the interpretation of international agreements.)

Applying these rules, we note first that, while it was certainly contemplated that access in the United States to the INTELSAT space segment would be made through common carriers, there is nothing in the text of the INTELSAT Agreement which links or limits the concept of "available to the public" in the definition of "public telecommunications services" to the concept of common carriage, which is essentially a United States domestic regulatory concept. Nor is there anything in the text which links or limits that concept to the analogous term "public correspondence", used in the ITU Radio Regulations, where it is defined as: "any telecommunication which the offices and stations must, by reasons of their being at the disposal of the public, accept for transmission." Radio Regulations, Chapter I, Article 1, Section 5.1.

The text of the INTELSAT definition appears to be largely self-contained and susceptible of a reasonable meaning in context without resorting to the special meaning given the term in the regulatory framework of one of the participants or in a different agreement which defines an analogous term for a different object and purpose. Article I(k) defines "public international telecommunications services" by reference to types of services, e.g., telephony and telegraphy, which were services to which the public had access at the time of the INTELSAT negotations. It appears to use the phrase "available for use by the public" to make clear that new telecommunications services which satellites could provide would fall under the INTELSAT mandate as they came into public use. This construction of the phrase "available for use by the public" appears to be in accord with INTELSAT's practice in intercepting the concept of public telecommunications services over the years.

The definition itself appears to contemplate expressly that such services will be considered "public" even when offered via the leasing of a circuit by INTELSAT through one of its members. There is not requirement that the lease be only to a common carrier rather than an entity or small group of entities for the their own communications needs.

The strongest argument for the interpretation put forth by Orion is that the concept "public telecommunications" and the analagous term "public correspondence" were in use at the time of the INTELSAT negotiations in both the U.S. domestic telecommunications field and in the ITU Radio Regulations, a broad multilateral telecommunications instrument with which all the participants in the INTELSAT negotiations were familiar. In both those settings it denoted, *inter alia*, availability to the public at large, not just selected customers, a key element of common carriage. However, that fact does not appear to be sufficient to establish legally that the parties to the INTELSAT Agreement intended to so link and limit it, in light of a number of factors:

First, there are many different definitions of "public".

Second, within the telecommunications authorities and administrations of most of the participants in the INTELSAT negotiations, provision of circuits dedicated to one user's own communications are considered part of the public network, and wholly, "private" system are not a feature.

Third, the practice of the parties in the application of the INTELSAT Agreement includes the authorization of circuits dedicated to direct use by an end user, not merely circuits for use by a carrier offering telecommunications services to the public at large.

Fourth, it has not been U.S. practice under the INTELSAT Agreement to equate "public" with "common carrier". The FCC has held entities purchasing transponders not to be common carriers, yet the services they provided have been coordinated with INTELSAT as domestic public telecommunications services under Article XIV(c).

Fifth, the concept of common carriage, as it existed in the United States at the time of the INTELSAT Agreement, is itself shifting as formerly regulated services are deregulated and new services come on stream in a deregulatory climate. For example, in the *Computer II* decision, the FCC decided to forebear from regulating computer processing type services which, nevertheless, are services offered to the public and are not "private" services.

Finally, the theory that "public international telecommunications services" under the INTELSAT Agreement do not include the provisions of a space segment on a commercial basis to users who own or lease individual transponders on the satellite would allow any INTELSAT member to authorize the establishment of such a space segment *even if it were to do significant economic harm* to INTELSAT. This would appear to run counter to the object and purpose of the Agreement, the maintenance of a "single global commerical satellite telecommunications systems," to provide the space segment required for expanded "international public telecommunications services of high quality and reliability to be available . . . to all areas of the world." [Preamble, Article III and Article XIV(a)].

The Orion application cites INTELSAT's non-discrimination provision as an indication that "public telecommunications service" under INTELSAT means common carrier service. However, the "non-discrimination" clause cited by Orion, which occurs in the Preamble to the INTELSAT Agreement, clearly refers to the requirements of the Agreement that services be available on a non-discriminatory basis to the nations, large and small developed and developing, who are members of INTELSAT. This is consistent with the non-discrimination policy in the Communications Satellite Act. It does not refer to a requirement that INTELSAT be restricted to services made available to all members of the potential user public in participating states on a non-discriminatory basis.

3. *Although a private non-commercial space segment might not require economic harm coordination with INTELSAT, the proposals are not for such service.*

There is no indication that the development of purely private space telecommunications systems was considered by the negotiators of the INTELSAT Agreement or that such limited satellite systems would, in any event, be likely to cause significant economic harm. Nevertheless, from the INTELSAT Agreement's Article 1(k) reference to leased circuits and the overall object and purpose of INTELSAT as a single "commercial" telecommunication system, one might logically infer that the INTELSAT Agreement does not require economic harm coordination for a privately-owned satellite system in which all the capacity is dedicated to the communications needs of its owner. However, the proposals do not involve a privately-owned satellite for exclusive owner use.

While not necessarily dispositive of the INTELSAT interpretation issue, neither Orion nor ISI proposes a genuinely private facility even in U.S. regulatory terms. The FCC's regulations on private radio systems are found in 47 CFR Part 90. The services most analogous to those proposed to be provided by Orion and ISI are found in Subpart D, Industrial Radio Services. These are services which have been established by companies to satisfy their own communications needs. For example, a pipeline transmission company has been permitted to establish a private communications system to serve itself along its right of way. The Commission's regulations (Subpart M) permit companies operating these private systems to provide services to others, or permit any person to provide private services to any person eligible for licensing under Subpart D. However, the Subpart M regulations permit the arrangements only on a "not-for-profit, cost-shared basis." Both Orion and ISI intend to sell or lease satellite transponders, and to maintain satellite control centers and furnish telemetry, tracking, and control functions for a profit. Neither Orion nor ISI will therefore be a private system as those systems are defined in the FCC regulations.

4. *The proposals are not for the type of services which the "specialized services" category, requiring no economic harm coordination, was intended to include.*

The INTELSAT Agreement, Article I(1), defines "specialized telecommunications services" as:

> telecommunications services which can be provided by satellite, other than those defined in paragraph (k) of this Article ["public telecommunications services"], including, but not limited to, radio navigation services, broadcasting satellite services for reception by the general public, space research services, meteorological services, and earth resource services.

While the category of "specialized services" might be a catch-all to assure that any service which is not a public service would, nevertheless, be technically coordinated with INTELSAT under Article XIV(e), the drafters had certain kinds of exceptions in mind for its principal content. The negotiating history of the INTELSAT Agreement gives clear guidance that "specialized" as opposed to "public" services were intended to comprise principally those services, excluding generalized telecommunications, under the direct control of governments as a matter of special national policy (such as direct broadcasting) or services provided by governmental or inter-governmental entities incident to their functions. The negotiators intended to permit members and intergovernmental organizations full freedom to provide such services outside of and without regard to the economic well-being of INTELSAT. Numerous references in the negotiating history indicate that, before INTELSAT undertakes specialized services, it should consult with the U.N. specialized agencies already involved in providing such services, such as the International Civil Aviation Organization (ICAO) or the International Maritime Consultative Organization (IMCO).

The data and TV services that Orion and ISI propose to offer are not specialized services within the sense of that term as used in the INTELSAT Agreement.

Conclusion

While the issue is not free from doubt, the proposals would appear to contemplate providing public international telecommunications and require coordination with INTELSAT both to avoid economic harm and for technical compatibility.

Davis R. Robinson.

[FR Doc. 85-801 Filed 1-10-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Parts 2, 15, and 90

[Gen. Docket No. 84-1233; RM-4829; FCC 84-575]

Amendment of the Commission's Rules To Allocate Frequencies in Specific MHz Bands for Private Land Mobile Use

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making to release land mobile reserve spectrum in the 896–902 MHz and 935–941 MHz bands for use by the Private Land Mobile Radio Services. This new spectrum will be regulated under the existing provisions of Subpart S, Part 90 of the Commission's Rules.

DATE: Comments are due by February 28, 1985. Replies are due by March 29, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Overby, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 15

Radio.

47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rule Making

In the matter of amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to allocate frequencies in the 896–902 MHz and 935–941 MHz bands for private land mobile use; General Docket No. 84-1233, RM-4829, FCC 84-575.

Adopted: November 21, 1984.

Released: January 3, 1985.

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioner Patrick issuing a separate statement.

Introduction

1. In response to a petition filed by the Land Mobile Communications Council (LMCC)[1] and a study by the Commission's Private Radio Bureau of the need for additional private land mobile spectrum between now and the end of this century,[2] we are proposing to

[1] *Petition for Rule Making* filed by the Land Mobile Communications Council, RM-4829, received June 18, 1984, requesting the Commission release 20 MHz of spectrum from the land mobile reserve for private land mobile systems and 12 MHz for common carrier cellular systems. The petition also requests the Commission explore the potential use of the 220–225 MHz band and vacant UHF-TV spectrum to satisfy land mobile requirements. This *Notice* responds only to that portion of LMCC's petition requesting release of land mobile reserve spectrum for private land mobile use.

[2] *Future Private Land Mobile Telecommunications Requirements:* Final Report, Planning Staff, Private Radio Bureau, FCC, Washington, D.C., August 1983.

release the 896–902 MHz and 935–941 MHz bands for private land mobile use.[3] We propose to require the use of narrowband equipment on this spectrum and to apportion these new channels among four pools as follows: 30% for Public Safety, 20% for Industrial/Land Transportation, 20% for Business Radio, and 30% for Specialized Mobile Radio Systems (SMRS). We also propose a regulatory structure for this spectrum similar to that set forth in Subpart S, Part 90 of the Rules,[4] and currently applied to applicants and licensees of frequencies in the 806–821/851–866 MHz bands.

Background

2. Since the 1940's the Commission has recognized the essential nature of land mobile telecommunications to the safety and well being of the American public and to the nation's productivity.[5] Efficient communication is indispensable for law enforcement agencies, firefighters, paramedic squads, search and rescue teams, and other organizations which protect the lives and property of the public. Additionally, land mobile radio systems are an important tool for manufacturers, utilities, transportation companies, and other businesses which provide goods and services to the public.

3. The Congress recently recognized the importance of the Private Land Mobile Radio Services to the public welfare and economy when it adopted the Communications Amendments Act of 1982, which states *inter alia*, that:

> In taking actions to manage the spectrum to be made available for use by the private land mobile servies, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—
>
> (1) promote the safety of life and property;
>
> (2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;
>
> (3) encourage competition and provide services to the largest feasible number of users; or
>
> (4) increase interservice sharing opportunities between private land mobile services and other services.[6]

4. In the legislative history accompanying these amendments, the Conferees stated:

> The Communications Act of 1934 contains no guidelines for the FCC to follow in managing the spectrum to be made available for the private land mobile services, other than its broad statutory authority to promote public interest, convenience and necessity. The Congrees believe such guidelines are necessary since these services have a direct and substantial impact on the public welfare and the economy. . . .[7]

Also, with respect to the specific case of public safety operations, the Conference Report states:

> The Commission should be ever vigilant to promote the private land mobile spectrum needs of police departments and other public agencies which need to use such radio services to fulfill adequately their obligations to protect the American public. The Conferees are particularly concerned about radio services which are necessary for the safety of life and property and urge the Commission to carefully consider the legitimate needs of public safety agencies in managing the private land mobile spectrum.[8]

5. Since the late 1960's, the Commission has recognized that without additional allocations serious land mobile spectrum shortfalls would develop before the end of this century. After extensive consideration of this matter in Docket No. 18262,[9] the Commission determined that the increasing use of land mobile telecommunications systems required reallocation of 115 MHz of federal government and broadcast spectrum in the 806–947 MHz band. Seventy MHz of this spectrum was released immediately and divided into 40 MHz for the common carrier cellular radio service and 30 MHz for private conventional and trunked operations. The remaining 45 MHz was specifically set aside to provide for future land mobile growth. Of this 45 MHz, 41 MHz now remains in reserve.

6. When the 30 MHz for private land mobile systems was allocated in 1975 we stated that "based on market projections given by industry, 30 MHz should be sufficient [for private land mobile use] in most areas well into the 1980's, and the reserve bands will take care of any unforeseen growth within and beyond that time frame." [10]

However, it is now clear that private land mobile communications requirements are growing faster than anticipated. In August 1983, the Commission released a staff report culminating two years of study on the future spectrum needs of the private land mobile services. This report concluded that:

> * * * Private land mobile radio services in all 21 urban areas of this study will require additional radio communication channels over the next 17 years. A portion of these additional channels can be generated by deriving new narrowband channels from existing PLMRS spectrum. To meet the projected requirements, even in the smaller urban areas studied, the Commission would have to allocate a significant portion of the spectrum reserve at 821–947 MHz to the PLMRS and reallocate 2 MHz in the 216–225 MHz band for land mobile. For the larger market areas additional spectrum from the UHF–TV bands or greater portions of the land mobile reserve are required.[11]

7. More specifically, this study assumed an annual private land mobile growth rate of 6.2% over the period 1980–2000 and projected the degree of spectrum shortfall for various metropolitan areas that will exist by the years 1990 and 2000. For example, it assumed that if 17 MHz of the reserve spectrum was released for private land mobile use and that narrowband technologies were permitted in the existing 150–170 MHz band, the projected shortfalls by the year 1990 would be 109 MHz, 88 MHz, 40 MHz, 27 MHz, and 22 MHz respectively for Los Angeles/San Diego, New York, Baltimore/Washington, Philadelphia, and Chicago. Similarly, shortages of 12 MHz each for Detroit and Cleveland, 11 MHz for Dallas, 10 MHz for Houston, 9 MHz for San Francisco, 8 MHz for Seattle, 6 MHz for St. Louis, 5 MHz for Atlanta, 4 MHz for Boston, and 3 MHz for Minneapolis/St. Paul were projected to occur by the year 1990.

8. Commission records indicate there are now approximately 950,000 authorized stations using nearly 8 million transmitters in the private land mobile radio services. Examination of the number of stations authorized for fiscal years 1979 through 1984 shows an average annual growth rate of approximately 6.5% for the last five years. This substantiates the predicted rate of 6.2% used in the study of future private land mobile spectrum needs. It appears clear, therefore, that without some action serious spectrum shortfalls for private land mobile services will occur in the near future, especially in the

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[3] For simplicity we will refer to the spectrum between 806–947 MHz as the 900 MHz band.

[4] See 47 CFR 90.601 et. seq.

[5] *General Mobile Radio Services*, 13 FCC 1190 (1949).

[6] 47 U.S.C. 332(a).

[7] *See Conference Report* No. 97–765, 97th Cong. 2nd Sess., August 19, 1982 at page 52.

[8] *Conference Report, supra*, at page 52.

[9] *See generally, First Report and Order and Second Notice of Inquiry*, Docket No. 18262, 35 FR 8644 (June 4, 1970); *Second Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974), *reconsidered, Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945 (1975); *Order*, FCC 78–854, (1978) on reconsideration; *aff'd sub nom. NARUC* v. *FCC*, 525 F.2d 630 (D.C. Cir. 1976), *Cert. denied*, 425 U.S. 992 (1976).

[10] *Second Report and Order, supra*, at para. 17.

[11] *Future Private Land Mobile Telecommunications Requirements, supra*, at 9–1.

nation's major urban centers. This eventuality, as noted by Congress, could have a direct and substantial adverse impact on the public welfare and the American economy.

9. In recognition of this fact, on June 18, 1984, the Land Mobile Communications Council filed its petition requesting that 20 MHz of the land mobile reserve be released for private land mobile use. In support of this request, LMCC points out that the last of the remaining private land mobile spectrum which was released in 1982 [12] has already been licensed in several urban areas and additional applicants for exclusive assignments in these areas cannot be accommodated without an additional spectrum release. The petition states:

> The current use of presently allocated private land mobile frequency assignments substantiates the need for an immediate spectrum allocation for Part 90 [private land mobile] users. According to data compiled by the National Association of Business and Educational Radio (NABER), the Commission's designated coordinator for the use of the 800 MHz channels available for Business Radio Service eligibles, there are no longer any 800 MHz exclusive frequency assignments available in New York, San Diego, Los Angeles, and Houston. Further, as of May 2, 1984, the date upon which NABER compiled its data, there was only a single exclusive channel available in Chicago, seven channels remaining in San Francisco and eight and nine channels, respectively, available for assignment in Boston and Miami. . . . There are similar spectrum shortages in the public safety and special emergency "poll." NABER, the data base manager for these frequency assignments, indicates that all channels allocated for public safety and special emergency use have been assigned in the Los Angeles and New York/Northern New Jersey areas. Except for a few single channels, all frequencies have also been assigned in the Baltimore/Washington and Miami/Ft. Lauderdale areas. It is further reported that there will shortly be no available public safety and special emergency channels in the Houston area as well.[13]

The LMCC petition also cites shortages in other private land mobile services:

> Spectrum shortages are also reported by the Special Industrial Radio Service Association, Inc. (SIRSA), recognized by the Commission as the coordinator for the use of 800 MHz assignments employed by industrial and land transportation users. SIRSA coordinates the use of channels for applicants eligible in the Commission's Power, Petroleum, Forest Products, Motion Picture, Relay Press, Special Industrial, Manufacturers, Telephone Maintenance, Motor Carrier, Railroad, Taxicab, and Automobile Emergency Radio Services. SIRSA reports that there are no longer any exclusive frequency assignments available from this pool for use in Houston, New York and Los Angeles.[14]

10. In light of these factors and the concern expressed by Congress to provide adequate spectrum for private land mobile operations, we are proposing to release 12 MHz of spectrum from the 900 MHz band for use by public safety, industrial, land transportation, business, and commercial users. We also propose to require the use of narrowband technologies in this spectrum.

11. While this is our preferred allocation scheme, commenters are advised that in another *Notice of Proposed Rule Making* adopted today, we seek comment on alternative approach for allocating 24 MHz of pairable land mobile reserve spectrum including the bands discussed in this *Notice*. Under the alternative option, we would generally refrain from establishing service categories and mandating narrowband use of these frequencies. Instead, we would rely upon market forces to both allocate spectrum among the various mobile uses and encourage the intensive use of the spectrum. A distinct allocation, however, would be set aside to accommodate the needs of public safety entities. This alternative proposal is discussed in detail in the *Notice of Proposed Rule Making* in Gen. Docket No. 84-1231, adopted November 21, 1984, at paragraphs 31-46.

12. In a separate action, we have declined to make a nationwide allocation for a Private Radio Communications Service (PRCS). [15] In a *Notice of Proposed Rule Making* in Gen. Docket No. 84-1231, adopted today, we are soliciting comment on the possibility of using some of the new cellular mobile radio allocations for PRCS outside of the major markets where the need for cellular expansion spectrum is not as intense. While we believe that this sharing proposal is the most practical, sharing between PRCS and private land mobile radio is also an option. Since the need for additional private land mobile spectrum is more acute in larger cities, we request comments on whether this allocation could be made on a primary basis nationwide for the traditional land mobile services, with a secondary allocation to PRCS outside the more populated urban areas. Based on the spectrum shortfalls projected in our study of future private land mobile needs, [16] We could consider PRCS use of some or all of the proposed 12 MHz allocation outside of, for example, the top 21 urban areas. [17]

13. In making this proposal we recognize that PRCS was proposed as a high volume consumer service. Such geographical restraints would make it unavailable to approximately one-third of the United States population. Because the cost of the PRCS radio was to be minimized by the predicted high sales volume, a geographically restricted service may not be viable.

14. Finally, we recognize the potential difficulties in authorizing a consumer radio service on a limited geographical basis. Since radios would be readily available and users might not be individually licensed, violation of the geographical restrictions would be easily accomplished and detection of violators difficult and time consuming, at a time when enforcement efforts have already been curtailed due to budgetary constraints. We would therefore require, before authorizing any PRCS service in non-urban areas, that we be thoroughly convinced that there will be effective mechanisms, technical or otherwise, to prevent PRCS operation in urban areas where the frequencies are authorized for private land mobile or other use. Comments on these and other issues posed by the option are requested.

Proposal

A. Frequency Allocation

15. Of the 41 MHz of reserve spectrum available in the 900 MHz band, 32 MHz is readily pairable for land mobile operation. In recognition of the high priority of the private land mobile services we propose to make 12 MHz of this spectrum available for their use. We are also proposing in separate proceedings to make 12 MHz available for additional cellular operation and 8 MHz available for a land mobile satellite service. [18] [19] Together, these actions allocate all readily pairable reserve spectrum for land mobile use.

16. With regard to the specific channels to be employed, current 900 MHz band private land mobile systems utilized paired transmit and receive frequencies separated by 45 MHz. We recognize that it would be convenient to maintain this 45 MHz separation on any further release of spectrum, since other spacings will necessitate equipment

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[12] See *Second Report and Order*, PR Docket No. 79-191, 47 FR 41002 (Sept. 16, 1982), and *Memorandum Opinion and Order*, PR Docket No. 79-191, FCC 83-474, 48 FR 51917 (Nov. 15, 1983).

[13] *Petition for Rule Making*, *supra*, at pages 10, 11.

[14] *Petition for Rule Making*, *supra*, at page 12.

[15] *Report and Order*, Gen. Docket 83-26, adopted November 21, 1984.

[16] *Future Private Land Mobile Telecommunications Requirements*, *supra*.

[17] The areas are: Atlanta, Baltimore/Washington, Boston, Chicago, Cleveland/Detroit, Dallas, Denver, Houston, Kansas City, Los Angeles/San Diego, Miami, Minneapolis/St. Paul, New Orleans, New York, Philadelphia, Phoenix, Pittsburgh, San Francisco, Seattle, St. Louis, and Tampa/St. Petersburg.

[18] *Notice of Proposed Rule Making*, Gen. Docket 84-1231, *supra*.

[19] *Notice of Proposed Rule Making*, Gen. Docket 84-1234, adopted November 21, 1984.

redesign. However, a separation other than 45 MHz between transmit and receive frequencies appears to be necessary to maximize utilization of the reserve spectrum located between 932 and 947 MHz. Furthermore, equipment redesign would be necessary anyway in light of our proposed narrowband channeling scheme. Accordingly, we propose to allocate the band 896–902 MHz paired with 935–941 MHz, resulting in a 39 MHz separation between transmit and receive frequencies. Comments are requested on the technical and economic feasibility of this proposed pairing arrangement.

17. Historically, as technology has permitted, we have implemented a series of reductions or "splits" in land mobile channel bandwidths to generate additional communications capacity.[20] Currently, the channel bandwidth generally authorized for private land mobile licensees operating above 450 MHz is 25 kHz. In this release, we desire to implement the most efficient channeling plan feasible in order to derive the maximum communications capacity from the available spectrum. We recognize, however, that spectrum efficiency is a multifaceted measure. It includes not only the number of users that can be accommodated but also the utility of the communications. Therefore, in choosing a channeling plan for this release, we must strike a balance between accommodating would-be users and maintaining a communications quality that meets each individual licensee's needs. In addition, we while narrower channels would provide more capacity in a given amount of spectrum for analog communications, such channels pose some disadvantages and inefficiencies for the use of data communications, which we expect to increase substantially in the future. Equipment development time and cost must also be considered when evaluating channeling plans. Furthermore, we desire to design an optimum channel plan for this spectrum which will provide for technology soon to be available to private land mobile licensees and, at the same time, be in a position to accommodate future changes in channelization when technically appropriate.

18. We propose a 12.5 kHz channeling plan since we believe this approach strikes a reasonable balance between encouraging more efficient technologies and providing relief to private land mobile users within a reasonable time frame. Channel spacings other than 12.5 kHz, such as 5, 6.25, 7.5, 10, and 15 kHz will also be considered. We request comments on the utility of the various spacings considering equipment cost, development time, and technical advantages and disadvantages in light of current and future technologies. Appendix A includes proposed technical standards covering frequency deviation, emission bandwidth, emission roll-off characteristics, and frequency tolerance for the 12.5 kHz plan. Parties are urged to review these standards and comment on their appropriateness. Commenters should provide specific technical standards appropriate for their preferred plan. Also, in light of the unique nature of public safety communications and the economic constraints under which many public safety entities operate, we request comments on whether public safety applicants should be required to use narrowband channels.

19. We will not restrict these new channels to any specific modulation but will allow licensees technical flexibility. That is, we propose to allow licensees on these new frequencies the latitude to use multiple carriers or alternative modulation schemes within an assigned channel to encourage the development of more spectrum efficient techniques. This is consistent with the current rules which govern assignments on frequencies above 800 MHz.[21] We note, however, that currently, narrowband equipment capable of operation on the 806–821/851–866 MHz channels is not available. This has limited the extent to which existing licensees who need additional capacity can take advantage of technical flexibility. Because existing systems operate on 25 kHz channels in the 806–821/851–866 MHz band and the spectrum proposed for release would use narrowband channels in the 896–902/935–941 MHz band, it may not be feasible to use the proposed frequencies for expansion of existing sytems. However, we expect that development of narrowband technologies for the proposed spectrum release should lead to the availability of narrowband equipment which could be used in the existing 800 MHz channels. Licensees are free to use such equipment without further action by us.

20. We propose to apportion this spectrum among the various private land mobile users by establishing four frequency pools designated as Public Safety, Industrial/Land Transportation, Business Radio, and Specialized Mobile Radio Systems (SMRS). We believe that such a pooling arrangement offers potential users of this spectrum the most flexibility in deciding whether their needs can best be met by constructing their own systems, sharing facilities, or subscribing to service from an SMRS. Furthermore, such pools provide necessary groupings of available frequencies among various users with differing communications needs. At the same time, our rules on interservice sharing allow users eligible in a pool where no frequencies are available to utilize unused frequencies from another pool.[22]

21. While experience has shown that pools offer an effective means of providing all users access to the spectrum, the question of how to apportion the available spectrum among the four pools is complex. In making this decision, we must weigh many factors which may affect the spectrum requirements of different types of private radio users.

22. The Commission, recognizing the essential nature of public safety communications, is committed to providing the spectrum resources necessary for public safety entities to provide the best service possible to the American public. As we previously noted, Congress too has affirmed its desire for the Commission to "carefully consider the legitimate needs of public safety agencies in managing the private land mobile spectrum."[23] Therefore, we believe that some priority must be given to the Public Safety Services in this spectrum release. Furthermore, as pointed out in the LMCC petition,[24] all 800 MHz frequencies currently allocated to the Public Safety pool have already been assigned in the Los Angeles and New York/Northern New Jersey areas, with shortages in several other areas imminent.

23. SMR's provide needed communications capabilities to numerous small businesses that are unable to expend the capital necessary to establish their own communications systems. These small businesses constitute the largest number of 800 MHz users to date. Of the 800 MHz spectrum released in Docket 79–191,[25] 80 channels were allocated to the SMRS pool. The demand for SMRS service is so great that in the areas of Baltimore, Buffalo, Chicago, Cleveland, Dallas, Detroit, Houston, Los Angeles, Philadelphia, New York, San Diego, San Francisco, and Washington, D.C., more applications were received than could be accommodated on the available channels.[26] Service to the public has

[20] See *Second Report and Order*, Docket No. 11253, 21 FR 7637 (September 26, 1957); *Second Report and Order*, Docket No. 11992, 23 FR 6140 (August 9, 1958); and *Second Report and Order*, Docket No. 13847, 33 FR 3114 (February 17, 1968).

[21] See 47 CFR 90.645.

[22] See 47 CFR 90.621.

[23] *Conference Report, supra*, at page 52. See also FCC Authorization Act of 1983, Pub. L. No. 98–214, 97 Stat. 1467.

[24] *Petition for Rule Making, supra*, at page 11.

[25] *Second Report and Order*, PR Docket No. 79–191, *supra*.

[26] There were other areas where more applications were received than could be

Continued

been necessarily delayed in these areas while the Commission conducts lotteries to determine which applicants can be assigned frequencies. This experience has convinced us that in dividing this new spectrum, some priority should also be given to the SMRS pool.

24. While we believe that Public Safety and SMRS should be afforded priority, adequate all locations must be made to accommodate Special Industrial, Land Transportation, and Business users who find that their needs can best be met by establishing their own communication systems. The LMCC petition indicates that the currently available 800 MHz frequencies are at or near full utilization in several urban areas and that further allocations to the Industrial/Land Transportation and Business pools are necessary to accommodate additional users.

25. After careful consideration of the above factors, we propose to distribute the new channels among the four pools as follows: 30% of the channels for Public Safety, 20% for Industrial/Land Transportation, 20% for Business Radio, and 30% for SMRS. Comments are requested on this proposed division. In particular, we request comments on whether the Public Safety pool should be larger than we propose. Commenters should focus their attention on the relative spectrum requirements and operational characteristics of the users in each pool. We also point out that the new channels in these pools could not be utilized in the areas bordering Canada and Mexico until appropriate agreements are reached with those countries.

B. Regulatory Structure

26. We propose to establish a regulatory structure for this allocation similar to the approach taken by the Commission in Gen. Docket 79-191. For example, the rules concerning applications processing, implementation schedules, loading standards, and comparative criteria adopted in that proceeding and currently applied to applications and operations in the 806-821/851-866 MHz bands would be applied to this spectrum.[27] These rules are generally familiar to private land mobile applicants, licensees, and their representatives and have worked well to date. Using the same regulatory approach will allow for efficient application preparation and processing.

27. In Docket 79-191, a "filing window" within which applications would be accepted was established. Applications which are acceptable for filing are processed in order of receipt. If more applications are received than can be accommodated on the frequencies available for assignment in the area, all applications are treated as if they were received on the same date and at the same time. To the extent that there are more frequencies requested during the filing window than are available in a particular geographic area, a system of comparative criteria and lotteries is used to determine which applications can be granted.[28] We propose to use the same licensing procedures on this new spectrum.

28. Regarding the specific comparative criteria to be applied, applicants are currently judged in two areas: (1) Whether the proposed system is trunked or conventional, and (2) whether the application would expand a fully loaded trunked system. Applications proposing a trunked system receive one comparative point. If the application is for additional frequencies to expand a fully loaded trunked system, the applicant receives an additional comparative point. These comparative criteria were established in order to encourage the development of new trunked systems and the expansion of fully loaded existing trunked systems. Applications are ranked based on the number of comparative points and grants are made first to those with the highest number of points. If sufficient frequencies are not available in a geographic area to grant all applications with the same number of comparative points, grants are made by lottery.

29. We propose to utilize the same comparative criteria on this spectrum. As we have previously discussed, because existing systems operate on 25 kHz channels in the 806-821/851-866 MHz band and the spectrum proposed for release would use narrowband channels in the 896-902/935-941 MHz band it may not be feasible to utilize the proposed frequencies for expansion of existing systems. Accordingly, we request comments on whether the comparative point now awarded to applicants proposing expansion of fully loaded trunked systems would be applicable to the proposed spectrum release.

30. Our concern that this new spectrum be used as efficiently as possible prompts us to consider a third comparative criterion based on spectrum efficiency. Specifically, we propose to award to comparative point to applicants proposing significantly more spectrally efficient operation than that required by the rules. Comments are requested on this proposal, including suggestions on standards for the preference and its effect on the administrative process now utilized.

31. The proposed rules are attached in Appendix A. In addition to the issues which have been specifically raised in this *Notice*, any other comments related to the subject of this proposed spectrum release which have not been addressed herein are invited.

Regulatory Flexibility Analysis

32. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. *Reason for Action:* This proposal would allocate additional frequencies from presently unused reserve spectrum for use in the Private Land Mobile Radio Services. This will increase the number of radio channels available to applicants and licensees in these services to meet their growing need for spectrum.

II. *Objective:* The Commission is advancing this proposal to relieve current and future spectrum shortages experienced by the private land mobile community.

III. *Legal Basis:* The proposed action is authorized under secs. 4(i), 303(f), 303(g), 303(r), and 331(a) of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use.

IV. *Description, Potential Impact and Number of Small Entities Affected:* The release of additional radio channels will provide relief from congestion on existing land mobile channels. This will allow present systems to expand and new systems to be implemented. We expect that this ultimately will result in increased business efficiency. This proposal will also expand market opportunities for radio manufacturers, some of which are small businesses. Beyond this we are unable to quantify the potential effects on small entities. We therefore invite specific comments on this point by interested parties. Additionally, IT IS ORDERED that the Secretary shall serve a copy of this Notice on the Small Business Administration.

V. *Reporting, Recordkeeping and other Compliance Requirements:* No new requirements will be imposed upon Private Land Mobile Radio Service licensees.

VI. *Federal Rules which Overlap, Duplicate or Conflict with this Rule:* None.

VII. *Significant Alternatives:* There are no significant alternatives other than those enumerated in this *Notice* which

accommodated from the given frequency allocation; however, applicants in these areas settled among themselves prior to implementation of lottery proceedings.

[27] For further discussion on these and other related issues, see *Second Report and Order*, PR Docket No. 79-191, *supra*, and *Memorandum Opinion and Order*, PR Docket No. 79-191, *supra*.

[28] For a dicussion of lottery procedures, see *Second Report and Order*, Gen. Docket 81-768, 48 FR 27182 (June 13, 1983).

would accomplish our stated objective of providing sufficient additional spectrum to Private Radio Service licensees. Additionally, retaining the *status quo* represents a continuing burden on those licensees.

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

34. This action is taken pursuant to secs. 4(i), 303(c), 303(f), 303(g), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 332. Interested persons may file comments on this proposal on or before February 28, 1985, and reply comments on or before March 29, 1985. All relevant and timely comments filed in accordance with secs. 1.415 and 1.419 of our rules and regulations (47 CFR 1.415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information is noted in its final decision.

35. In accordance with the provisions of section 1.419 of the Rules and Regulations 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other material. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

36. For further information concerning this rule making contact Stuart Overby at (202) 634-2443, Private Radio Bureau, Federal Communications Commission, Washington, D.C.

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

William J. Tricarico,

Secretary, Federal Communications Commission.

Appendix A

We propose to amend Part 2, 15, and 90 of the Commission's Rules and Regulations, 47 CFR Parts 2, 15, and 90 to read as follows:

PART 2—[AMENDED]

1. In § 2.106, the Table of Frequency Allocations, under the heading "Federal Communications Commission," columns 5 and 6 would be amended as follows to include the 896–902 and 935–941 MHz bands: (Note: This Table reflects concurrent Commission action in General Docket Nos. 82-243 and 82-335.)

§ 2.106 Table of Frequency Allocations

* * * * *

Non-Government	FCC Use Designators
Allocation MHz	Rule Part(s)
(5)	(6)
* * * * *	
(5)	(6)
890–896 LAND MOBILE US116 US268	Reserve
896–902 LAND MOBILE US116 US268	PRIVATE LAND MOBILE (90)
* * * * *	
932–935 FIXED US215 US268	
935–941 LAND MOBILE US116 US215 US268	PRIVATE LAND MOBILE (90)
941–944 FIXED US268 US301 US302	
* * * * *	

PART 15—[AMENDED]

2. In § 15.63, the introductory text in paragraph (a) would be revised to read as follows (the table in that paragraph remains unchanged):

§ 15.63 Radiation interference limits.

(a) The radiation from all radio receivers that operate (tune) in the range 30 to 890 MHz, 896 to 902 MHz, or 941, including frequency modulation broadcast receivers and television broadcast receivers, manufactured after the effective date specified in § 15.72 shall not exceed the following field strength limits at a distance of 100 feet or more from the receiver:

* * * * *

(3) Section 15.69 would be amended by revising paragraph (a) to read as follows:

§15.69 Equipment authorization for a receiver.

(a) Each radio receiver that tunes (operates) on a frequency between 30 to 890 MHz, 896 to 902 MHz, or 935 to 941 MHz and each CB receiver, as defined in § 15.59, shall have the necessary equipment authorization as listed in paragraph (b) below to show compliance with the technical specifications of this Part. The equipment authorization is a prerequisite of marketing, pursuant to Subpart I of Part 2 of this Chapter.

* * * * *

(4) In § 15.72(b) the introductory text would be revised to read as follows:

§ 15.72 Date when an equipment authorization is required.

* * * * *

(b) For other receivers. All radio receivers other than television broadcast receivers that operate (tune) in the range 30 to 890 MHz, 896 to 902 MHz, or 935 to 941 MHz manufactured after October 1, 1956, shall comply with the certification requirements with respect to radiation of radiofrequency energy, except as follows:

* * * * *

(5) In § 15.79, the introductory text would be revised to read as follows:

§15.79 Report of measurements: Receivers other than TV or FM.

The report of measurements for a receiver other than an FM or TV broadcast receiver and for each band in the range 30 to 890 MHz, 896 to 902 MHz, or 935 to 941 MHz in a multiband broadcast receiver shall include the information listed below if the receiver is subject to certification pursuant to § 15.69. If the receiver is subject to notification or verification, that report of measurements, including the information listed below, shall be

submitted to the Commission only if it is specifically requested.

* * * * *

PART 90—[AMENDED]

6. The table in § 90.205(b) would be amended as follows to include the 896–902 and 935–941 MHz bands:

§ 90.205 Power.

* * * * *

Frequency range (MHz)	Maximum output power (watts)	Maximum effective radiated power (watts)
* * * * *		
851 to 866	(*)	(*)
896 to 902	(*)	(*)
929 to 930	(*)	(*)
935 to 941	(*)	(*)
* * * * *		

7. In § 90.209, paragraph (b)(4) would be revised; paragraphs (b)(5), (b)(6), and (b)(7) would be redesignated as (b)(6), (b)(7), and (b)(8), respectively; and new paragraphs (b)(5), and (h) would be added as follows:

§ 90.209 Bandwidth Limitations.

* * * * *

(b) * * *

* * * * *

(4) For all F3 emissions, on frequencies below 947 MHz, except for the frequency bands 896 to 902 MHz and 935 to 941 MHz, the maximum authorized bandwidth shall be 20 kHz and the maximum authorized frequency deviation shall be 5 kHz. However, stations authorized for operation on or before December 1, 1961, in the frequency band 73.0–74.6 MHz may continue to operate with a bandwidth of 40 kHz and a deviation of 15 kHz. For stations operating on frequencies above 947 MHz, except as provided in subparagraph (6) of this section, the maximum authorized bandwidth and frequency deviation will be specified in the station authorization.

(5) For all emissions on the frequency bands 896 to 902 MHz and 935–941 MHz, the maximum authorized bandwidth shall be 10 kHz. The maximum authorized frequency deviation for all frequency modulated emissions shall be 2.5 kHz.

* * * * *

(h) For transmitters that operate in the frequency bands 896–902 MHz and 935–941 MHz, and are not equipped with an audio low-pass filter in accordance with the provisions of § 90.211(d)(1), the peak power of any emission shall be attenuated below the peak envelope power of the transmitter (P) in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 2.5 kHz up to and including 5 kHz: At least 83 Log_{10} ($2f_d/5$) decibels;

(2) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 250 percent of the authorized bandwidth: At least 116 Log_{10} ($2f_d/6.1$) decibels or 50 plus 10 Log_{10} (P) or 70 decibels, whichever is the lesser attenuation;

(3) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 Log_{10} (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

8. Section 90.211 would be amended by revising the introductory text and paragraphs (d) (1)(ii) and (2) as follows:

§ 90.211 Modulation Requirements.

* * * * *

(d) Each transmitter shall meet the requirements provided in paragraph (d) (1) or (2) of this section. The requirements of this paragraph do not apply to mobile stations which are authorized to operate with a maximum power output of 2 watts or less and to any radiotelecommunication system operating wholly within the limits of one or more of the territories or possessions of the United States, or Alaska, or Hawaii, except those systems operating in the frequency ranges 806 to 821 MHz, 851 to 866 MHz, 896 to 902 MHz, and 935 to 941 MHz.

(1) * * *

(i) * * *

(ii) For transmitters that operate in the frequency band of 450 to 470 MHz and authorized on or after November 1, 1967, and transmitters that operate in the frequency bands of 470 to 512 MHz, 806 to 821 MHz, 851 to 866 MHz, 896 to 902 MHz, 929 to 930 MHz, 935 to 941 MHz, and Traveler's Information Stations on 530 and 1610 kHz the attenuation of the low-pass filter between the frequencies of 3 kHz and 20 kHz shall be greater than the attenuation at 1 kHz by at least: 60 Log_{10} (f/3) decibels where "f" is the frequency in kHz. At frequencies above 20 kHz, the attenuation shall be 50 decibels greater than the attenuation at 1 kHz.

(2) Transmitters subject to the emission limitations of paragraphs (f), (g), or (h) of § 90.209 shall be exempt from the audio low-pass filter requirements of this section, provided that transmitters used for digital emissions must be type accepted with the digital modulating signal or signals specified by the manufacturer. The type acceptance application shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (f), (g), or (h) of § 90.209.

9. The table in § 90.213(a) would be amended as follows to include the 896–902 and 935–941 MHz bands:

§ 90.213 Frequency tolerance.

* * * * *

FREQUENCY TOLERANCE

Frequency range	Fixed and base stations		Mobile stations	
	Over 200W output power	200W or less output power	Over 2W output power	2W or less output power
* * * * *				
851 to 866	[14] .00015	[14] .00015	[14] .00025	[14] .00025
896 to 902	[14] [15] .00015	[14] [15] .00015	[14] .00025	[14] .00025
929 to 930	.00015	.00015	[15]	[15]
935 to 941	[14] .00015	[14] .00015	[14] .00025	[14] .00025
1427 to 1435	[17] .03	[17] .03	.03	.03
* * * * *				

10. In § 90.477(b) the introductory text would be revised as follows:

§ 90.477 Interconnected Systems.

* * * * *

(b) In the frequency ranges 806–821 MHz, 851–866 MHz, 896–902 MHz, and 935–941 MHz, interconnection with the public switched telephone network is authorized under the following conditions:

* * * * *

11. Section 90. 492 would be revised as follows:

§ 90.492 One way paging operations in the 806–821 MHz, 851–866 MHz, 896–902 MHz and 935–941 MHz bands.

Except as provided at §§ 90.378 and 90.645(e) of the rules for systems assigned channels on an exclusive basis, including SMR systems, systems of communication licensed in the 806–821 MHz, 851–866 MHz, 896–902 MHz and 935–941 MHz band may not be employed for paging operations.

12. The heading for Part 90, Subpart S, of the Rules and Regulations would be revised as follows:

Subpart S—Regulations Governing Licensing and Use of Frequencies in the 806–821, 851–866, 896–902, and 935–941 MHz bands

13. Section 90.601 would be revised to read as follows:

§ 90.601 Scope.

This subpart sets out the regulations governing the licensing and operations of all conventional systems operating in the 806–821/851–866 MHz and 896–902/935–941 MHz bands, and trunked systems operating in the 809.750–816/854.750–861 MHz and 896–902/935–941 MHz bands. Trunked systems operating in the 816–821/861–866 MHz bands are governed by the rules in Subpart M until September 1, 1987. After that time they will be governed by the rules in this subpart. This subpart also governs the use of frequencies in the 806–821/851–866 MHz bands along the Mexican and Canadian border areas in accordance with existing agreements. It includes eligibility requirements, applications procedures, operational, and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflict, the provisions of this subpart shall govern with respect to licensing and operation in these frequency bands.

14. The introductory text in § 90.603 would be revised as follows:

§ 90.603 Eligibility.

The following persons are eligible for licensing in the 806–821 MHz, 851 to 866 MHz, 896 to 902 MHz, and 935 to 941 MHz bands.

* * * * *

15. The heading immediately preceding § 90.611 would be revised to read as follows:

Policies Governing the Processing of Applications and the Selection and Assignment of Frequencies for Use in the 806–821 MHz, 851–866 MHz, 896–902 MHz, and 935–941 MHz Bands

16. The introductory text in § 90.613 would be revised as follows:

§ 90.613 Frequencies Available.

The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with mobile station frequencies taken from the 806–821 MHz band with corresponding base station frequencies being 45 MHz higher and taken from the 851–866 MHz band or with mobile station frequencies taken from the 896–902 MHz band with corresponding base station frequencies being 39 MHz higher and taken from the 935–941 MHz band.

* * * * *

§ 90.613 [Amended]

17. An additional table would be added to § 90.613 to list specific frequencies and their associated channel numbers that would be made available from the 896–902/935–941 MHz bands. For the sake of brevity, the actual table is not being listed at this time.

§ 90.617 [Amended]

18. Tables 1 through 4 in § 90.617 would be amended to list additional channels taken from the 896–902/935–941 MHz bands and assigned to each category. The specific channels that would be assigned to each of the four categories are not being listed at this time, however, approximately 30% of the newly created channels would be allocated in the Public Safety Category, 20% in the Industrial/Land Transportation Category, 20% in the Business Category, and 30% in the SMRS Category.

19. The heading immediately preceding § 90.635 would be revised to read as follows:

Technical Regulations Regarding the Use of Frequencies in the 806–821 MHz, 851–866 MHz, 896–902 MHz, and 935–941 MHz Bands

20. The titles of Tables 2, 3, and 4 of § 90.635 would be revised to read as follows:

§ 90.635 Limitations on Power and Antenna Height.

* * * * *

Table 2—Equivalent Power and Antenna Heights for Base Stations in the 851–866 MHz, and 935–941 MHz Bands Which Have a Requirement for a 32 km (20 mi.) Service Area Radius.

* * * * *

Table 3—Equivalent Power and Antenna Heights for Suburban-Conventional Base Stations in the 851–866 MHz, and 935–941 MHz Bands Which Have a Requirement for Less than 20-mi Service Area Radius—Maximum Effective Radiated Power (Watts).

* * * * *

Table 4—Equivalent Power and Antenna Heights for Urban-Conventional and Trunked System Base Stations in the 851–866 MHz, and 935–941 MHz Bands Which Have a Requirement for Less Than 20-mi Service Area Radius—Maximum Effective Radiated Power (Watts).

* * * * *

21. In § 90.637(a) the introductory text would be revised as follows:

§ 90.637 Restrictions on Operational-Fixed Stations.

(a) Except for control stations, operational-fixed operations will not be authorized in the 806–821 MHz, 851–866 MHz, 896–902 MHz, or 935–941 MHz bands.

* * * * *

22. Paragraph (f) of § 90.645 would be revised to read:

§ 90.645 Permissible Operations.

* * * * *

(f) Where the channel(s) is assigned to an SMRS licensee or exclusively to a single licensee, or where all users of a system agree, more than a single emission may be utilized within the authorized bandwidth. In such cases, the frequency stability requirements of § 90.213 shall not apply, but out-of-band emission limits of § 90.209 shall be met.

* * * * *

November 21,1984.

Concurring Statement of Commissioner James H. Quello

In re: Notice of Proposed Rulemaking to release 900 MHz reserve spectrum for private land mobile use

I have no reluctance to release this 12 MHz for use by private land mobile licensees because I recognize the value of this service. I also recognize the need for additional communications channels in a few of the nation's largest cities.

My reservations in approving this Notice of Proposed Rulemaking lie only with its favoring a 12.5 KHz channelizing plan for land mobile use in the new spectrum. I believe that the proposal is far too conservative and that the Commission should propose a 5 KHz channelizing plan. I am well aware of the controversy within the technical community with respect to 5 KHz channels, and I beleive that this Notice is an appropriate vehicle to thoroughly air that controversy on the record. Therefore, I hope and expect that there will be extensive informed, thoughtful comments on the various channelizing plans proposed—including 5 KHz—so that the Commission can go forward in a responsible manner.

My concerns regarding efficient use of the spectrum are not limited to private land mobile use but extend to cellular radio and to studio transmitter links and intercity relay channels at 900 MHz. Where technological developments seem to make such efficient use practicable, the Commission should encourage the rapid use of such technology.

Clearly there are costs associated with adoption of different technologies, but these are minimized where new spectrum is involved. No investment is incurred through displacement of existing users. I believe that there are significant costs imposed, as well, by adhering to existing technologies when

more efficient ones are readily available. The Commission, in proposing allocation of the remaining reserve spectrum at 900 MHz in this and related proceedings, declined to authorize two new radio services because there was not enough spectrum to accommodate all legitimate needs. Stated more precisely, there was not enough spectrum given the existing channelizing plan. Thus, the inefficient use of spectrum has cost the development of two new services either or both of which might have provided significant benefits to the American people. Who can guess what other services have been or will be foregone because of a lack of available spectrum?

While I believe that the Commission has responded to legitimate short term needs of the land mobile community, I also believe that we have fallen short in responsible consideration of longer term needs. There is a need for the orderly allocation of additional spectrum, but I can only concur with the proposed channelizing plan to the extent that it appears to favor 12.5 KHz channels.

Separate Statement of Commissioner Dennis R. Patrick

In the Matter of: Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 896–902 MHz and 935–941 MHz Bands for Private Land Mobile Use

Overall, I approve of the Commission's proposal, as set forth in the *Notice of Proposed Rule Making*, to release the 896–902 MHz and 935–941 MHz bands for private land mobile use. The facts clearly show that the private land mobile community has a critical need for additional spectrum.[1] I especially support the proposal to grant Public Safety some priority in this spectrum by apportioning 30% of these new channels to the Public Safety pool.[2] Congress, in enacting the Communications Amendments Act of 1982, directed the Commission to "carefully consider the legitimate needs of the Public Safety agencies in managing the private land mobile spectrum."[3] This proposal reflects such efforts by the Commission.

On the other hand, I am unconvinced of the wisdom or necessity of requiring the use of narrowband equipment on spectrum allocated to Public Safety. In the *Notice*, the Commission proposes a 12.5 kHz channeling plan for this new spectrum. This is one-half of the 25 kHz channel spacing currently used in existing equipment for the 800 MHz band. Parties are also requested to comment on alternative narrow channel spacings, *i.e.*, 5 kHz, 6 kHz, 7.25 kHz, 10 kHz and 15 kHz channels. This range of options indicates that a channel spacing smaller than 25 kHz has not yet been established for this frequency band, and consequently, equipment using any of these suggested channel spacings is not commercially available.

While I recognize the need to encourage spectrum efficiency in the private land mobile radio services, mandating the use of narrowband technologies for public safety may create unique problems of grave importance. First, I am concerned about the reliability of narrowband technology in Public Safety applications. The reliability of radio communication cannot be compromised where the safety of life and property is at risk. The Commission has not reached a final decision with respect to mandating a particular narrowband channelization plan. Therefore, this isue cannot be prejudged. I will not, however, vote to make Public Safety a proving ground for untested technologies. Imposing such a requirement does not "promote the safety of life and property,"[4] but, instead, may jeopardize it.

In addition, equipment using new technologies is usually more expensive than equipment using existing, proven and industry-accepted technology. Since Public Safety already competes with other public services for limited financial resources, the higher costs of new equipment will certainly create additional financial and budgeting problems. Furthermore, the lead time necessary for the developmentof new technologies may create obstacles for public safety agencies with fixed budget cycles and rigid planning requirements.

I would appreciate comments on an alternative proposal implementing a 25 kHz channeling plan in the spectrum allocated to the Public Safety pool. It should be noted that although this spectrum would be assigned to the Public Safety pool, the Commission's rules on interservice sharing would allow users eligible in another pool where no frequencies were available to utilize unused frequencies, if any, in the Public Safety pool. However, I would require other users gaining access to the Public Safety pool through interservice sharing to use narrowband channels. I invite comment by all interested parties on such an approach. In particular, Public Safety users and equipment manufacturers should specifically discuss the merits, costs and benefits of this alternative proposal.

In addition, I encourage commenters generally to discuss the unique status of Public Safety and whether it should affect the Commission's action in determining the size of the Public Safety spectrum pool and any proposed channelization plan.

[FR Doc. 85–800 Filed 1–10–85; 8:45 am]
BILLING CODE 6712-01-M

[1] *See Future Private Land Mobile Telecommunications Requirements:* Final Report, Planning Staff, Private Radio Bureau, FCC, Washington, D.C., August 1983; *Petition for Rule Making*, filed by the Land Mobile Communication Council ("LMCC"), RM–4829, received June 18, 1984.

[2] The *Notice* also solicits comments on whether the Public Safety pool should be larger than the 30% proposed (*see* paragraph 25). A larger pool may be warranted considering that, as LMCC points out in its *Petition*, all 800 MHz frequencies currently allocated to Public Safety have already been assigned in some major cities, and shortages are soon expected in other areas.

[3] *Conference Report* No. 97–765, 97th Congress 2nd Session, August 19, 1982 at page 52.

[4] 47 U.S.C. section 332(a)(1).

47 CFR PART 31

[CC Docket No. 78–196; FCC 84–634]

Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to rescind Part 31, Uniform System of Accounts for Class A and Class B Telephone Companies, and Part 33, Uniform System of Accounts for Class C Telephone Companies, and to replace those Parts with a new Part 32, Uniform System of Accounts for Telephone Companies. The proposed Part 32 would prescribe a single new uniform accounting system for all telephone companies subject to the Commission's jurisdiction. The proposed accounting system is intended to establish a modernized financial accounting system for the telephone industry which would meet the Commission's needs for financial information and would serve as a basis for allocating costs by regulatory jurisdiction and service category.

DATES: Comments due on or before March 4, 1985. Reply comments due on or before April 3, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald P. Vaughan, Chief, Accounting and Audits Division, Common Carrier Bureau, (202) 634–1861.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 31

Communications common carriers, Telephone, Uniform system of accounts.

The collection of information requirement contained in this proposed rule has been submitted to OMB for review under Section 3504(h) of the Paperwork Reduction Act. Persons wishing to comment on this collection of information requirement should direct their comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Federal Communications Commission.

Further Notice of Proposed Rulemaking

In the matter of revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies (Parts 31, 33, 42, and 43 of the FCC's Rules), CC Docket No. 78-196, FCC 84-634.

Adopted: December 19, 1984.

Released: January 3, 1985.

By the Commission:

I. Introduction

1. In this *Further Notice of Proposed Rulemaking (Further Notice)*, we are proposing to rescind Part 31 of the Commission's Rules and Regulations (Uniform System of Accounts for Class A and B Telephone Companies) and Part 33 of the Commission's Rules and Regulations (Uniform System of Accounts for Class C Telephone Companies). We are proposing further to replace these Parts with a single new Uniform System of Accounts (USOA) for all telephone companies subject to our jurisdiction—Part 32, Uniform System of Accounts for Telephone Companies.

2. The text of the proposed Part 32 (incorporated by reference as Appendix A to this *Notice*) provides for only two classes of carriers: Class A carriers, having annual gross operating revenues of $100 million or more; and Class B carriers, having annual gross operating revenues of less than $100 million. It is our intention to require ultimately a much smaller level of accounting detail and system compliance from Class B carriers than from Class A carriers, and further discussion in this *Notice* will touch on this concept.

3. Our proposal for a new USOA is based, in large part, on a report prepared by the Telecommunications Industry Advisory Group (TIAG) and transmitted to the Commission on May 31, 1984. The TIAG is a Federal Advisory Committee created by the Commission in the *Second Supplemental Notice of Proposed Rulemaking and Order (Second Notice)* in this proceeding, 88 FCC 2d 83 (1981). The TIAG's report reflects the general guidance discussed in the *Second Notice* and, consequently, has provided precisely the starting point we envisioned for developing Appendix A.

4. The TIAG's report presents a comprehensive financial accounting system premised on generally accepted accounting principles (GAAP)[1] and structured to reflect the functional nature of a telephone company's telecommunications operations. Although the report represents a substantial departure from the form and content of Parts 31 and 33, it is a cohesive and well-thought-out system approach to satisfy our request for a revised USOA recommendation. Nevertheless, the report does recommend a number of changes in areas of Commission policy with which we cannot agree. Thus, we propose to depart in some instances from certain of the concepts or details recommended by the TIAG. (See paragraphs 28, 32, 34, 38, and 46 of this *Further Notice*.) Some modifications we propose embody what we perceive as the proper regulatory philosophy of a new accounting system. Many others are designed to ease much of the potential burden of eventual system implementation which ultimate adoption of our proposal may well generate. Detailed discussions of our proposed Part 32 are contained in Sections III and IV of this *Further Notice*.

II. Background

5. In July 1978 the Commission issued a *Notice of Proposed Rulemaking*, 70 FCC 2, 719 (1978), in the above-captioned proceeding. We stated at that time that we envisioned a revised USOA as a regulatory information system that would meet all the ordinary needs of the Commission for the regulation of telephone common carriers. We recognized the necessity of revising the USOA because the system adopted in 1935 is anachronistic in a massively more complex and competitive, technological and economic environment. To keep pace with these changes, and at the same time to maintain our responsibility to regulate carriers rates in the public interest, it became essential that we develop and implement a revised system of accounts. We envisioned that such a system would constitute a single database which would serve several functions.

6. On August 9, 1979 the Commission released a *First Supplemental Notice of Porposed Rulemaking (Supplemental Notice)*, 44 FR 47359, August 13, 1979. In that document, the Commission expanded on its concept of a regulatory information system and sought further comment on the single database approach, as well as on several new issues raised by the comments to the original *Notice*.

7. The comments received in response to the *Supplemental Notice* indicated that the proposed system would be too complex to implement and administer, would be cost prohibitive to all parties, and, premised on service offerings, would be unstable. Commenters further claimed that the industry environment has not been sufficiently considered and that the industry itself had not been properly represented in the development of the proposal. In response to the comments, we issued the *Second Notice*. In the *Second Notice* we set aside the single database approach and determined that the revised USOA would be designed to interrelate both with cost allocation procedures and with the jurisdictional separations process. Further, we determined that the revised USOA should not be segregated by service categories. In no sense, however, did we abandon our commitment to cost of service ratemaking, but we decided that the USOA proceeding should interrelate in a coordinated fashion with other proceedings implemented in response to the newly competitive telecommunications environment.

8. In the *Second Notice* we also iterated a new set of objectives responsive to the comments made as well as to the original objectives of keeping pace with changes and maintaining our responsibility to regulate carriers in the public interest. These objectives are:

1. The new USOA must exist in the new competitive environment, balancing our continuing needs for regulatory information against our desire not to impose unreasonable or unnecessary reporting requirements on telephone companies. It should significantly reduce the number and complexity of special studies by providing, on a regular basis, the normal accounting input necessary for the regulatory process.

[1] The question of the extent to which the new USOA will embrace the concept of GAAP (as would be practiced in an unregulated environment) is currently at issue in CC Docket No. 84-469. (Reference *Notice of Proposed Rulemaking*, 49 FR 21377, May 21, 1984.) The fact that Appendix A reflects GAAP as recommended by the TIAG should in no way be construed as indicative of the decisions we will make in that Docket. GAAP was incorporated in Appendix A only for administrative ease at this juncture. The final Part 32 will be amended accordingly based on our conclusions in CC Docket No. 84-469.

2. The new USOA should ascertain appropriate accounting categories, recognizing that it is a simpler matter to aggregate small categories than to disaggregate larger ones. The desirability of smaller categories should be carefully balanced by the concern not to impose burdens upon carriers out of proportion to the usefulness of the information provided.

3. The revised USOA should not be tied to any particular cost of service methodology, as such methodologies may well change with time, with changing technology, or with relevant economic or legal considerations. A stable base from which to build is necessary to provide the ability to produce consistent and reliable output without the necessity of changing the accounting system each time a costing methodology is revised.

4. The new accounting system should be consistent with the regulatory requirements of the new telecommunications environment. With some companies offering regulated and unregulated services through different corporate entities, and with other companies offering both regulated and unregulated services through the same corporate entity, it is important that an effective accounting system be in place. While structural separation facilitates the identification of revenues and expenditures associated with regulated activities from those associated with unregulated activities, it does not eliminate the need for an accounting system. Where structural separation is not present, precise accounting procedures are even more important.

9. With the preceding providing the context for action, detailed procedures to be employed in the development of the revised USOA were set forth in the *Second Notice*. These procedures were directed to two major areas—the revised system concept and the establishment of a task force to develop the new USOA.

10. It was conceived that the new USOA would be a financial accounting system which would meet the financial and primary fiduciary reporting needs of the telephone industry and would provide the body of financial data to which appropriate methodolgoies could be applied to develop the requisite information to satisfy both our regulatory needs and the carriers' managerial needs. In this manner efficient regulation would be served by this Commission's relying upon the same database utilized by management, rather than relying upon data generated solely for submission to this agency. This concept, we noted, would require a design to support and fully complement, through separate, parallel subsystems (principally those of separations and costing), the evolving regulatory policies of this considered necessary by individual internal management systems considered necessary by individual common carriers for corporate decision-making, planning and control. Such a design was expected to satisfy the Commission's regulatory concerns for specific costing and separations data—through the interaction of compatible yet descrete financial and methodclogical mechanisms—and to satisfy the carriers' concerns for a financially-based accounting system to drive other external and internal reporting and decision-making models. *Second Notice, 16–41.*

11. To ensure that the basic integrity of all recorded data would remain intact and that the system would be auditable and would provide stable, reliable and consistent information, and in keeping with the financial nature of the system, GAAP was identified as a desirable basis. Exceptions to GAAP would be considered only when the requirements of the regulatory process under the Communications Act, particularly with respect to ratemaking, mandated additional or different accounting. (See Footnote 1 which discusses the phase in this proceeding regarding GAAP issues.)

12. In addition to the flexibility to accommodate diverse uses, the system should readily respond to and accommodate technological and competitive advances in the industry, permitting easy revision of the system to reflect such changes with minimal need to reallocate account balances. Account classifications and groupings should be determined by the concern for this responsiveness to change—limited only to the extent that materiality and relevance become overriding considerations. The classifications and groupings should be characterized by a categorization scheme linked to technological and generic commonalities rather than to service-related or compositely aggregated designations.

13. Recognizing the magnitude of the undertaking and considering the resources required for its completion, and further considering the diversity of uses intended for the system, the *Second Notice* authorized the establishment of the Telecommunications Industry Advisory Group (TIAG) to assist in the design and development of the revised USOA. Furthermore, a Commissioner was appointed as a supervising member to oversee TIAG activities. TIAG was charged with the development, preparation, and submission of a proposal for the basic framework and content of the new system. This charge included developing the necessary accounts with adequate disaggregation to support the anticipated subsystems discussed above, formulating the necessary account definitions and items lists, and drafting the necessary accounting rules to support the revised system. In setting up the TIAG in January 1982 and directing it to develop a revised USOA, the Commission established a joint cooperative effort to assist in expediting the development of the final prescription of the revised USOA. The ultimate responsiblity of the revision remains, of course, with the Commission.

14. The general membership of TIAG was eventually comprised of representatives from eleven distinct constituencies including the Federal Communications Commission, American Telephone and Telephone Company, Bell Communications Research (known as "Bellcore"), large independents,[2] United States Telephone Association, American Institute of Certified Public Accountants, other common carriers, National Association of Regulatory Utility Commissioners, consumers, equipment manufacturers, and large users. The general membership has overseen the progress of TIAG, provided the resources to staff and carry out the work of a steering committee and seven subcommittees to produce the various pieces of the new accounting system, and approved the reports to the Commission comprising the group's recommendations to the Commission for a revised USOA.

15. The TIAG membership has provided the Commission with a wealth of resources and experience which otherwise would not have been tapped by this Commission in following through on the rewrite effort. Through TIAG, the expertise of hundreds of accountants, engineers, attorneys, and other experts was infused into the USOA revision. These experts, many of them dedicated full time to this effort, and their staffs have put tens of thousands of man-hours into this project. The hundreds of hours of subcommittee meetings held over the past three years are documented by 16 cubic feet of records.

16. In the development of the various parts of the revised USOA, each constituency, through its members on the TIAG and/or their alternates working on the various subcommittees, had several opportunities to have its opinions considered. All constituencies were invited to participate at the

[2] Large independents are comprised of General Telephone and Electronics United Telephone System, and Continental Telephone.

working subcommittee level by submitting proposed revisions and white papers and by participating in the discussions and votes of the subcommittees. Upon completion of projects at the subcommittee level, each constituency through representation on the steering committee had an opportunity to submit suggestions for revisions and to vote whether or not the proposals should be referred to the general membership for final consideration or back to the subcommittee for further work. In addition, the policy was established that minority reports submitted at the steering committee level were to be sent along with the majority report to the general membership for their consideration. The reports submitted to the Commission included all minority views submitted to the general membership.

17. To date, the TIAG has provided the Commission with seven reports, one being the recommendation upon which the attached proposal for a revised USOA was based. Two other reports have been developed into dockets released for consideration under separate notices. A report on several aspects of depreciation accounting became the basis for a *Notice of Inquiry*, CC Docket 84–468, 49 FR 21375, May 21, 1984, and a report on the application of generally accepted accounting principles in a revised USOA was developed into a *Notice of Proposed Rulemaking*, CC Docket 84–469, 49 FR 21377, May 21, 1984. The fourth report on issues surrounding the implementation of a revised USOA is discussed in Section V below. The remaining three reports, covering necessary changes to conform the Separations Manual, 47 CFR Part 67, and the access charge rules, 47 CFR Part 69, to the new USOA as well as a recommendation for allocating joint costs to nonregulated activities, are currently under review by Commission staff. The attached proposed revisions of the USOA accounts, account text and general instructions are to a very great extent taken from the TIAG recommendations; however, the proposal incorporates our changes after consideration of minority reports and identified regulatory needs. These changes are explained in the discussions of the proposal in the sections following.

III. Summary of Proposal.

18. Our proposal for a revised USOA is a historical financial accounting system which reports the results of operational and financial events in a manner that enables the independent assessment of those results within a specified accounting period. Within the telecommunications industry certain recurring functions (natural groupings) take place in the course of providing products and services to customers. This proposal reflects, to the extent feasible, those functions.

19. For example, the primary basis of the accounts containing the investment in telecommunications plant are the functions performed by the assets. In addition, because of the anticipated effects of future innovations, the telecommunications plant accounts are intended to reflect technological distinctions. Similarly, the primary basis of the plant operations, customer operations and corporate operations expense accounts are the functions performed by individuals. The revenue accounts, on the other hand, reflect a market perspective of natural groupings based primarily on the products and services purchased by customers. A brief review of the principal chart of accounts (included separately as Appendix B) will help to expand on this foundation.

20. The plant accounts have been disaggregated from the current 20 broad categories to 41 technology—specific accounts grouped among switching, transmission, information origination/termination (e.g., terminal equipment), support (e.g., buildings and vehicles), and other functions, as well as intangibles (such as rights-of-way and patents). As noted above, the expense accounts have been recast and categorized as plant operations, customer operations, or corporate operations, with specific accounts reflecting the activities people perform. The revenue accounts have been expanded from a handful of non-specific service designations to a market-specific array encompassing private network, public network, access, customer premises facilities, and miscellaneous service revenues disaggregated to specific products and services.

21. We have also proposed a two-dimensional matrix concept to classify expenses. Under this concept, every expense, by its nature, has two characteristics, purpose and type. The "purpose" of the expense essentially equates to its functional nature (e.g., plant operations) as identified in paragraph 22 above. The "type", on the other hand, identifies the objective nature of the expense, *i.e.*, wages, salaries, benefits, rents, and other, as they have been identified in Appendix A. Under the matrix concept, therefore, every expense incurred is classified by both its purpose and its type upon initial recordation within the system.

22. This system, then, is intended to reflect a functional and technological view of the telecommunications industry. In our opinion, this view will provide a stable and consistent foundation for the recording of financial data. Moreover, the financial data contained in the accounts, together with the detailed information contained in the underlying financial and other subsidiary records to be required by this Commission, will, we believe, provide the information necessary to support separations, cost of service, and management reporting requirements. The basic account structure has been designed to remain stable as reporting requirements change.

23. *Account Numbering.* The proposal in Appendix A reflects a different numbering scheme from that provided in the TIAG recommendation (Reference Section 32.01(10)). The numbering system recommended by the TIAG is built upon, and thus follows directly from, the system currently prescribed in Part 31. It appears to us, therefore, that the TIAG recommendation tends to perpetuate to a large extent the archaic logic and inflexibility characteristic of the current USOA. We believe that the four-digit scheme that we proposed instead is simpler and more adaptable to current accounting system theory and practice. In the process of renumbering, we also change the order of accounts to conform with that more generally used for financial reporting. The proposed balance sheet sequence proceeds in the order of liquidity, beginning with working capital items through to the long-term items. Since the numbering scheme and account contents must in any event be revised by carriers to meet the overall objectives of the USOA revision, we see no benefit to retaining a semblance of the old account numbering system. In fact, such a retention may prove detrimental to ultimate accounting uniformity by confusing system users with old, familiar numbers that have new or entirely different meanings.

24. We believe that the new numbering scheme will prove responsive to the widest range of financial statement users. It is logically ordered and is flexible to permit future expansion. Respondents should address explicit problems they might have in implementing this scheme and should offer precise or specific alternatives where such are suggested.

25. *Class B Carriers.* Class B Carriers will not be required to provide the same detail in their account structure as required of Class A Carriers (Reference Section 32.01(01)(c)). Based on the proposed parameters for classification

of carriers, about 23 (or 38%) of the 61 carriers currently subject to FCC accounting rules will be classified as Class B. Because their combined revenues, however, represent only 0.6% of 1983 Form M gross operating revenues ($446 million vs. $75.3 billion), we do not believe that detailed accounting and reporting requirements are needed to provide the Commission with information relative to the regulation of these carriers.

26. We are also quite concerned about the large number of carriers who are not subject to our accounting rules but who may otherwise find it necessary to implement a portion or all of the proposed Part 32. These are carriers who operate in States which require adoption of FCC accounting within their jurisdictions and/or who contract to settle with other carriers on an actual cost (versus average schedule) basis.

27. To recognize our reduced need for regulatory data from smaller carriers, but at the same time to promote continued uniformity and comparability within the industry, we therefore propose that Class B carriers maintain a system of accounts similar in overall concept and structure to that set forth in Appendix A, but only to the level of detail represented in general by the first three (3) digits of the proposed account numbering scheme. A proposed chart of accounts for Class B carriers is presented in Appendix C. The purpose of creating a Class B category is to reduce to the necessary minimum the regulatory burdens and costs on small carriers. While we believe this proposal to be an efficient and useful alternative to full implementation of proposed Part 32 for Class B carriers, we do welcome suggestions for other appropriate levels of detail or additional alternatives which would continue to permit full participation of small carriers in industry activities.

28. *Regulatory Perspective.* Part 31 currently prescribes account 323, "Miscellaneous income charges," which is used to record "below-the-line" costs that are normally disallowed or given special scrutiny in ratemaking proceedings. The account is grouped with other nonoperating accounts to emphasize their special treatment and to provide a more discrete presentation of financial results for the regulated telephone entity.

29. In the report developed by the TIAG, this traditional concept of "below-the-line" accounting has been somewhat abandoned. While the TIAG did provide a series of nonoperating income and expense accounts, the "special charges" account (its counterpart to account 323) was included in an operating expense classification. The general consensus of the TIAG was that the application of the "below-the-line" distinction in this instance did not comport with strict financial accounting concepts. The TIAG recommended that, if specific items are clearly "below the line" transactions, the requirement for their disclosure be satisifed through special subsidiary record identification and reporting procedures. If additional account prescription was deemed necessary, however, the TIAG did recommend that any such account(s) be structured in accordance with the new expense account concepts and not from the persepctive of "below the line" accounting prescribed in Part 31.

30. We are not prepared to abandon the accounting distinction for items above and below the line. The USOA is, in the final analysis, a regulatory accounting system and should, at a minimum, provide a ready reference to regulatory authorities on the magnitude and disposition of costs normally disallowed or given special scrutiny in ratemaking proceedings.

31. Thus, to maintain a more precise regulatory perspective in the new system, while maintaining its basic structure and design, we propose to classify "special charges" as a nonoperating income and expense account (Reference Section 32.7370). In our opinion, this approach does little to undermine the basic financial accounting nature of the proposed system while greatly enhancing the system's usefulness as a tool for continued evaluation of this Commission's policies.

32. *Nonregulated Accounts.* The TIAG proposal contains two accounts to record certain transactions occurring when a regulated carrier conducts nonregulated activities without a separate subsidiary for these activities. The two accounts are a balance sheet investment account to record direct plant investment, inventories, and related deferred taxes, and a net income/loss account to record the results of nonregulated operations during the period.

33. In the *Fifth Report and Order*, CC Docket No. 81-893, 49 F.R. 46378, November 26, 1984, however, we have already established the accounting treatment to be afforded nonregulated activities. Consistent with this decision, we are therefore proposing the incorporation in Part 32 of accounting treatment for nonregulated activities which approximates full equity accounting as would be practiced in accounting for the activities of a separate subsidiary. This proposal calls for the investment account to include not only the direct plant and inventory investments, but also all other assets, payables, and undistributed net income of the nonregulated activity as well, and for the transactions of the nonregulated activities to be recorded in a separate set of books. As this proposal reflects our policy already established in the Docket 81-893, we do not seek additional comment on it.

34. *Clearing Accounts.* TIAG decided that the system of accounts as they developed it would not require the prescription of clearing accounts.[3] Carriers would, under this scheme, be permitted to use clearing accounts where needed, upon notification to the Commission. Account numbers could then be assigned that would be compatible with the carriers' internal systems. We are of the tentative view, however, that the system recommended by the TIAG will not adequately provide for identification and proper assignment of all costs associated with several expense areas, namely vehicles and other work equipment expenses and provisioning expenses associated with material and supplies and other inventories.

35. The nature of these costs is such that they almost exclusively support either plant construction or the range of functional groupings. Absent defined clearing accounts, there is no mechanism readily available to recognize this association. To accommodate the identification and assignment of these expenditutres, it may be necessary to prescribe accounts in these areas. The proposal attached, therefore, provides for vehicle expense (Reference Sections 32.6112, 6113, 6114, and 6116) and provisioning expense (Reference Section 32.6313) clearing accounts to assure that the amounts associated with these areas have an appropriate mechanim for equitable distribution among the various accounts which they affect.

36. *Cost-type Subaccount Matrix and Subsidiary Record Categories.* The TIAG's report recommends that cost-type subaccounts for salaries and wages, benefits, rents, depreciation and amortization, and other expenses be prescribed for all expense accounts. While we agree with the matirx concept in principle (as discussed in paragraph 21 above), we are not convinced that it is necessary to prescribe actual

[3] Clearing accounts are accounts established to provide a medium for the distribution of certain items which affect more than one account and which cannot be allocated appropriately as they are incurred.

subaccounts for this level of detail. We believe that the cost elements can be established within the accounts such that these data are readily available for reporting. To facilitiate this concept, we have established in proposed Part 32 detailed accounting requirements within the accounts themselves which we have termed "subsidiary record categories."

37. A subsidiary record category is a specific information requirement within an account. Where a subsidiary record category is specified for a given account, the carrier would be required to maintain its accounting system so that the specified information is readily identifiable and available for reporting to the Commission. In our opinion, subsidiary record categories will provide us with relevant, verifiable data without the costly burdens of carrier system design and maintenance, as the carriers would have the freedom and flexibility to identify this information in a manner compatible with their internal system procedures. Thus, we are proposing a cost-type matrix wherein the individual cost elements are subsidiary record categories instead of prescribed subaccounts Reference Section 32.6).

38. *Depreciation and Amortization.* As mentioned above, "depreciation and amortization" is a prescribed cost-type element within the matrix concept proposed by the TIAG. These expenses, however, represent a substantial portion of carrier operating costs and have been a focus of Commission attention. We are concerned that the significance of these costs may well become obscured in the context of the matrix. Thus, we prefer to see depreciation and amortization as separate and distinct expense accounts. Moreover, the detail which would have been otherwise gained by leaving depreciation and amortization as cost types in the matrix will not be lost for reporting purposes. As is the case currently, this detail will be readily available from an analysis of the related allowance for depreciation and amortization accounts which will continue to be maintained so that all accounts, adjustments and retirements will be reported to this Commission periodically and which will be specific to each individual plant account. We have, therefore, established in Appendix A proposed primary expense accounts for both depreciation and amortization expenses (Reference Sections 32.6361 through 6365).

39. *Capitalized Leases.* Since it is our objective to conform to GAAP to the extent possible, this system may allow for the capitalization of leases which qualify for such treatment (depending, of course, on the outcome of previously-discussed Docket 84-469). For regulatory purposes, however, the TIAG proposal has not adequately provided for the identification and classification of such leases.

40. Part 32, as proposed by the TIAG, makes no provision for reflecting capitalized leases separately in the prescribed accounts. Rather, capitalized leases would be recorded in the prescribed asset accounts which, under the TIAG's recommendation, do not identify capitalized lease transactions separately.

41. We have proposed, therefore, that capitalized leases be recorded in a separate account (Reference Section 32.2181). Further, details by type of plant would be maintained for reporting purposes. These measures are primarily to facilitate ratemaking treatment by the FCC and the various state commissions and serve further to mitigate NARUC's objection to the TIAG effort in regard to capitalized leases, as mentioned in paragraph 59 below.

42. *Cable and Wire Facilities.* The traditional account structure in Part 31, which included separate accounts for Aerial Cable, Underground Cable, Buried Cable, Submarine Cable, and Aerial Wire, was predicated primarily on the basis of depreciation considerations. It does not appear that these distinctions are relevant any longer. The results of studies underlying the depreciation represcription process progressively demonstrates that the depreciable lives of the items in these different accounts now in Part 31 are no longer significantly different. Further, in the heavily automated accounting environment existing today, the assurances gained by relegating such distinction to separate accounts are no longer necessarily valid. Thus, we propose to maintain these distinctions as subsidiary record categories (discussed in paragraph 37 above) so that the information will continue to be available for reporting purposes.

43. We believe, however, that a significant distinction will exist between metallic and nonmetallic cable and wire facilities as light technology becomes more feasible. Such a distinction will be significant for depreciation purposes, as life characteristics of the new technology will undoubtly differ from those of metallic conductors, and is in keeping with the general requirements of the *Second Notice* stipulating that categorization be linked to technology rather than to service-related designations. Consequently, we have modified the TIAG recommendation to provide that this distinction alone—except for the added informational requirements noted above—shall be used for classifying cable and wire facilities. We have proposed, therefore, that cable and wire investment shall be maintained in separate accounts based on the metallic/nonmetallic distinction.

44. Additional disaggregation may be possible. The TIAG proposal in fact included such a recommendation for further disaggregation. TIAG's recommendation would require that cable and wire facilities be maintained as Subscriber and Interoffice subaccounts on the premise that this distinction would facilitate costing. However, we do not agree that this distinction is useful because it does not correlate in any way with services provided nor with our costing procedures contained in Part 67. (Moreover, the varying use of "exchange vs. interexchange" or "toll vs. local" was designed and is meant for depreciation purposes only, and was never intended to substitute for service assignment.) Proper costing would still require allocation through separations and costing procedures. Considering this and considering that the classification of wire and cable on the basis of subscriber and interoffice designations is overly complex and would require continued studies based on changing usage patterns, we are of the tentative view that the associated burden of maintaining a plant inventory on this basis is prohibitive and of questionable usefulness. We do, however, invite alternative suggestions for disaggregating the cable and wire facility beyond the level we have proposed.

45. *Circuit Equipment.* The TIAG proposed that three subaccounts be maintained for Circuit Equipment: Pair Gain, Multiplex, and Other Circuit Equipment. This reflects the usage of equipment rather than the technological basis we had anticipated. It appears that the same distinction used for cable and wire facilities—namely, metallic/nonmetallic—is equally applicable to circuit equipment as this type of equipment is closely allied to the transmission medium which it augments. We propose, however, only one account for the investment in the equipment categorized as circuit. While we have not provided separate accounts in this case for the metallic/nonmetallic distinction, we have proposed that these distinctions be maintained as subsidiary record categories for accounting and reporting purposes. As with the cable and wire facilities above, we invite suggestions for further or alternative

disaggregation of circuit equipment investment on a technological basis.

46. *Access Revenues and Expenses.* The TIAG's report contains a series of access revenue accounts, and corresponding expense accounts, which reflects a somewhat different view of the access charge area than the Commission currently holds. In the *Report and Order*, CC Docket No. 83–1347, 49 F.R. 44289, November 6, 1984, we have established accounts for access revenues and expenses. Consistent with that decision, we are, therefore, proposing the incorporation in Part 32 of accounts for access revenues and expenses as follows.

47. We have proposed access revenue accounts for End User Revenues; Carrier's Carrier Facilities Revenues; and Special Access Revenues (Reference Section 32.53(01)). Within the Carrier's Carrier Facilities Revenues account, subsidiary record categories would identify limited pay telephone; carrier common line; line termination; local switching; intercept; information; common transport; and dedicated transport charges. The interstate and intrastate revenue categories currently prescribed for Part 31 would be accommodated by the blanket interstate and intrastate subsidiary record categories for all revenues contained in Appendix A. Further, Appendix A already provides for access-related billing and collection services under a separate and distinct miscellaneous revenue category.

48. For Access Expenses we have developed a single access expense account (Reference Section 32.6335) which utilizes subsidiary record categories to identify the interstate and intrastate elements as well as the billing and collection and carrier's carrier charges as prescribed for Part 31 in the above *Report and Order*. This approach to access accounting mirrors the requirements now prescribed by the Commission but within the system structure developed by TIAG and, thus, should facilitate carrier implementation.

49. *Depreciation Accounting.* The TIAG proposed changes to the current USOA's depreciation accounting procedures for telephone common carriers. Originally, the TIAG recommended that the Commission initiate a separate proceeding to address depreciation issues outside the context of Docket 78–196 so that the issues of accounting system design would not be clouded with issues concerning revenue requirement impacts. The TIAG addressed several issues concerning depreciation and recommended that (1) the current composite depreciation reserve should be slit into component pieces for capital recovery and net salvage, (2) both the cost of removal and gross salvage should be treated as current period items if not distortive, (3) the embedded net salvage reserve should be eliminated by booking the current realized net salvage against the balance until eliminated, and (4) a modified location life accounting procedure, utilizing net book material cost, should be implemented to give recognition to the capital costs that have been consumed at each location and to reduce the level of "reuse salvage."

50. These recommendations were the subject of the aforementioned *Notice of Inquiry* (Docket 84–468) released on May 16, 1984. At that time, we pointed out that insufficient information was available on the impact of these recommendations and solicited further data from the industry as a whole. However, the responses to the *Notice of Inquiry* did not provide sufficient data to assess the impact of the recommended changes, particularly on the issue of treating cost of removal and salvage as current items. Further, the TIAG recommendations were met with strong opposition on the part of the states commenting in response to the *Notice of Inquiry*. Moreover, the National Association of Regulatory Utility Commissioners dissented from several conclusions and recommendations of the TIAG report. Because of this strong regulatory opposition to the TIAG's recommendations on the depreciation accounting issues, and because of the lack of sufficient information to assess the impact of the change, we propose in this *Further Notice* to retain the depreciation accounting as it appears in the existing Part 31 with one exception. This one exception involves the reuse of minor items that are currently salvaged and charged to the Material and Supplies account at current prices new. We are proposing that minor material and supply items which are salvaged be recapitalized at lower of original cost or market value in keeping with GAAP. This proposal will prevent the write-up in value of used items which now occurs because of inflationary pressures on the cost of new items which are unrelated to the economic circumstances of the salvaged items.

51. *Software.* The TIAG proposal does not explicitly address the treatment of software used in carrier operations. Presumably the requirements of GAAP are to be the guidelines in this area. However, because the primary sources of GAAP have not addressed this issue extensively—except for research- and development-related software costs—there seems to be a considerable variation in the manner that software is treated among enterprises. For the sake of uniformity of treatment, therefore, we believe that some specific guidance in this area is required. Though we provide the following proposal, we welcome comments and alternative proposals on the issue before finalization of guidelines.

52. Our proposal is to treat software expenditures, except those which are properly classified as research- and development-related, in the same manner as any other expenditures. The decision whether to capitalize or expense software related costs should "be made in light of all the facts and circumstances surrounding the particular situation." This in fact is the guidance provided by the Financial Accounting Standards Board (FASB) for deciding whether to inventory or defer certain software production costs determined not to be research and development (FASB Technical Bulletin 79–2, Paragraph 3). In general, then, we propose that the production or acquisition of software for use in operations should be capitalized if the expenditures relate to the attainment of a benefit that extends over one or more accounting periods beyond the current period. If not, the software should be treated as a period cost and expensed accordingly.

53. *Item and Unit Lists.* The format of the current USOA includes item lists as part of the account descriptions, effectively making the lists an integral part of the USOA. These lists have always appeared in the texts of the various accounts and were given for the purpose of clearly indicating the application of the prescribed accounting in specific cases. These lists have been updated and are included in the traditional manner as part of the text of the revised USOA in Appendix A. It has always been recognized, however, that the item lists are merely representative of what is to be recorded in the accounts and that their inclusion with the account texts is for illustrative purposes only—proper entry of items into accounts is always to be determined primarily by the text of accounts. In fact, the usefulness of the lists in the current format is questionable because they tend to become outdated with changes in technology. Since they are currently an integral part of the USOA, maintenance of the lists requires formal procedures for updating. This is impractical and administratively burdensome, and, consequently, the lists have been allowed to become outdated. Further, the tendency for the lists to become outdated can only be expected to increase with the rapidity of

technological change that exists in the current and foreseeable environment.

54. We propose, therefore, to remove the item lists from the USOA. However, because they are a useful and necessary tool to assist in assessing proper account classifications, the lists will be maintained and republished separately as necessary by the Commission. Because the list would not remain as an integral part of the Commission's Rules, changes can be made without the usual formal procedures. This, we believe, will keep the lists current and consequently more useful.

55. Similarly, the List of Retirement Units which itemizes types of property units to which retirement accounting requirements apply has effectively been illustrative because carriers have been allowed to submit their own lists to the Commission for approval. This list has also been revised and included in Appendix A (Reference Section 32.2(10)). But, for the same considerations indicated above on item lists, we propose that this list be removed from the USOA as well. However, the requirement for submitting lists to the Commission for approval and for using such lists would remain as a necessary provision to ensure the continued consistency in application of a carrier's retirement accounting practices.

56. *Resolution of Minority Concerns.* Included with the TIAG report were several minority reports from Bellcore, GTE, and National Association of Regulatory Utility Commission (NARUC). Each of these reports raised certain objections to the TIAG report, and we have, in developing our proposal, taken care to resolve many of these objections where possible.

57. GTE pointed to the burden of the system changes on subject entities and objected to what is perceived as a deviation from certain TIAG concepts designed to ensure stability and consistency in the system. GTE believes that GAAP should be used for ratemaking; that jurisdictional considerations and *a priori* allocations have been included inappropriately in the system recommendation; that the subscriber/interoffice split was inconsistent with the concept for the plant accounts; and that the cost-type subaccount matrix was itself unduly burdensome.

58. Bellcore expressed its desire that the proposed Part 32 should treat all software as a period cost and avoid capitalization wherever possible. Further, Bellcore expressed concern for the potential cost of implementation and asked that the new USOA be reexamined accordingly.

59. NARUC's objections were manyfold, ranging from conceptual problems with the make-up of TIAG representation to specific accounting concerns such as the lack of definitive software treatment. Other NARUC concerns were directed at costing objectives, transactions with affiliates, basic service revenues and deferred revenue accounting, nonregulated activities, capital leases, GAAP, capitalization of certain costs, property record formats, depreciation accounting, and expensing inventory adjustments.

60. In this *Further Notice* we are making definitive proposals on the classification of and accounting requirements for carriers of different sizes; "below-the-line" accounting; accounting for nonregulated activities; clearing accounts; relaxed cost matrix requirements; identifying capitalized leases; classifying transmission assets; and addressing the issue of software capitalization. Further, other proceedings will be initiated or resolved addressing cost allocation to nonregulated activities; full adoption of generally accepted accounting principles in the USOA; separations and other costing issues; and accounting for litigation costs in general.Thus, most of the above-mentioned minority concerns are either resolved by our proposed Part 32 or remain under consideration in this proceeding or other proceedings of this Commission.

V. Implementation

61. It has been our intention, since release of the *Second Notice* in 1981, that the new USOA would be ready for implementation by subject carriers on January 1, 1986. We did not expect the system to be fully implemented as of that date. Given the magnitude of the overall system, such an expectation would have been unrealistic.

62. To point out the principal implementation isssues involved and to provide us with a starting point to consider these issues, the TIAG prepared, as noted in paragraph 17 above, an issue paper focused on both general and specific USOA implementation concerns as perceived by the telecommunications industry as a whole. The paper runs the gamut of implementation issues, from industry-wide conformity and system interrelationships on the one hand to staff training and internal resistance to change on the other. The paper also explores several alternative possibilities for implementation plans designed to effert industry-wide adoption by January 1, 1988.

63. The principal issues raised by TIAG fall into two broad categories: those characterized by a *cost* of implementation and those concerning the *continuity* of records, data, and information flows. These two areas cause us the greatest concern and will, in all likelihood, dictate the implementation plan. Therefore, we will carefully consider and address each of them as an integral issue in this proceeding.

64. *Cost.* Whenever a new system, regardless of size, is implemented by any organization—or even if only a slight change is made to an existing system—there are attendant costs of implementation. Certain of these costs can be directly and easily identified, such as the acquisition costs of new data processing hardware and software or the formal training of personnel. Others may be less quantifiable, and indeed less objective, such as the costs associated with a loss in efficiency during the period in which the new or modified system is "coming on line."

65. As pointed out by the TIAG, the potential costs of implementing a new USOA will arise from virtually every corner of a given company's operations. There will be costs associated with system design, development, and modifications; with inventories of property, plant and equipment to facilitate reclassifications of associated accounts; with personnel training at all levels, both on and off the job; with the restructure of internal reporting, procedures, and controls; and with the reordering of records and record keeping systems, to name but a few. These costs will be direct or indirect; incremental or on-going depending on circumstance and perspective.

66. Of prime importance in addressing this issue, then, is an objective and reasonable quantification for the costs of implementation. Respondents are urged to make every attempt to provide the Commission with cost estimates that are fully substantiated and appropriately categorized between direct costs (which are specifically and immediately traceable to a given effort) and indirect costs, and between incremental costs (which would not otherwise be incurred) and on-going costs. (Attempts to quantify subjective affects such as opportunity cost or interrupted productivity should be avoided.) Further, where possible, cost estimates should be identified with specific proposals of this *Notice*. Only with such detail can we make informed decisions on the impacts of our proposals and their proper disposition.

67. Because of our concern in this area, we have already taken steps in this *Notice* to reduce the burdens and

complexities of the new system where such reductions have been reasonable and consistent with the objectives of this proceeding. We have incorporated where possible changes which we believe will result in significant reductions in implementation costs to many of the carriers subject to this system. More specifically, we have introduced technological bases for categorizing Cable and Wire Facilities and Circuit Equipment accounts which should abate significantly much of the potential cost attendant to inventories of these assets; and we have in many instances throughout the proposed system substituted subsidiary record category information provisions for what would otherwise have been detailed subaccount requirements, thus allowing greater flexibility and simplification in the carriers' internal system design process and resulting in a commensurate potential cost reduction.

68. *Continuity.* The continuity of records, data, and information flows may also pose a problem when viewed in terms of implementing a new accounting system. An essential underpinning of any body of accounting concepts is that of a continuous processing of like transactions in a consistent manner so that activities and results of those activities can be compared and interpreted from one period to the next. This is especially true in the area of depreciation rate represcription where changes in plant categorization and classification can cause significant disruption and distortion to the results of depreciation studies.

69. The implications of implementing a new system such as the proposed Part 32 are, thus, obvious. With changes proposed in virtually every account, the continuity of the records, data, and information flows at the detail level will be interrupted and will return only gradually over time as new records, new data, and new information flows ultimately become the norm.

70. We view resolution of this problem as a key to successful implementation of the proposed Part 32 and, as a result, will make every reasonable effort to mitigate its impacts. In the depreciation area especially, we will take into consideration all changes which impact on rate represcription so that no rates will be unduly affected as a result of simple reclassifications. Respondents are asked to identify any other alternatives which will serve to preserve to the extent possible the continuity of records, data, and information flows and thus assist in the consistency of interperiod comparability and interpretation of results of operations.

71. *Implementation Alternatives.* With the above discussions serving as a framework, we turn now to alternative proposals for full USOA implementation, of which there are basically two: flashcut and phase-in.

72. Flashcut implementation would require complete and instantaneous conversion to the new accounting system as at some future date certain. This approach implies that the new system would be developed, programmed, trained for, and tested in its entirety while the current system based on Part 31 continues to function. At the specified date, the carrier's entire operation would be cut over to the new system. Under this alternative, we would propose full implementation of Part 32 as of January 1, 1987, with full annual reporting to the Commission due as of March 1, 1988.

73. The phase-in alternative would permit implementation of the new accounting system over time, on a systematic account by account (or logical group of accounts by group of accounts) basis. Under this alternative, reporting would also be phased-in accordingly, and system implementation would possibly begin in 1986.

74. At this time we do not favor either alternative over the other but, rather, are seeking comment on the feasibility of these alternatives and on any additional alternatives that might be explored. Serious recommendations in this area should include fully developed plans for implementation together with suggested timetables.

VI. Other Issues

75. While we have established accounts and accounting procedures for nonregulated activities as discussed in paragraphs 32.33 above, the identification and disposition of the actual costs attributable to those activities is an issue which we have yet to address fully. The Commission now has before it a discussion paper, submitted by the TIAG, on the determination of nonregulated costs in regulated entities. TIAG attempted to establish a mechanism which distinguishes regulated costs from nonregulated costs (where a single entity provides both regulated and nonregulated telecommunications products and services) and which would provide for the allocation or assignment of those costs to the nonregulated activities. The TIAG's recommendations are now under consideration by the Commission staff. The Commission, using the TIAG's work as a basis, will institute a separate proceeding with its proposals on this issue in the near future.

76. The Commission is also looking at the automated reporting requirements that will be associated with the revised USOA. The work in this area is of an ongoing technical nature and will not culminate in firm propoals until such time as we adopt final requirements for, or disposition of, the revised USOA. Reporting considerations also raise questions as to Part 43 requirements and any necessary changes resulting from the USOA rewrite. At this point, however, our concern lies with satisfying the accounting system objectives as established by the *Second Notice.* The emphasis for now is on such issues as providing an adequate financial datebase, specifying the appropriate disaggregations of costs and revenues, and developing an accounting system that allows for regulatory and independent auditing and tracing of questioned entries. We are not, therefore, addressing reporting in this stage of the USOA revision and, accordingly, we are not seeking comments on reporting issues at this time.

77. In a *Memorandum Opinion and Order* in CC docket 79-19, FCC 82-494, released November 15, 1982, the Commission assigned TIAG the task of determining the need for separate accounts, definitions, and rules pertaining to accounting for litigation expenses and amounts in settlement of antitrust lawsuits. The TIAG recommendation in response to this direction provides a separate expense account for the amounts expended for litigation and antitrust lawsuits. We do not believe that all such costs can be disposed of summarily in this manner. Furthermore, the implications of this issue appear to extend beyond the scope of pure accounting system design. Thus, the Commission will institute a separate proceeding on this issue in the near future.

78. Finally, we turn to the ultimate, underlying reason for the entire thrust of this proceeding—the demonstrated need of both this Commission and the industry for better costing. As pointed out in the *Second Notice,* we perceived a new USOA as being only one part (albeit the principal part) of the costing process. We viewed it as the financial system which would serve to feed separate, parallel subsystems or methodologies to derive realistic and representative cost allocations among the various regulatory jurisdictions and further among the specific telephone services or types of service. Other aspects of this costing process include

separations, access charges, and interstate services which are being addressed in this and in other proceedings.

79. It is our tentative view that the proposal defined herein fully satisfies our need for the financial aspect of our total regulatory accounting system. It portrays in precise functional and technological terms the actual business of providing telephone services and breaks costs down into more discrete and analytical elements. It recognizes the current environment of the telephone industry and possesses the flexibility to accommodate readily any changes in the nature of the environment and in the technology that drives it. As a result, the proposed Part 32 should provide us with a far more highly flexible and informative basis to proceed with the identification and development of improved costing procedures than does the existing Part 31.

80. As an initial step in arriving at these improvements, however, it would first be necessary to ensure that the jurisdictional separations process continues unimpeded, assuming that we do adopt major changes or alternatives to the existing USOA. Because the Separations Manual (47 C.F.R. Part 67) is driven by the account groupings and account numbers specified in Part 31, any changes such as we are proposing herein would require a complete revision of the Separations Manual to conform it to the changes which may be adopted. Further, statutory dictates and the procedural requirements which are imposed on this Commission mandate that any such changes to the Separations Manual be preferred to the Commission only under the auspices of a combined Federal-state joint board. We will, therefore, initiate shortly a separate joint board proceeding to undertake the conformance of the Separations Manual to whatever USOA changes are adopted as a result of this proceeding.

81. In anticipation of such an eventuality, the TIAG did (as mentioned in paragraph 17 above) provide us with a conformed Separations Manual. This conformed manual was, however, based entirely upon the TIAG's recommendation for a new Part 32. Obviously, the adoption of any changes herein would require revision to the TIAG's draft, and, acknowledging this, the TIAG has offered to continue the Separations Manual conformance process to accommodate our decisions in this Docket.

82. Because we believe that a conformed draft Separations Manual will provide an invaluable starting point for any joint board activities resulting from this proceeding, we are disposed to accept the TIAG's offer for continued Separations Manual conforming efforts and hereby charge the TIAG to begin to develop a conformed draft Separations Manual as soon as possible. This draft in turn will be used as the basis for initial joint board consideration of formal revisions to the Separations Manual necessitated by our final actions in this Docket.

VII. Conclusion

83. In summary then, we are proposing the following:

(a) Rescission of Part 31 of the Commission's Rules and Regulations (Uniform System of Accounts for Class A and Class B Telephone companies);

(b) Rescission of Part 33 of the Commission's Rules and Regulations (Uniform System of Accounts for Class C Telephone Companies);

(c) Adoption of Appendix A to become Part 32 of the Commission's Rules and Regulations (Uniform System of Accounts for Telecommunications Entities);

(d) Solicitation of additional substantive information on the issues attendant to eventual implementation of the proposed Part 32;

(e) Continued consideration by the TIAG of necessary conforming changes to Part 67.

Comments are invited on these proposals as well as on any viable alternative germane to this proceeding. Where alternate proposals are offered, they should be complete in all respects.[4]

84. Copies of Appendix A and of the TIAG reports mentioned herein may be obtained from the Commission's contractor for public records duplication, International Transcription Services, Inc., 4006 University Drive, Fairfax, Virginia 22111, telephone in Virginia (703) 352-2400, in the District of Columbia (202) 296-7322. The contractor also maintains space in Room 246 at FCC headquarters, 1919 M Street, N.W., Washington, DC. 20554.

85. We certify that the Regulatory Flexibility Act is not applicable to the rules we are proposing in this proceeding. Although some local exchange carriers are very small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. The Commission has found all exchange carriers to be dominant in the *Competitive Carrier* proceeding, 85 FCC 1, 23-24 (1980). To the extent that interexchange carrier are affected by these rules, we hereby certify that these rules will not have significant economic effect on a substantial number of small entities. At the time of publication of this *Further Notice* in the **Federal Reigster**, a copy of this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

86. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

87. For purposes of this nonrestricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleading and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff, which addresses the merits of a proceeding. Any person who submits a written *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's rules, 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

[4] For example, on November 2, 1984, the United States Telephone Association (USTA) transmitted to the Commission a report setting forth its own recommendation for a complete revised USOA. We will view USTA's report (although not filed specifically in response to this *Further Notice*) as a formal comment in this proceeding and will give it full and careful consideration as such.

88. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and providing that the fact of the Commission's reliance on such information is noted in the Report and Order.

VIII. Ordering Clauses

89. Accordingly it is ordered, pursuant to the Provision of Sections 4(i) and 220(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 220(a), that there is hereby instituted a notice of proposed rulemaking into the foregoing matters.

90. It is further ordered, that interested persons may file comments on the specific proposals discussed in this Notice on or before March 4, 1985. Reply comments shall be filed on or before April 3, 1985. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419, an original and five (5) copies of all comments shall be furnished to the Commission. Copies of the comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M Street, N.W., Washington, D.C.

91. It is further ordered, pursuant to Section 220(i), that the Secretary shall serve a copy of this Notice on each state commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

The full text of proposed Part 32, Uniform System of Accounts for Telephone Companies, is not being published in the **Federal Register**. Copies are available, however, through the Commission's contractor for public records duplication. Refer to paragraph 84 of this *Further Notice of Proposed Rulemaking* for specifics.

Appendix B

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS ENTITIES

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32.6141 Public Telephone Terminal Equipment Expense
32.6142 Other Terminal equipment Expense
32.6146 Large Private Branch Exchanges Expense
32.6147 Station Apparatus Expense
32.6148 Customer Premises Wiring Expense
32.6151 Poles Expense
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32.6153 Conduit Systems Expense
32.6154 Nonmetallic Cable Expense
32.6155 Metallic Cable Expense
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32.6158 Satellite and Earth Station Expense
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32.6161 Common Channel Network Signaling Expense
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32.6712 Planning
32.67(02) General and Administrative
32.6721 Accounting and Finance
32.6722 External Relations
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32.7110 Income from Custom Work
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32.7130 Return from Nonregulated Use of Regulated Facilities
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32.7210 Operating Investment Tax Credits—Net
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32.7440 Nonoperating Other Taxes
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Jurisdictional Differences and Nonregulated Income Accounts
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Glossary

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Current Assets
Cash and Equivalents
Telecommunications Accounts Receivable
Other Accounts Receivable
Notes Receivable
Interest and Dividends Receivable
Accounts Receivable Allowance—Telecommunications
Accounts Receivable Allowance—Other
Notes Receivable Allowance
Material and Supplies
Prepayments
Other Current Assets

Noncurrent Assets
Investments
Nonregulated Investments
Deferred Charges
Other Jurisdictional Assets—Net
Other Noncurrent Assets

Regulated Plant
Telecommunications Plant in Service
Telecommunications Plant Under Construction Short Term
Telecommunications Plant Under Construction Long Term
Property Held for Future Telecommunications Use
Nonoperating Plant

Telecommunications Plant in Service (TPIS)—Detail Accounts
Network Support Assets
Other Support Assets
Switching Assets
Information Origination/Termination Assets
Transmission Assets
Network Operations assets
Other Assets
Amortizable Tangible Assets
Amortizable Intangible Assets

Reserves
Accumulated Depreciation
Accumulated Depreciation—Held for Future Telecommunications Use
Accumulated Depreciation—Nonoperating
Accumulated Amortization—Tangible
Accumulated Amortization—Intangible
Accumulated Amortization—Other
Deferred Income Taxes

Current Liabilities
Account—Payable
Notes Payable
Advance Billing and Payments
Customer's Deposits
Current Maturities—Capital Leases
Other Accrued Liabilities
Other Current Liabilities

Long Term Debt
Obligations Under Capital Leases
Other Long Term Debt

Other Liabilities and Deferred Credits
Other Long Term Liabilities
Other Deferred Credits
Other Jurisdictional Liabilities and Deferred Credits—Net

Stockholders Equity
Capital Stock
Additional Paid-in Capital
Treasury Stock
Other Capital
Retained Earnings

Income Statement Accounts

Revenues

Private Network Services Revenue
Public Network Services Revenue
End User Revenue
Carriers' Carrier Facilities Revenue
Special Access Revenue
Customer Premises Facilities Service Revenues
Miscellaneous Revenue

Plant Specific Operations Expense

Net Support Expense
Other Support Expense
Switching Expense
Information Originating/Termination Expense
Transmission Expense
Network Operations Expense

Plant Non-Specific Operations Expense

Other Property, Plant and Equipment Expense
Network Expense
Access Expense
Depreciation Expense
Amortization Expense

Customer Operations Expense

Marketing
Services

Corporate Operations Expense

Executive and Planning
General and Administrative
Provision for Uncollectible Accounts Receivable
Provision for Uncollectible Notes Receivable

Other Operating Income and Expense

Income from Customer Work
Income from Plant Rentals
Return from Nonregulated Use of Regulated Facilities
Gains and Losses from Foreign Exchange
Gains or Losses from Disposition of Land and Artwork
Other Operating Gains and Losses

Operating Taxes

Operating Investment Tax Credits—Net
Operating Federal Income Taxes
Operating State and Local Income Taxes
Operating Other Taxes
Provision for Deferred Operating Income Taxes—Net
Provision for Deferred Nonproperty Related Operating Income Taxes—Net

Nonoperating Income and Expense

Dividend Income
Interest Income
Income from Sinking and Other Funds
Allowance for Funds Used During Construction
Gains or Losses from the Disposition of Certain Property
Other Nonoperating Income
Special Charges

Nonoperating Taxes

Nonoperating Investment Tax Credits—Net
Nonoperating Federal Income Taxes
Nonoperating State and Local Income Taxes
Nonoperating Other Taxes
Provision for Deferred Nonoperating Income Taxes—Net
Provision for Deferred Nonproperty Related Nonoperating Income Taxes—Net

Interest and Related Items

Interest Expense
Interest Expense-Capital Leases
Amortization of Debt Issuance Expense

Extraordinary Income—Net

Extraordinary Items

Jurisdictional Differences and Nonregulated Income Items

Income Effect of Jurisdictional Ratemaking Differences—Net
Nonregulated Net Income

[FR Doc. 85-803 Filed 1-10-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Docket No. MC-112; Notice No. 84-8]

Citizen Band Radios on Buses

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: As required by the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261, September 20, 1982), the FHWA is requesting comments on a recommendation of the National Research Council, Transportation Research Board, of the National Academy of Sciences (NAS) concerning the use of citizen band radios (CB's) on buses. The NAS has recommended that the DOT retain the status quo and allow motor carriers of passengers to continue to decide whether their drivers should be permitted to use CB's in buses, subject to collective bargaining.

DATE: Comments must be received on or before February 11, 1985.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh St., SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: A study of the use of CB's on buses was undertaken by NAS as directed by Congress in the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261, 96 Stat. 1120). Section 25 of that Act directed the Secretary of Transportation to enter into appropriate arrangements with NAS to conduct a study of the use of CB's on motor vehicles providing transportation of passengers subject to the jurisdiction of the Interstate Commerce Commission. The study was to determine, at a minimum, the following:

(1) The effect on safety if such operators are authorized to use such radios; and

(2) The effect on safety, health, and convenience of the passengers of such vehicles if such operators are authorized to use such radios.

The Secretary was directed to initiate rulemaking no later than 60 days after NAS submitted its report to the Secretary and to the Congress, to determine whether bus drivers should be permitted to use CB's on such vehicles. The rulemaking must be completed within 120 days from the date this notice is published in the **Federal Register**. The reason for a 30 day comment period is to provide time for review of the comments and to issue a final rule within the time period established by Congress.

Previous Consideration

Two public hearings were conducted jointly by the FHWA and the National Highway Traffic Safety Administration during April 1979, in Washington, D.C. and Salt Lake City, Utah. These hearings were held in response to a petition for rulemaking and to a number of inquiries concerning the action certain for-hire motor carriers of passengers had taken to prohibit the use of CB radios on intercity buses. Meaningful evidence

that CB radios have a direct effect on the safety of operation of a motor vehicle did not surface from the data submitted at the hearings.

A Federal policy had previously been adopted by the Department of Transportation, the Interstate Commerce Commission and the Federal Communications Commission. The agencies involved stated that the CB radios can offer a significant contribution to safety and service on the highways and their use was encouraged to promote highway safety and service.

A Notice of Policy Statement on the Use of Citizen Band Radios, was issued by the FHWA on January 17, 1980 (45 FR 3419) encouraging the use of CB's, because as an in-vehicle communication system, it can offer a significant contribution to safety and emergency service on the highways.

NAS Conclusions and Recommendations

The NAS, in its report prepared by its Transportation Research Board (TRB), entitled "Study of Safety Benefits and Costs of Using Citizen Band Radios on Intercity Buses", has recommended that the Federal policy remain unchanged, and that individual companies determine for themselves whether or not to permit their drivers to use CB radios while on the job.

In its report, prepared by the National Research Council, the TRB determined that the we of CB's by drivers of intercity buses may have some positive effects on the safety and convenience of passengers, but any such effects appear to be very small and difficult to discern through scientific investigation. For example, as pointed out in the report, a small survey of bus speeds did not detect any noticeable increase in speeds for CB-equipped buses. Similarly, a review of on-board incidents showed that CB's might be used in only a limited number of situations, and that there is little basis for speculation whether any lives might be saved or serious injuries averted. Faced with these findings, the report states that the use of CB radios by intercity bus drivers has little effect, either helpful or harmful. Therefore, the majority of the study committee concluded that it was inappropriate for the Federal government to intervene. Rather, resolution of this matter should be left to private sector collective bargaining.

In brief, the committee concluded that the use of CB radios on intercity buses does not appear to encourage speeding, does not appear either to distract or stimulate drivers, nor does it appear to cause annoyance to passengers. Neither is there evidence of a significant number of on-board or external incidents or accidents, the effects of which might have been ameliorated by the use of a CB. Therefore, while CB's on intercity buses do not appear to do any harm, neither do they appear to make a meaningful contribution to the health, safety, and convenience of the intercity bus riding public. A copy of the report may be obtained by writing to the Bureau of Motor Carrier Safety at the above shown address.

In view of the recommendations and conclusions of NAS, to which Congress instructed the Secretary of Transportation to give substantial weight, the FHWA will continue to support its current policy, unless comments to the docket contain data substantiating that there is meaningful evidence that CB radios have a direct and positive effect on the safety of operation of a motor passenger vehicle to an extent that warrants further rulemaking.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation has been prepared and is available in the public docket for review.

Based on the information available at this time it is believed that any action taken in this rulemaking will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 393

Motor carriers, Motor vehicle equipment, Motor vehicle safety.

(49 U.S.C. 3102; 49 CFR 1.48)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety).

Issued on: January 3, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 85-914 Filed 1-10-85; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 50, No. 8
Friday, January 11, 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

Forest Service

Lincoln National Forest Grazing Advisory Board; Meeting

The Lincoln National Forest Grazing Advisory Board will meet at 9:30 a.m., January 24, 1985, at the School for Visually Handicapped Media Center Conference Room, Alamogordo, NM. The purpose of the meeting is to provide grazing permittees of the Lincoln National Forest means for offering advice and recommendations concerning:

(a) Review of FY–85 Improvement Projects,

(b) Allotment Management Plans.

Other items to be discussed ipclude off-road vehicle use, nonuse, ten-year grazing permits, and status of Lincoln National Forest Land Management Plan.

James R. Abbott,

Forest Supervisor.

January 2, 1985.

[FR Doc. 85–855 Filed 1–10–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Kickapoo Creek (Lipan) Watershed, Texas; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of deauthorization of Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Kickapoo Creek (Lipan) Watershed project, Erath, Hood, Palo Pinto, and Parker Counties, Texas, effective on December 11, 1984.

FOR FURTHER INFORMATION CONTACT: Billy C. Griffin, State Conservationist, Soil Conservation Service, W. R. Poage Federal Building, 101 South Main, Temple, Texas 76501, telephone 817/774–1214.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.

Charles Conklin,

State Administrative Officer.

[FR Doc. 85–850 Filed 1–10–85; 8:45 am]

BILLING CODE 3410–16–M

Little Luckiamute Watershed, Oregon; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 93–566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for Little Luckiamute Watershed project, Polk County, Oregon effective on December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 S. W. Third Ave., 16th Floor, Portland, Oregon 503–221–2751.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular No. A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.

January 4, 1985.

William R. Evans,

Assistant State Conservationist.

[FR Doc. 85–874 Filed 1–10–85; 8:45 am]

BILLING CODE 3410–16–M

Environmental Impact; South Fork Broad River Watershed, GA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); The Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the critical area treatment portion of the South Fork Broad River Watershed, Georgia.

FOR FURTHER INFORMATION CONTACT: B.C. Graham, State Conservationist, Soil Conservation Service, 355 East Hancock Avenue, Federal Building, Box 13, Athens, Georgia, 30601, telephone: 404–546–2217.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the proposed action will not cause significant local, regional, or national impacts on the environment. As a result of these findings, B.C. Graham, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed.

The objective of the sponsors is to stabilize sediment producing areas on roadbanks within the watershed. The planned works of improvement consist of establishing permanent vegetation on a total of 113 acres.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting B.C. Graham.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally asisted programs and projects is applicable)

Dated: January 3, 1985.

B.C. Graham,

State Conservationist.

[FR Doc. 85-812 Filed 1-10-85; 8:45 am]

BILLING CODE 3410-16-M

Rock Creek Watershed, Oregon; Deauthorization of Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for Rock Creek Watershed project, Gilliam & Morrow Counties, Oregon, effective on December 3, 1984.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 S.W. Third Ave, 16th Floor, Portland, Oregon, 97204, 503-221-2751.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention, Office of Management and Budget Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: January 4, 1985.

William R. Evans,

Assistant State Conservationist.

[FR Doc. 85-890 Filed 1-10-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Market Assessment of National Ocean Service (NOS) Aeronautical Charts
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 2,000 respondents; 508 reporting hours
Needs and Uses: This survey will collect market data on aeronautical charts. The information will be used to measure the possible effects of pending legislation on recovery of costs.
Affected Public: Small businesses or organizations; individuals or households
Frequency: One-time report
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Fisheries Loan Fund
Form Number: Agency—N/A; OMB—0648-0133
Type of Request: Reinstatement of a previously approved collection for which approval has expired
Burden: 200 respondents; 2,200 reporting hours
Needs and Uses: This program allows vessels other than those financed under the Fisheries Obligation Act to receive loan money to avoid defaulting on vessel mortgages
Affected Public: Individuals or households; businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposals 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: January 7, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-808 Filed 1-10-85; 8:45 am]

BILLING CODE 3510-CW-M

Bureau of the Census

Service Annual Survey; Determination

In accordance with Title 13, United States Code, sections 182, 224, and 225, and due Notice of Consideration having been published October 5, 1984 (49 FR 39355), I have determined that data covering 1984 operating receipts of selected service industries are needed to provide a sound statistical basis for the formation of policy by various governmental agencies and that these data also apply to a variety of public and business needs. This survey yields data on annual operating receipts and sales taxes for 1984 for selected service industries. These data are not available publicly from nongovernmental or other governmental sources on a continuing basis.

The Census Bureau has expanded the coverage for the 1984 Service Annual Survey to include the following: engineering, architectural and surveying services, correspondence and vocational schools, accounting, auditing and bookkeeping services, arrangement of passenger transportation, business services, and selected real estate services. For all new services, 2 years of data (1984 and 1983) will be requested.

The Census Bureau will require a selected sample of firms operating service establishments in the United States (with receipts size determining the probability of selection) to report on the 1984 Service Annual Survey. The sample will provide, with measurable reliability, statistics on these subjects.

We will furnish report forms to the firms covered by this survey and will require their submission within 15 days after receipt. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have directed, therefore, that an annual survey be conducted for the purpose of collecting these data.

Dated: January 7, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-881 Filed 1-10-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Order No. 288]

Resolution and Order Approving the Application of the EDC, Inc., the Economic Development Council for the Peoria Area for a Foreign-Trade Zone and Subzone in the Peoria, IL Customs Port of Entry Area

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the EDC Inc., the Economic Development Council for the Peoria

Area, a non-profit Illinois corporation affiliated with the Peoria Area Chamber of Commerce, filed with the Foreign-Trade Zones Board (the Board) on May 21, 1984, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in the Peoria, Illinois area, and a special-purpose subzone for Caterpillar Tractor Company plants in the Peoria area, adjacent to the Peoria Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the general-purpose zone and any new manufacturing within the subzone. The FTZ Staff shall monitor the subzone operations to insure that zone procedures do not create imports that would otherwise not have occurred. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone and Subzone in the Peoria, Illinois Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the EDC, Inc., the Economic Development Council for the Peoria Area (the Grantee), a non-profit Illinois corporation affiliated with the Peoria Area Chamber of Commerce, has made application (filed May 21, 1984, Docket 29–84, 49 FR 22842) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone at sites in and near Peoria, Illinois, and a special-purpose subzone for the manufacturing and distribution facilities of Caterpillar Tractor Company in the Peoria area, adjacent to the Peoria Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard;

Whereas, the Board notes that, in approving zones and subzones, it retains authority to restrict or prohibit activity found to be detrimental to the public interest after the operation is underway; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzone, designated on the records of the Board as Zone No. 114 and Subzone No. 114A at the locations mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone and subzone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the general-purpose zone, and any new manufacturing within the subzone.

Subzone operations will be monitored by the FTZ Staff to determine their economic effects.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone or subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 21st day of December, 1984 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-607 Filed 1-10-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-565-401]

Preliminary Affirmative Countervailing Duty Determinations; Certain Textile Mill Products and Apparel From the Philippines

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in the Philippines of certain textile mill products and apparel. The estimated net bounty or grant is 1.49 percent *ad valorem* for textile mill products and 1.33 percent *ad valorem* for apparel. We are directing the U.S. Customs Service to suspend liquidation of all entries of textile mill products and apparel from the Philippines, except those produced by Aris Philippines, G&S Manufacturing Corporation and Philippine Handicraft, Inc., that are entered, or withdrawn from warehouse, for consumption after the date of publication of this notice, and to require a cash deposit or bond on entries of these products in the amount equal to the estimated net bounty or grant.

These investigations were initiated by the Department under the title "Certain Textiles and Textile Products from the

Philippines." Because of the number of products covered, and the differences in those products, the Department determined that it should conduct separate investigations—one on textiles and non-apparel textile products, and one on apparel. Because of the potential for confusion, as apparel can also be considered a textile product, we are changing the titles of these investigations to "Certain Textile Mill Products and Apparel from the Philippines." The scope of these investigations remains the same as announced in the initiation.

If these investigations proceed normally, we will make our final determinations by March 15, 1985.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Melissa Skinner or Rick Herring, Office of Policy and Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–4412 or 377–0187.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

Based upon our investigations, we preliminary determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in the Philippines of certain textile mill products and apparel. For purposes of these investigations, the following programs are preliminarily found to confer a bounty or grant:

- Preferential Export Credits.
- Preferential Tax Benefits.
- Development Bank of the Philippines Interest Moratorium

We estimate the net bounty or grant to be 1.49 percent *ad valorem* for textile mill products and 1.33 percent *ad valorem* for apparel.

Case History

On August 2, 1984, we received a petition from the American Textile Manufacturers Institute, the Amalgamated Clothing and Textile Workers Union, and the International Ladies' Garment Workers Union, on behalf of the U.S. industry producing certain textile mill products and apparel. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in the Philippines of textile mill products and apparel receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate countervailing duty investigations, and on August 30, 1984, we initiated such investigations (49 FR 34381). We stated that we expected to issue preliminary determinations by October 35, 1984. On September 21, 1984, we determined these investigations to be "extraordinarily complicated," as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determinations until not later than December 31, 1984 (49 FR 42772).

Since the Philippines is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) of the Act apply to these investigations. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of these products cause or threaten material injury to a U.S. industry.

Due to the scope of these investigations, we employed a two-step questionnaire process. We presented a preliminary questionnaire to the government of the Philippines in Washington, D.C., on August 28, 1984. Based on the responses to the preliminary questionnaire, we requested responses from those producers who account for at least 60 percent of the textile mill products and apparel exported to the United States. We selected eight textile producers and exporters, and ten apparel producers and exporters to respond to the detailed questionnaire. On October 29, 1984, we presented the detailed government and company questionnaires to the government of the Philippines in Washington, D.C. The responses to our detailed questionnaires were received on November 28 and December 3, 1984. Nine companies made timely requests for exclusion and were sent copies of the detailed questionnaires. The responses of Aris Philippines, G&S Manufacturing Corporation and Philippine Handicraft, Inc., indicate that they receive benefits which are *de minimis*, and therefore, they are excluded from these preliminary determinations. Other companies requesting exclusion have been included in the suspension of liquidation.

Certain respondents in the *Certain Textile Mill Products and Apparel* investigations have raised the issue as to whether petitioners have standing to file these cases. We addressed this issue in our preliminary determinations of *Certain Textile Mill Products and Apparel from Indonesia* (49 FR 49672, December 21, 1984). See that notice for our comments on the issue of petitioners' standing.

Scope of the Investigation

The products covered by these investigations are certain textile mill products (textiles) and apparel, which are described in Appendix A, attached to this notice.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the instant investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of these preliminary determinations, the period for which we are measuring bounties or grants ("the review period") is calendar year 1983.

Based upon our analysis of the petition and the response to our questionnaires, we preliminarily determine the following:

1. Programs Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in the Philippines of certain textile mill products and apparel under the following programs.

A. Preferential Export Credit

Petitioners allege that the exporters of the products under investigation receive preferential export credit at below market rates through the rediscounting

program run by the Central Bank of the Philippines.

The export packing credit program (EPC) is a rediscounting program offered by the Central Bank of the Philippines, which provides credit on eligible paper with original maturity of one year or less. Upon receipt of a letter of credit, an exporter may request from a commercial bank a loan predicated on the letter of credit to finance working capital and other requirements. From January to November, the maximum interest rate chargeable to exporters under this program was 12 percent. In November 1983, the Central Bank adjusted the relending rates to a maximum of the Manila Reference Rate (as published by the Central Bank of the Philippines) less 2 percentage points. The Central Bank rediscounts up to 80 percent of the letter of credit at a rate of three percent. During the review period, the average annual commercial bank interest rate on short-term loans (one year and less) was 18.63 percent. Since this program is available solely to exporters and interest rates are less than those for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the products under investigation.

The benefit provided by this program was calculated by applying the interest differential to the amount of loans taken out during the review period for the days outstanding. We determined that the most appropriate comparable commercial interest rate was the average of the monthly weighted average interest rates charged by commercial banks on secured loans with a duration of one year or less (as published by the Central Bank of the Philippines). The responses provided information on EPCs used to finance exports to the United States and, for one producer, on total EPCs. To determine the amount of benefit to be applied to U.S. exports, we mutiplied the benefit from total EPCs by that producer's percentage of U.S. exports to total exports, where appropriate. Otherwise, we used the amount of the benefit received on EPCs used to finance exports to the U.S. We then allocated the amount of the total benefit received by all producers over total exports to the U.S. of the products under investigation. On this basis, we calculated a bounty or grant in the amount of 1.08 percent *ad valorem* for textiles and 0.80 percent *ad valorem* for apparel.

B. Preferential Tax Benefits

Petitioners allege that producers and exporters of the products under investigation receive a variety of preferential tax benefits under the Export Processing Zone Authority (EPZA) created by PD 66, as amended by PD 1449, ARticles 48 and 49 of the Omnibus Investment Code (OIC), and Sections 11 and 12 of the Investment Incentive Policy Act of 1983 (IIPA).

To be eligible for incentives granted by the EPZA a company must be located in one of the designated export zones. To locate in one of the zones a company is required to export a certain percentage of its production. Because availability of the incentives is limited to companies located in the zones, and location in the zones is contingent upon export performance, we preliminarily determine that Section 17(a) of the PD 66 confers a bounty or grant on the export of the products under investigation.

The Board of Investments (BOI) is responsible for administering the OIC and IIPA. The BOI prepares an annual Investment Priority Plan listing the preferred areas of investment," which designates areas of economic activity. Firms operating in these areas are entitled to apply for incentives under the OIC and IIPA.

Articles 48 and 49 of the OIC provide for incentives to "registered export producers" and "registered export traders." A "registered export producer" is defined in the OIC as a registered producer which manufactures and exports or sells export products that meet certain standards set by the Board of investments (BOI). A "registered export trader" is defined as a registered export trading company that trades the products of registered export producers. Because availability of the incentives is limited to companies registered under Articles 48 and 49 of the OIC, and registration is contingent upon export performance, we preliminarily determine that Article 48(b) and 48(f) of the OIC confers bounties or grants on the export of the products under investigation.

The IIPA, enacted in January 1983, amends the OIC. Section 11 of the IIPA specifically amends Article 48, and Section 12 amends the OIC to insert new Articles 48–A and 48–B. Companies which were registered under the OIC prior to January 1983, may continue to receive the incentives offered under the OIC, or may choose to re-register under the IIPA. Companies which originally register under the IIPA are eligible only for the incentives offered by the IIPA. Article 48, as amended by Section 11, offers incentives for "registered new or expanding export producers." Articles 48–A and 48–B, as inserted by Section 12, provide for incentives to "registered existing export producers" and "registered indirect export producers," respectively. Some of the incentives available to companies under the OIC have been eliminated by the IIPA. Others have been modified or added. Because registration under Articles 48, 48–A, and 48–B continues to be contingent upon export performance, we preliminarily determine that Article 48(d) of the IIPA confers a bounty or grant on the export of the products under investigation.

One of the companies chosen to receive our questionnaire is registered under the EPZA and located in the Bataan Export Processing Zone. The other companies that responded to our questionnaire are registered with the BOI as export producers or export traders under the OIC, or the IIPA.

1. *Exemption from Duties on Imported Capital Equipment.* Article 48(f) of the OIC, Article 48(a) of the IIPA and Section 17(a) of PD 66 provide for the importation of capital equipment with a 100 percent exemption of the tariff duties and compensating tax payable. One textile producer and one apparel producer received an exemption from duties on the importation of capital equipment during the review period under Article 48(a). One apparel producer received an exemption from duties on the importation of capital equipment during the review period because of his location in an Export Processing Zone.

Article 45(d) of the OIC provides for an exemption of 50 percent of the duties on imported capital equipment and Article 45(a) of the IIPA provides an exemption of 50 percent of the duties on imported capital equipment to nonpioneer domestic producers. Article 45(d) of the OIC has been determined not to confer a bounty or grant on the basis that both in law and in practice, it is not limited to a specific enterprise or industry or group of enterprises or industries. (See "Final Affirmative Countervailing Duty Determination: Canned Tuna from the Philippines," 48 Fed. Reg. 50133). Therefore, the difference between the amount of exemption allowed under Article 48(f), 48(a) or Section 17(a) and the amount that would have been allowed (50 percent) had the claims been filed under Article 45(d) of the OIC, is preliminarily determined to confer a bounty or grant on the export of the products under investigation. We calculated the benefit by taking 50 percent of the amount of the exemption taken under the different laws and allocating that amount over total exports of the products under investigation. On this basis, we calculated a net bounty or grant, under Article 48(a), in the amount of 0.16

percent *ad valorem* for textiles and 0.12 percent *ad valorem* for apparel. We calculated a net bounty or grant under Section 17(a), in the amount of 0.01 percent *ad valorem* for apparel.

2. *Tax Deduction for Direct Labor Costs and Local Raw Materials.* Article 48(b) of the OIC provides a tax deduction for direct labor costs and local raw materials. A registered export producer may, for the first five years from the date of its registration or initial commercial operation, deduct from its total taxable income from domestic and export sales by its registered operation an amount equivalent to the direct labor costs of its domestic and export products and the local raw material costs incurred in the production of its export products. The total deduction may not exceed 25 percent of the company's total export revenue. Five textile producers and three apparel producers used this incentive during the review period. The benefit provided by this Article is the amount of tax savings which were claimed on the tax return filed during the review period. We calculated the benefit by applying the corporate tax rate to the amount of deduction claimed and then allocating the resulting tax savings over total exports of the products under investigation. On this basis, we calculated a bounty or grant in the amount of 0.08 percent *ad valorem* for textiles and 0.08 percent *ad valorem* for apparel.

3. *Article 48(d) of the—11PA Tax Credit on Net Local Content.* Article 48(d) provides for a tax credit on net local content of exports for registered new or existing export producers. One of the companies under investigation responded that it received a tax credit on net local content due to its registration under PB 391 (11PA). Because receipt of this tax credit is contingent upon export performance, we preliminarily determine that this program confers a bounty or grant on the export of the products under investigation. We calculated the benefit from this program by allocating the amount of the tax credit received in the year of review over total exports of the products under investigation. On this basis we calculated a bounty or grant in the amount of 0.12 percent *ad valorem* for textiles and 0.09 percent *ad valorem* for apparel.

C. *Development Bank of the Philippines Interest Moratorium.* Petitioners allege that the Development Bank of the Philippines (DBP) has provided equity infusions into Continental Manufacturing Corporation and Redson Garments on terms inconsistent with commercial considerations. According to the resonse of the government of the Philippines, the DBP has not provided equity infusions into either of those companies. However, the annual report of one of the companies producing textiles indicates that the DBP has converted outstanding loans and interest payable by that company to the DBP into that company's common and preferred stock. The report states that the company has not yet recognized the conversion, due to the necessity of amending its Articles of Incorporation. The company's annual reports indicate that the company is not making interest or principal payments on the loans that would be converted. The annual report of one of the companies producing apparel indicates that, although there is a plan under which the DBP will convert its outstanding debt to equity in the company, it has not yet implemented this plan. This company's annual report indicates that the company is not making interest or principal payments on these loans. Therefore, for our preliminary determinations, we consider these to be interest free loans in the amount of the debt plus interest to be converted to equity. We calculated the benefit provided by these loans as the amount of interest that the company would pay on a short-term loan granted at the commercial interest rate.

The net benefit is allocated over total sales. On this basis, we calculated a bounty or grant in the amount of 0.05 percent *ad valorem* for textiles and 0.24 percent *ad valorem* for apparel.

11. Programs Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in the Philippines of certain textile mill products and apparel under the following programs.

A. Incentives Available Under the Export Processing Zone Authority

1. *Preferential Leasing Rates.* Petitioners allege that exporters of the products under investigation located in the Bataan Export Processing Zone (BEPZ) receive land lease rates and occupancy terms that are much more favorable than comparable rates and terms in the suburbs of Manila. The responses of the government of the Philippines and the company located in the BEPZ state that the rates and terms are not favorable. The annual report of the EPZA indicates that it is not operating at a loss. Due to the differences in the location and the services available in the different areas of the country, it would be inappropriate to compare the land lease rates and occupancy terms of the BEPZ and the suburbs of Manila. Therefore, since the information on the record indicates that the Zone is not operating at a loss and we have no other information to suggest that the Zone is run on manifestly uncommercial terms, we preliminarily determine that this program does not confer a bounty or grant.

2. *Tax Deductions.* Petitioners allege that exporters of the products under investigation are eligible for tax deductions for organizational and pre-operating expenses; sales and compensating taxes and duties on supplies, raw materials, and semimanufactures used in export production; expansion costs; and labor training costs. The amount of deduction allowable under the EPZA is the same as the amount that is provided to producers registered under Article 45 of the OIC. Since Article 45 has been determined not to confer a bounty or grant on the basis that registration and benefits provided under Article 45 are not limited to a specific enterprise or industry or group of enterprises or industries (See "Final Affirmative Countervailing Duty Determination: Canned Tuna from the Philippines," 48 Fed. Reg. 50133), we preliminarily determine that this program does not confer a bounty or grant.

B. Additional Incentives Under the Omnibus Investment Code and the Investment Incentive Policy Act of 1983

1. *Loss Carryforward.* Petitioners allege that exporters of the products under investigation are allowed to reduce their taxable income by a carryforward of new operating losses. One of the producers of the products under investigation reduced their taxable income by a carryforward of net operating losses. The OIC allows for the carryforward of net operating losses incurred in any of the first 10 years of operation as a registered export enterprise. The same provision is available to domestic producers under Article 45(b) of the OIC. Since Article 45 has been determined not to confer a bounty or grant on the basis that registration and benefits provided under Article 45 are not limited to a specific enterprise or industry or group of enterprises or industries (See "Final Affirmative Countervailing Duty Determination: Canned Tuna from the Philippines," 48 Fed Reg. 50133), we preliminarily determine that this program does not confer a bounty or grant.

2. *Article 48(c).* Petitioners allege that exporters of the products under

investigation benefit from Article 48(c) of the 11PA that provides for a tax credit on the net value earned by registered new or expanding export producers. The same provision is available to domestic producers under Article 45(c) of the 11PA. Since Article 45 has been determined not to confer a bounty or grant on the basis that registration and benefits provided under Article 45 are not limited to a specific enterprise or industry or group of enterprises or industries (See "Final Affirmative Countervailing Duty Determination: Canned Tuna from the Philippines," 48 FR 50133), we preliminarily determine that this program does not confer a bounty or grant.

III. Programs Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in the Philippines of certain textile mill products and apparel did not use the following programs which were listed in our notice of initiation.

A. Certain Provisions Provided Under the Export Processing Zone Authority

Petitioners allege that the exporters of the products under investigation which are located in Export Processing Zones, specifically the Bataan Export Processing Zone, receive the following incentives provided for under the EPZA:

Section 18(a), which provides for a net-operating loss carry-over for zone-registered enterprises;

Section 18(b), which provides for the use of accelerated depreciation;

Section 18(c), which provides for the exemption from export taxes on the products exported from an export zone;

Section 18(d), which provides for foreign exchange assistance in the form of priority in the allocation of foreign exchange;

Section 18(e), which provides for financial assistance to zone-registered enterprises by conferring on them the same privileges accorded to enterprises approved by and registered with the BOI under any other law;

Section 18(g), which allows the deduction of labor training expenses;

Section 18(h), which allows the deduction of organizational and operating expenses for 10 years; and

Section 18(i), which provides for a tax credit on supplies, raw materials and semi-manufactured products used in the manufacture, processing or production of export products and forming a part thereof.

The responses state that none of the producers which are zone-registered enterprises used any of these incentives. Therefore, we preliminarily determine that these incentives were not used.

B. Certain Incentives to Exporters Under the Export Incentives Act and Sections 11 and 12 of the Investment Incentive Policy Act of 1983

Petitioners allege that firms exporting the products under investigation to the U.S. are receiving countervailable benefits under these laws. Article 48(b) of the OIC provides for the total exemption from export taxes, duties, imposts, and fees on exported products. The responses state that exports of textiles and apparel are not otherwise subject to these taxes. Therefore, we preliminarily determine that these Articles were not used.

IV. Programs for Which Additional Information is Needed

We preliminarily determine that additional information is needed for the following programs which were listed in our notice of initiation.

A. Foreign Currency Retention Scheme

Petitioners allege that the producers and exporters of the products under investigation benefit from a so-called export deduction program, under which export-oriented industries are allowed to use a part of their export proceeds for the repayment of loans obtained for imports of machinery, raw materials, and other requirements. They state that normally foreign currency must be surrendered to an authorized agent of the Central Bank, and that no foreign currency or foreign exchange may leave the Philippines without approval of the Central Bank. The responses of the individual companies state that some of the producers of the products under investigation were able to obtain foreign currency. We will investigate further to determine whether there was any preference in their ability to obtain such currency.

B. Preferential Access to Foreign Exchange

Petitioners allege that exporters of the products under investigation are given priority access to foreign exchange for financing imports. In addition, petitioners allege that exporters of the products under investigation have preferential access to foreign exchange under a program run by the Philippine International Trading Corporation. The responses of the individual companies state that some of the producers of the products under investigation were able to obtain foreign currency. We will investigate further to determine whether there as any preference in their ability to obtain such currency.

C. Tax Incentives for Preferred Investments

Petitioners allege that the Omnibus Investment Code as amended by the Investment Incentive Policy act provides that the Board of Investments may grant tax incentives to preferred producer enterprises. We believe that we have covered all of the tax incentives of this program in the other sections of this notice.

D. Section 17(f) of PD 66 Creating the Export Processing Zone Authority

Petitioners allege that the Section 17(f) of PD 66 confers a bounty or grant because it allows for the exemption from local taxes and licenses. As we understand the operation of these zones they operate as federal government districts in that if taxes were to be paid, they would be federal not local taxes. We will seek more information on the operation of these zones for our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act we are directing the U.S. Customs Service to suspend liquidation of all entries of certain textile mill products and apparel from the Phillipines which are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise as follows:

Product	Ad valorem rate (percent)
Textiles	1.49
Apparel	1.33

The following will remain in effect until further notice.

Verification

In accordance with section 776(a) of the Act we will verify the data used in making our final determination. As previously stated, we will not accept any statement in the response that cannot be verified in our final determination.

Public Comment

In accordance with section 355.35 of our regulations we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on February 18, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution

Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistanct Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) the party's name, address, and telephone number: (2) the number of participants: (3) the reason for attending: and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in a least 10 copies must be submitted to the Deputy assistant Secretary by February 11, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 30 days of the publication of ths notice, at the above address and in at least 10 copies.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

A. TEXTILE MILL PRODUCTS

Yarns

303.1000	303.2040	307.6810	307.6820	307.6830	310.5049

Cordage

315.3500	315.4500	316.3000	316.5800	319.0300	319.0500

Fabrics

.....	.....	328.1004	328.4092	335.7500	.....

Special Constructional Fabrics

347.6040	348.0080	348.0095	348.0575	349.1060	351.0500
351.3000	351.4010	351.4610	351.4660	351.8060	352.8060
353.5052	355.2500	355.4530	357.1500	357.7060	357.8060
358.0210	.....				

Textile Furnishings

360.1515	360.1520	360.4225	360.4825	360.7000	360.7800
360.7900	360.8300	361.4500	361.4800	361.5420	361.5426
361.5620	361.5660	363.0120	363.0200	363.0515	363.0525
363.2562	363.2564	363.2575	363.2580	363.3020	363.5115
363.8512	363.8555	365.5060	365.7825	365.7855	365.7865
365.8100	365.8300	365.8640	365.8660	365.8670	365.8680
366.1540	366.1840	366.1855	366.4600	366.4700	366.4820
366.4840	366.5100	366.5400	366.5740	366.7200	366.7700
366.7925	366.7930	367.5500	367.6025	367.6040	367.6080
367.6500	727.8200				

Miscellaneous

385.5000	385.6120	385.6140	385.6300	385.6040	386.0430
386.2000	386.5045	387.3700	389.3000	389.4000	389.5000
389.6265	389.7000				

B. APPAREL

Wearing Apparel

370.0800	370.1200	370.1600	370.8420	372.1010	372.1020
372.1030	372.1036	372.1040	372.1060	372.1540	372.1560
372.3500	372.6020	372.7000	372.7520	372.7540	373.2200
374.1000	374.2500	374.3530	374.3550	374.4000	374.6020
376.1600	376.2425	376.2430	376.2470	376.2825	376.2830
376.2846	376.2886	376.5408	376.5609	376.5612	376.5618
378.0545	378.0550	378.0553	378.0560	378.0571	378.0576
378.1035	378.1535	378.1540	378.6030	378.6530	379.0215
379.0220	379.0230	379.0240	379.0490	379.0605	379.0615
379.0620	379.0640	379.0645	379.0840	379.2020	379.2320
379.2360	379.2610	379.2630	379.2830	379.2840	379.3120
379.3130	379.3140	379.3180	379.3334	379.3336	379.3540
379.3905	379.3915	379.3925	379.3930	379.4020	379.4030
379.4040	379.4050	379.4060	379.4140	379.4330	379.4615
379.4620	379.4640	379.4650	379.4660	379.4670	379.5220
379.5520	379.5530	379.5535	379.5540	379.5545	379.5550
379.5560	379.5565	379.5700	379.5800	379.6210	379.6215
379.6220	379.6230	379.6240	379.6250	379.6260	379.6270
379.6280	379.6430	379.6470	379.7250	379.7530	379.7610
379.7620	379.7630	379.7650	379.8311	379.8318	379.8355
379.8360	379.8420	379.8906	379.8911	379.8915	379.8930
379.8935	379.8940	379.9010	379.9020	379.9030	379.9035
379.9040	379.9100	379.9510	379.9525	379.9530	379.9535
379.9540	379.9550	379.9555	379.9565	379.9575	379.9580
379.9585	379.9650	383.0005	383.0010	383.0015	383.0020
383.0205	383.0206	383.0210	383.0211	383.0215	383.0218

383.0221	383.0225	383.0233	383.0250	383.0265	383.0305
383.0306	383.0320	383.0330	383.0335	383.0340	383.0350
383.0355	383.0390	383.0505	383.0506	383.0520	383.0570
383.0610	383.0611	383.0615	383.0616	383.0620	383.0630
383.0632	383.0805	383.0810	383.0815	383.0820	383.0825
383.0830	383.0835	383.0838	383.0841	383.0844	383.0855
383.0856	383.0859	383.0860	383.1802	383.1803	383.1807
383.1808	383.1820	383.1841	383.1842	383.1857	383.1860
383.1910	383.1920	383.1925	383.1930	383.1935	383.1940
383.2005	383.2013	383.2014	383.2016	383.2020	383.2025
383.2035	383.2040	383.2050	383.2052	383.2054	383.2058
383.2060	383.2205	383.2210	383.2215	383.2220	383.2225
383.2230	383.2240	383.2245	383.2250	383.2305	383.2310
383.2315	383.2320	383.2325	383.2330	383.2335	383.2340
383.2350	383.2351	383.2352	383.2354	383.2356	383.2360
383.2365	383.2550	383.2580	383.2590	383.2706	383.2707
383.2708	383.2709	383.2720	383.2725	383.2730	383.2731
383.2750	383.2820	383.2830	383.2835	383.2910	383.3010
383.3020	383.3030	383.3040	383.3050	383.3060	383.3065
383.3080	383.3085	383.3090	383.3200	383.3405	383.3415
383.3420	383.3430	383.3435	383.3445	383.3448	383.3450
383.3452	383.3460	383.3465	383.3466	383.3600	383.4015
383.4200	383.4300	383.4702	383.4704	383.4705	383.4707
383.4709	383.4711	383.4715	383.4720	383.4721	383.4730
383.4747	383.4749	383.4753	383.4755	383.4759	383.4761
383.4763	383.4765	383.4816	383.4818	383.4820	383.4821
383.4823	383.4825	383.5030	383.5036	383.5038	383.5039
383.5040	383.5045	383.5047	383.5049	383.5050	383.5052
383.5053	383.5062	383.5063	383.5072	383.5073	383.5075
383.5080	383.5082	383.5086	383.5088	383.5090	383.5295
383.5304	383.5316	383.5332	383.5372	383.5392	383.5395
383.5825	383.5845	383.6330	383.6340	383.6371	383.6395
383.7205	383.7210	383.7510	383.7520	383.7540	383.7550
383.7560	383.7864	383.7868	383.7878	383.7882	383.8002
383.8003	383.8004	383.8005	383.8043	383.8044	383.8045
383.8047	383.8070	383.8073	383.8108	383.8110	383.8114
383.8115	383.8116	383.8117	383.8135	383.8140	383.8146
383.8160	383.8300	383.8605	383.8620	383.8621	383.8622
383.8630	383.8635	383.8645	383.8650	383.8660	383.8661
383.8663	383.8665	383.8669	383.8670	383.9010	383.9015
383.9020	383.9025	383.9030	383.9035	383.9040	383.9041
383.9050	383.9051	383.9060	383.9065	383.9070	383.9071
383.9205	383.9210	383.9211	383.9215	383.9225	383.9230
383.9235	383.9240	383.9245	383.9246	383.9265	383.9270
383.9273	383.9276	383.9290	383.9291	383.9525	

Headwear

702.5600	703.0500	703.1000	703.1600	

Gloves

704.1020	704.2000	704.2500	704.3220	704.3240	704.4010
704.4504	704.4506	704.4508	704.5015	704.6500	704.8520
704.8550	704.9000	705.8520			

Luggage and Handbags

706.3200	706.3400	706.3640	706.3680	706.3840	706.3850
706.4106	706.4121	706.4140	706.4150		

[FR Doc. 85-757 Filed 1-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-404]

Live Swine and Fresh, Chilled and Frozen Pork Products From Canada: Postponement of Preliminary Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Postponement of preliminary countervailing duty determination.

SUMMARY: The Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of live swine and fresh, chilled and frozen pork products from Canada. We intend to issue this determination not later than April 1, 1985.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 377-0161.

SUPPLEMENTARY INFORMATION: On November 23, 1984, the Department initiated a countervailing duty investigation on live swine and fresh, chilled and frozen pork products from Canada. The notice stated that we would issue our preliminary determination on or before January 28, 1985 (49 FR 47079).

As detailed in the notice of initiation, petitioner alleged that the producers and exporters in Canada of live swine and fresh, chilled and frozen pork products benefit from numerous programs conferred on the federal level and by each of nine Canadian provincial governments. The alleged subsidy practices are numerous and raise complex issues. Some of these programs may entail analyzing tens of thousands of transactions. The number of producers whose activities must be investigated is exceptionally large, it is estimated that there are over fifty thousand Canadian producers of live swine. In addition, the question of petitioner's standing to bring this case with respect to fresh, chilled and frozen pork products presents a novel issue. We have determined that the government of Canada and the other parties concerned are cooperating and that additional time is necessary to make the preliminary countervailing duty determination.

For these reasons, we determine that this investigation is extraordinarily complicated in accordance with section 703(c)(1)(B)(i) of the Act, and that additional time is necessary to make this preliminary determination in accordance with section 703(c)(1)(B)(ii) of the Act. We intend to issue the preliminary determination not later then April 1, 1985.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 4, 1985.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-931 Filed 1-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-403]

Certain Welded Carbon Steel Rectangular Pipes and Tubes From Taiwan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain welded carbon steel rectangular pipes and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Critical circumstances have been alleged. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 1, 1985, and the Department of Commerce will make its preliminary determination on or before May 27, 1985.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, D.C. 20230; telephone: (202) 377-3798.

SUPPLEMENTARY INFORMATION:

The Petition

On December 18, 1984, we received a petition in proper form filed by the Mechanical Tubing Subcommittee of the Committee on Pipe and Tube Imports. This subcommittee is comprised of domestic producers of welded carbon steel rectangular pipes and tubes, who represent approximately 75 percent of the domestic production of the subject merchandise. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. Critical circumstances have also been alleged under section 733(e) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(e)) (the Act).

The petitioner based the United States price on the average unit value of U.S. imports of carbon steel pipes and tubes from Taiwan as reported by the U.S. Department of Commerce, Bureau of Census, IM 145X.

The petitioner based foreign market value on the average home market price for carbon steel pipes and tubes in Taiwan. Petitioner used information obtained from the American Institute in Taiwan for 1982 prices, and updated these prices according to official Taiwan commodity price indices for 1984, a representative year.

By comparing the prices calculated using the information obtained from these sources, the petitioner alleged a dumping margin of 58.6 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain welded carbon steel rectangular pipes and tubes and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain welded carbon steel rectangular pipes and tubes from Taiwan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by May 27, 1985.

Scope of Investigation

The products under investigation are rectangular (including square) welded carbon steel pipes and tubes having a wall thickness of less than 0.156 inch, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under item 610.4928.

Notification of the ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by the ITC

The ITC will determine by February 1, 1985, whether there is a reasonable indication that imports of certain welded carbon steel rectangular pipes and tubes from Taiwan are causing material injury, or threaten material injury, to a United States industry. If the ITC determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

January 7, 1985.

[FR Doc. 85-932 filed 1-10-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-307-401]

Certain Circular Welded Pipes and Tubes of Carbon Steel From Venezuela; Initiation of Antidumping Duty Investigations

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating antidumping duty investigations to determine whether certain circular welded pipes and tubes of carbon steel from Venezuela are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of these products are causing material injury, or threaten material injury, to a United States industry. If these investigations proceed normally, the ITC will make its preliminary determination on or before February 1, 1985, and we will make ours on or before May 28, 1985.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On December 18, 1984, we received a petition in proper form filed by the Subcommittee of the Committee on Pipe & Tube Imports (CPTI) who produce standard pipe (defined in "Scope of Investigation") and its member companies, and the Subcommittee of CPTI who produce API line pipe (defined in "Scope of Investigation") and its member companies. In compliance with the filing requirements of section 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based by the Bureau of Census, Department of Commerce, for the month of October, 1984 (IM 145X).

The petitioner based foreign market values on home market price list prices of the two named foreign manufacturers. The price lists were in effect on October 1, 1984.

By comparing the values calculated by the foregoing methods the petitioner alleged dumping margins as follows:

	Percent
API line pipe up to 4½ inches in outside diameter	65.5
API line pipe up to 16 inches in outside diameter	77.2
Standard pipe	22.7

Initiation of Investigations

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain circular welded pipes and tubes of carbon steel from Venezuela and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating antidumping duty investigations to determine whether certain circular welded pipes and tubes of carbon steel from Venezuela are being, or are likely to be, sold in the United States at less than fair value. If our investigations proceed normally we will make our preliminary determinations by May 28, 1985.

Scope of Investigations

The products under investigations are:

(1) Small diameter circular welded carbon steel pipes and tubes, with an outside diameter of .375 inch or more but not over 16 inches, of any wall thickness, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925.

(2) Small diameter circular welded carbon steel line pipe with an outside diameter of .375 inch or more but not over 16 inches, and with a wall thickness of not less than .065 inch, currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 610.3208 and 610.3209. These products are produced to various API specifications for line pipe, most notably API–5L or API–5LX.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determinations by ITC

The ITC will determine by February 1, 1985, whether there is a reasonable indication that imports of certain welded pipes and tubes of carbon steel from Venezuela are causing material injury, or threaten material injury, to a United States industry. If its determinations are negative the investigations will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 85–933 Filed 1–10–85; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Business Development Program; Request for Applications

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Correction.

SUMMARY: The following amendment is made to the notice that appeared in Volume 50 of the **Federal Register**, January 3, 1985 issue:

On page 320, middle column, 14th line of summary, after the sentence "The MBDC will operate in the Williamsburg, Brooklyn, New York Metropolitan Statistical Area (MSA)" please add the following sentence: "This project should focus on assisting the minority business community in general and specifically the Hassidic community of Williamsburg."

Gina A. Sanchez,

Regional Director, New York Regional Office.

January 3, 1985.

[FR Doc. 85–819 Filed 1–10–85; 8:45 am]

BILLING CODE 3510-21-M

National Technical Information Service

Intent to Grant Exclusive Patent License; W.M. Barr and Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant W.M. Barr & Company, having an office in Memphis, Tennessee, an exclusive right to practice the invention embodied in U.S. Patent Application Serial Number 555,749, "Multi-Phase Agriculture Herbicide Granule Method." The patent rights in this invention have been assigned to the United States of America, represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85–917 Filed 1–10–85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing Import Restraint Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products From Taiwan Effective on January 1, 1985

Correction

In FR Doc. 84-33675, begining on page 50233, in the issue of Thursday, December 27, 1984, made the following corrections:

1. On page 50233, in the third column, in the table, in the entry for "448", "11,782 dozen." should read "11,792 dozen."

2. Also on page 50233, in the third column, in the paragraph under the table, in the third line, "670 pt." should read "670 pt.^{9}".

3. On page 50234, in the first column, in the fourth line from the top, "679 pt." should read "670 pt.^{9}".

4. Also on page 50234, in the first column, in the first complete paragraph, in the first line, "In 1985" should read "The 1985".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 4, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Terminal Guidance Technology Options will meet at the Naval Weapons Center, China Lake, CA on February 4 (8:00 a.m.-5.00 p.m.) and February 5 (8:00 a.m.-5:00 p.m.) 1985 to receive briefings on and to discuss current and planned weapon terminal guidance technology programs.

This meeting will involve classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-915 Filed 1-10-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

Assessment Policy Committee, National Assessment of Educational Progress (NAEP); Meeting

AGENCY: Department of Education.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Education has scheduled a meeting of the Assessment Policy Committee of the National Assessment of Educational Progress (NAEP). The purpose of the meeting is to provide guidance and direction to the National Institute of Education supported NAEP project. The entire meeting will be open to the public.

DATE: January 25, 1985, 8:30 a.m. to 5:00 p.m.

Location: Camelhead Hotel, 1515 North 44th Street, Phoenix, Arizona 85008.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Barton, Liaison-APC, National Assessment of Educational Progress, CN 6710, Princeton, NJ 08541-6710, telephone: (800) 223-0267.

SUPPLEMENTARY INFORMATION: One of the primary purposes of NAEP is to assess the performance of children and young adults in the basic skills of reading, mathematics, and communication. The Assessment Policy Committee (APC) is established by section 405(k)(2)(A) of the General Education Provisions Act, 20 U.S.C. 1221e. The committee is responsible for the design of NAEP which includes the selection of learning areas to be assessed, the development and selection of goal statements and assessment items, and the methodology, form, and content of the reporting. The committee is also responsible for the dissemination of results, and the implementation of studies to evaluate and improve the form and utilization of the program.

The Agenda for the meeting includes—

- Planning for the future of NAEP;
- Review of process for setting objectives and exercises;
- Relationship with commercial publishers; and
- Proposals for news projects.

In order to assure adequate seating arrangements and to obtain an advance copy of the final agenda, individuals may contact Mr. Paul Barton at the address cited above.

(Catolog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

Dated: January 8, 1985.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 85-880 Filed 1-10-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

Radioactive Waste Management System Preliminary Draft Project Decision Schedule

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Issuance of the Radioactive Waste Management System Preliminary Draft Project Decision Schedule for Federal Agency Comment.

SUMMARY: Section 114(e) of the Nuclear Waste Policy Act (NWPA) of 1982 (Pub. L. 97-425), requires the Department of Energy, in cooperation with all affected Federal agencies, to issue a Project Decision Schedule that identifies the key activities, decision points, and deadlines for Federal agency action that are integral to the initiation of operation by 1998 of a Radioactive Waste Management System. A preliminary draft Project Decision Schedule is being issued at this time to seek comments from Federal agencies regarding the completeness, accuracy, and clarity of the Agency actions identified therein. The sequence of deadlines, with specific dates for Federal agencies to take action, will be issued for review after the Office of Civilian Radioactive Waste Management issues the final Mission Plan required by Section 301 of the NWPA.

Copies of the document may be obtained by telephoning (202) 252-5508 and/or by direct pickup from or writing to the Office of Public Affairs, U.S. Department of Energy, Room 1E-218, 1000 Independence Avenue, SW, Washington, D.C. 20585. Federal agency comments are requested by February 22, 1985.

Issued in Washington, D.C., January 4, 1985.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 85-906 Filed 1-10-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 82-11-NG]

Northern Natural Gas Co.; Supplement to Application To Amend Current Natural Gas Import Authorization and To Extend the Term of the Authorization

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of supplement to application to amend current Natural Gas Import Authorization and to extend the term of the Authorization.

SUMMARY: On December 24, 1984, Northern Natural Gas Company (Northern), Division of InterNorth Inc., filed with the Economic Regulatory Administration (ERA) a request for an interim amendment to its import authorization in ERA Docket No. 82-11-NG, permitting it immediately to commence importing up to 200,000 Mcf of natural gas per day until the ERA issues a final decision on the supplement to its application filed on December 10, 1984 (49 FR 49709, December 21, 1984). Northern stated that interim emergency authorization of these increased volumes would allow the company to minimize its take-and-pay and take-or-pay exposure with its Canadian gas suppliers, and to reduce the chances of a related, possible shutdown of its domestic gas production fields in the summer, thereby avoiding the negative impacts of these situations on the cost of its gas supplies in 1985.

On December 28, 1984, the ERA, in a letter to Northern, clarified the terms of Northern's current import authorization by notifying the company that there was no need for the request of an emergency interim amendment filed on December 24, 1984, inasmuch as the firm currently is authorized to import up to 200,000 Mcf per day through October 31, 1987 (*see* Ordering Paragraph A of Opinion and Order No. 19 issued on August 29, 1980, in ERA Docket No. 79-24-NG, 1 ERA ¶ 70,518, and the related order issued by the Federal Energy Regulatory Commission (FERC) on June 27, 1980, in Docket No. CP80-22, 11 FERC ¶ 61,340).

This document clarifies and amends the **Federal Register** Notice published on December 21, 1984 (49 FR 49709). In view of the determination that Northern's current authority allows the import of up to 200,000 Mcf per day through October 31, 1987, expedited treatment of the December 10, 1984, application is no longer considered necessary; therefore, the public comment period is extended to allow for a full 30 days. The ERA is amending the December 21, 1984, notice to substitute January 21, 1985, for January 12, 1985, as the closing date for the comment and intervention period.

FOR FURTHER INFORMATION CONTACT:

Olga Ronkovich (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-033, Washington, D.C. 20585 (202) 252-8116

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.

Issued in Washington, D.C., on January 4, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-907 Filed 1-10-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-148-000 et al.]

Northwest Central Pipeline Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Central Pipeline Corporation, Docket No. CP85-148-000; January 4, 1985.

Take notice on December 4, 1984, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP84-148-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Union Texas Petroleum Corporation (Union) under the certificate issued in Docket No. CP82-479-000 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 Northwest Central proposes to transport up to 3 billion Btu of natural gas per day on an interruptible basis for Union for low-priority use in Union's olefin plant in Iberville Parish, Louisiana. Northwest Central submits that its limited-term gas transportation agreement with Union, dated September 7, 1984, shall continue in effect (subject to termination by either party upon proper notice) for a period of one year, including a provision for mutually extending such term in accordance with applicable Commission Regulations. Northwest Central states that Union has entered into a gas purchase contract to purchase gas from Union Texas Products Corporation to be produced from wells in Grant County, Oklahoma. Northwest Central proposes to receive the gas, which Union purchases, into Northwest Central's pipeline at an existing point of interconnection for transportation and redelivery to ANR Pipeline Company (ANR), for Union's account, at an existing point of interconnection in Rice County, Kansas. It is stated that ANR would transport the gas through its distribution system to Acadian Gas Pipeline System, which would, in turn, redeliver the gas to Union at an existing point of interconnection in Iberville Parish, Louisiana.

Northwest Central proposes to charge Union in accordance with the then effective rates and provisions, excluding Gas Research Institute and added incentive charge, set forth from time to time in Northwest Central's F.E.R.C. Gas Tariff, Original Volume No. 2.

Comment date: February 19, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Southern Natural Gas Company, Docket No. CP85-164-000; January 7, 1985.

Take notice that on December 10, 1984, Southern Natural Gas Company (Southern), First National-Southern Natural Building, Birminghan, Alabama 35203, filed in Docket No. CP85-164-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon service to the Ensley meter station, a delivery point for direct sales to United States Steel Corporation (USS) and to abandon the facilities necessary to render the service under the abandonment authorization issued in Docket No. CP82-406-000 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.

Southern states that it makes sales to USS for use as process fuel at the Ensley meter station, Jefferson County, Alabama. Southern explains that USS has retired its Ensley plant and that USS has requested Southern to remove its facilities from the plant site. Such facilities, it is indicated, include approximately 87 feet of tap line and related appurtenant facilities known as the Ensley meter station located at Mile Post 4.948 on Southern's loop line in Jefferson County, Alabama. Southern proposes to abandon the subject facilities and the related direct sales service to USS.

Comment date: February 21, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Southern Natural Gas Company, Docket No. CP85–128–000; January 7, 1985.

Take notice that on November 26, 1984, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85–128–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport natural gas on behalf of Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport for Natural, on an interruptible basis, up to 40 billion Btu of gas per day, or such greater quantity as Applicant may accept from time to time, pursuant to a transportation agreement dated December 22, 1982, as amended, and letter agreement dated January 1, 1983, as amended. Applicant states that Natural is purchasing gas from Texoma Production Company, Anschutz Corporation and NICOR Exploration Company from Main Pass Area Blocks 77, 148, and 151, offshore Louisiana (Blocks 77, 148, and 151).

It is stated that Natural would deliver gas purchased from Blocks 148 and 151 to Applicant at the existing subsea interconnection between Applicant and Natural On Applicant's 18–inch South pass Block 60 Line in Block 151 (Texoma delivery point). It is further stated that Natural would deliver gas purchased from Block 77 to Applicant at an existing interconnection jointly constructed and owned by Natural and Applicant extending from Block 77 and Applicant's 18-inch South Pass Block 60 Line in Block 151 (Gulf Delivery point). Applicant states that the daily quantity delivered and accepted at the points of delivery would be less one percent as Natural's share of gas used as compressor fuel, company-used gas and unaccounted-for gas, less Natural's *pro rata* share of gas lost or vented during transportation for any reason except gross negligence on Applicant's part, and less any shrinkage, fuel or loss resulting from or consumed in the processing of the gas transported by Applicant for the account of Natural or its producers.

The Applicant further states that it would effect the redelivery of gas to Natural by causing Sea Robin Pipeline Company (Sea Robin) to deliver gas it currently transports for Applicant to Columbia Gulf Transmission Company (Columbia Gulf) for National's account at the existing interconnection of Sea Robin and Columbia pipeline facilities located at the outlet of the Sea Robin Plant located in Vermilion Parish, Louisiana (Columbia redelivery point), and by displacement at the existing point of interconnection between the pipeline and measurement facilities of Natural and Applicant near the outlet of Texaco Inc.'s Henry Plant in Vermilion Parish, Louisiana (Southern redelivery point).

Applicant proposes to charge Natural for the transportation service a rate of 33.7 cents for each million Btu of gas delivered by Applicant at the redelivery points.

Comment date: January 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation, Docket No. CP 85–170–000; January 7, 1985.

Take notice that on December 13, 1984, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–170–000 and application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon compression facilities in the Greta Field, Refugio County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that Transco and Arco Oil and Gas Company (Arco), the Greta Field operator, entered into a compression agreement, dated October 21, 1964. Pursuant to such agreement, Transco installed one 1,000 hp Clark compressor, certificated May 25, 1964, in Docket No. CP64–205, to compress gas from the Greta Field to a pressure sufficient to enter Transco's pipeline. Subsequently, Transco and Arco entered into a second compression agreement, dated November 1, 1972. Pursuant to such second agreement, Transco agreed to furnish and pay for, and Arco agreed to install, ten smaller skid-mounted compressors (T-units) with a combined 791 hp, certificated August 10, 1972, in Docket No. CP72–266. The T-units were installed to compress the gas from the Greta Field wellhead pressure to an intermediate pressure at which point the Clark unit was utilized to compress the gas from such intermediate pressure to Transco's pipeline pressure.

Transco states that both of the agreements stipulate that Transco may discontinue the operation of the compression facilities after providing written notice to Arco. In recent years the volume of gas available for Transco to purchase is said to have been greatly reduced due to the depletion of reserves in the field and the use by the operator of a substantial amount of the remaining production for gas lift operations. Due to this reduction, Transco states, the operation of the Clark unit is uneconomical. In addition, it is asserted that the capacity at the Clark unit exceeds the quantity of gas flowing from the Greta Field to such an extent that operation of the unit presents a safety hazard. Transco further asserts that, in the absence of the Clark unit, the T-units are incapable of compressing the gas from the wellhead pressure to Transco's pipeline pressure. As a result, Transco notified Arco of its intention to discontinue the operation of the compression facilities and subsequently discontinued such operation.

Comment date: January 25, 1985, in accordance with Standard Paragraph F at the end of this notice

5. Columbia Gas Transmission Corporation, Docket No. CP 85–184–000; January 7, 1985.

Take notice that on December 17, 1984, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85–184–000 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 Johns-Manville Sales Corporation (Johns-Manville), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia proposes to transport certain volumes of gas on an interruptible basis from Johns-Manville's wells in guernsey, Noble and Muskingum Counties, Ohio, to Waterville Gas Company, the local distribution company serving Johns-Manville's plant in Waterville, Ohio, for use as process gas. It is stated that Columbia has been purchasing gas from Johns-Manville under a contract which provides that Johns-Manville may elect to retain for its own use up to 25 percent of the delivery capacity. It is further stated that Johns-Manville has elected to retain this 25-percent of the contract quantity and requested that Columbia transport the gas.

It is stated that Columbia would transport the gas for a term contiguous with the term of the gas purchase contract, which extends to October 23, 1986, with extensions thereafter. Columbia states that it would charge the current rate reflected in its Rate Schedule TS–1, as amended from time to time, for the transportation service and would retain for company-use and unaccounted-for gas the percentage currently reflected in Rate Schedule TS-1. Columbia submits that no new

facilities are required to effect the transportation service.

Comment date: January 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Trunkline Gas Company, Docket No. CP85–167–000; January 7, 1985.

Take notice that on December 12, 1984, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–167–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 50,000 Mcf of natural gas per day for Louisiana Industrial Gas Supply System (LIGS), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to implement the terms of a transportation agreement between Applicant and LIGS dated July 12, 1984, whereby Applicant has agreed to transport, on an interruptible basis, up to 50,000 Mcf per day of natural gas for LIGS. Applicant proposes a transportation charge of 3.79 cents per Mcf. Applicant states that it would receive gas for LIGS' account at a point of receipt in Cameron Parish, Louisiana, and redeliver it at a point of interconnection with LIGS in St. Mary Parish, Louisiana.

Comment date: January 25, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Panhandle Eastern Pipe Line Company, Docket No. CP84–758–001; January 7, 1985.

Take notice that on December 13, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed Docket No. CP84–758–001 an amendment to its application for a certificate of public convenience and necessity filed in Docket No. CP84–758–000 pursuant to section 7(c) of the Natural Gas Act for authorization to transport natural gas on behalf of UGI Corporation (UGI), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Panhandle's application in Docket No. CP84–758–000 requests authorization to implement an agreement dated June 30, 1984, between Panhandle and UGI. By the instant amendment Panhandle seeks authority to operate the points of receipt of transportation gas in Dewey and Major Counties, Oklahoma. It is asserted that these facilities were constructed as non-jurisdictional facilities pursuant to Part 284 of the Commission's Regulations.

Comment date: January 25, 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 Section 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 if 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. 85–903 Filed 1–10–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. EL84–13–000, et al.]

Hydroelectric Applications (Commonwealth Power Co., Inc., et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Declaration of Intention.

b. Project No: EL84–13–000.

c. Date Filed: May 3, 1984 and supplemented November 23, 1984.

d. Applicant: Commonwealth Power Company, Inc.

e. Name of Project: Hubbardston Hydro Project.

f. Location: On Fish Creek near Hubbardston, Ionia County, Michigan.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Robert Evans, Commonwealth Power Company, Inc., 6215 W. St. Joseph Highway, Suite 213 W. Lansing, Michigan 48917.

i. Comment Date: February 11, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 20-foot-high and 120-foot-long concrete dam; (2) a reservior with a surface area of approximately 40 acres; (3) an existing powerhouse adjacent to the dam housing two 120-KW generators totaling 240 KW; (4) a new 12-KV transmission line; and (5) appurtenant facilities. Applicant estimates the average annual generation to be 752 MWh. All power will be sold to a local utility company.

The Applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, Section 23(b), federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for these reasons: (1) the project is not located on a navigable water of the United States; (2) does not occupy lands of the United States or utilize surplus water or water power from a government dam; and (3) has not involved any construction subsequent to 1935 that may have increased the project's head, generating capacity, or water storage capacity, or have

otherwise significantly modified the project's pre-1935 design or operation.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Declaration of Intention.

b. Project No: EL84–20–000.

c. Date Filed: June 25, 1984 and supplemented November 23, 1984.

d. Applicant: Commonwealth Power Company, Inc.

e. Name of Project: LaBarge Hydro Project.

f. Location: On the Thornapple River near Caledonia, Kent County, Michigan.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Robert Evans, Commonwealth Power Company, Inc., 6215 W. St. Joseph Highway, Suite 213 W., Lansing, Michigan 48917.

i. Comment Date: February 11, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 17.5-foot-high and 116-foot-long concrete dam; (2) a reservoir with a surface area of approximately 888 acres; (3) an existing powerhouse adjacent to the dam housing two 350-KW generators totaling 700 KW; (4) a new 12-KV transmission line; and (5) appurtenant facilities. Applicant estimates the average annual generation to be 3,537 MWh. All power will be sold to a local utility company.

The Applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, Section 23(b), federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for these reasons: (1) the project is not located on a navigable water of the United States; (2) does not occupy lands of the United States or utilize surplus water or water power from a government dam; and (3) has not involved any construction subsequent to 1935 that may have increased the project's head, generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. Type of Application: New License (Over 5MW).

b. Project No: 2715–005.

c. Date Filed: June 7, 1984 and supplemented September 24, 1984.

d. Applicant: City of Kaukauna, Wisconsin.

e. Name of Project: Combined Locks Hydro Project.

f. Location: On the Fox River near the City of Kaukauna, Outagamie County, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ernest J. Mullen, General Manager, Kaukauna Electric and Water Department, 777 Island Street, Kaukauna, Wisconsin 54130.

i. Comment Date: March 1, 1985.

j. Description of Project: The run-of-river Combined Locks Hydro Project No. 2715 as licensed consists of: (a) A 1,005-foot-long dam comprising (1) a non-overflow section of concrete and cyclopean stone on the left abutment approximately 202 feet long and 28 feet high, (2) a gated spillway section approximately 288 feet long and 24 feet high, (3) an ungated spillway section approximately 160 feet long and 14 feet high, (4) a grinder building section about 70 feet long and 25 feet high, (5) a 285-foot-long and 25-foot-high right abutment section with trash rack and forebay; (b) a small reservoir; (c) a powerhouse containing two 300-kW, two 350-kW, two 595-kW, and one 400-kW generating units for a total installed capacity of 2,890 kW; (d) a substation; and (e) appurtenant facilities. The estimated annual generation of the project was to be 21 GWh.

The proposed redevelopment of the project would consist of: (1) an existing concrete and cyclopean stone dam approximately 635 feet long and 28 feet high with additional 24-inch high flashboards mounted upon the spillway crest at elevation 675.56 feet m.s.l.; (2) two modifications to the dam which would involve modifying the existing right abutment to permit tie-in to the new powerhouse, and adding an ice sluice to the spillway adjacent to the new powerhouse; (3) an existing 134-acre reservoir at normal pool elevation 677.56 feet m.s.l.; (4) a forebay leading to the intake section; (5) a new powerhouse approximately 68 feet wide and 105 feet long housing two 3,500-kW generators for a total installed capacity of 7,000 kW; (6) a proposed enlarged tailrace channel; (7) a new 12.47-kV transmission line approximately 850 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual energy generation for the redevelopment project would be 39.4 GWh.

k. Purpose of project: The project energy generated at the site will exclusively be used by the City of kaukauna Electric and Water Department to help meet the residential and commercial power requirements of its municipal utility system.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

4 a. Type of Application: Major License (over 5 MW).

b. Project No: 3479–001.

c. Date Filed: February 27, 1984.

d. Applicant: Oroville-Wyandotte Irrigation District.

e. Name of Project: Rock Creek No. 2.

f. Location: On Big and Little Kimshew Creeks, North Valley Creek, Rock Creek, and North Fork Feather River, near Storrie, in Butte and Plumas Counties, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Haskel A. McInturf, President, Oroville-Wyandotte, Irrigation District, P.O. Box 229, Oroville, California 95965, (916) 533-4578.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 80-foot-long diversion weir on Big Kimshew Creek at elevation 4,960 feet msl; (2) a 2.1-mile-long, 30-inch-diameter pipeline discharging into Little Kimshew Creek at elevation 4,785 feet msl and 0.4 mile upstream of item (3); (3) a 10-foot-high, 40-foot-long diversion weir on Little Kimshew Creek at elevation 4,710 feet msl; (4) a 1.2-mile-long, 30-inch-diameter pipeline discharging into North Valley Creek at elevation 4,590 feet msl and 4.0 miles upstream of its confluence with Rock Creek; (5) an 80-foot-high, 215-foot-long diversion dam on Rock Creek at elevation 3,425 feet msl creating a reservoir with a surface area of 6.7 acres, a maximum normal water surface elevation of 3,510 feet msl with flashboards installed, and a gross storage capacity of 166 acre-feet; (6) a 30-foot-wide, 60-foot-long, 56-foot-high concrete intake structure designed for a maximum flow of 235 cfs at a reservoir water surface elevation of 3,490 feet msl; (7) a 5,100-foot-long hardrock tunnel connecting the intake structure to the penstock; (8) a 3,530-foot-long steel penstock varying in diameter from 66 to 48 inches; (9) a powerhouse, located adjacent to the North Fork Feather River, 400 feet upstream of Pacific Gas and Electric Company's (PG&E) Rock Creek powerhouse, FERC Project No. 1962, and 1 mile upstream of the mouth of Rock Creek, containing a single 33-MWA generator and a vertical shaft Pelton turbine with an estimated average annual generation of 101.9 GWh and connected by a 13.8-kV bus to transformers serving the proposed PG&E Rock Creek No. 3 Unit; (10) a 40-foot-long box structure tailrace discharging to the North Fork Feather River at elevation 1,962 feet msl; and (11) 1.1 miles of new access road. The proposed project would be partially located on 228 acres of Plumas and Lassen National Forest lands. Project power would be

sold to PG&E. Applicant estimates total project costs at $56,230,000.

Applicant states that diversion of Little and Big Kimshew Creeks will augment the flow in the North Fork Feather River and provide a headwater benefit and an increase in average annual energy generation at PG&E's Cresta Power Plant of 1.7 GWh and at PG&E's Poe Power Plant of 3.1 GWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B and C.

5 a. Type of Application: Exemption (5MW or Less).

b. Project No: 3856-002

c. Date Filed: May 31, 1984.

d. Applicant: Reed Hydro-Electric Corporation.

e. Name of Project: Savage River Dam.

f. Location: Savage River in Garrett County, Maryland.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. John L. Reed, President, Reed Hydro-Electric Corporation, 5437 Morris Ave, Number 1, Suitland, Maryland 20746.

i. Comment Date: February 11, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 184-foot-high, 1,050-foot-long earth and rock fill Savage River Dam, owned by the upper Potomac River Commission at crest elevation 1,497 feet msl; (2) an existing reservoir with a surface area of 366 acres, and a gross storage capacity of 20,700 acre-feet; (3) a new 820-foot-long steel liner will be installed in the existing 1,170-long, 10-foot-diameter concrete outlet tunnel; (4) a new powerhouse containing a generating unit with a rated capacity of 2,000 kW at a head of 166 feet; (5) a new 660-foot-long transmission line tying into the existing Potomac Edison Company system. The Applicant estimates a 9.68 million kWh average annual energy production.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, & D3a.

6 a. Type of Application: License (Under 5 MW).

b. Project No: 4138-002

c. Date Filed: January 31, 1984.

d. Applicant: Energenics Systems, Inc.

e. Name of Project: Kentucky Lock and Dam No. 6.

f. Location: Kentucky River, Woodford County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Granville J. Smith, Energenics Systems, Inc., 1100 17th Street, NW., Suite 1109, Washington, D.C. 20036.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Kentucky Lock and Dam No. 6. Project No. 4138 would consist of: (1) An existing intake and trashrack at the lock chamber; (2) a proposed powerhouse located inside the decommissioned lock and containing two horizontal tubular turbines of 1,250-kW capacity each; (3) a proposed tailrace section to be constructed by modifying the existing downstream lock wall section; (4) modification of an existing 7.2-kV, 380-foot-long distribution line to be upgraded from single phase to three phase; and (5) appurtenat facilities.

k. Purpose of Project: The estimated average annual generation of 14,000,000 kWh would be sold to the Tennessee Valley Authority or the East Kentucky Power Cooperative.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

7 a. Type of Application: Exemption Under 5 MW.

b. Project No: 6955-002.

c. Date Filed: April 30, 1984 and amended November 13, 1984.

d. Applicant: Pan Pacific Hydro, Inc.

e. Name of Project: Stoney Creek.

f. Location: On Stoney Creek, near Weaverville, in Trinity County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. James B. Tompkins, Pan Pacific Hydro, Inc., 16464 Plateau Circle, Redding, California 96001, (916) 222-5247.

i. Comment Date: February 8, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) and inlet structure approximately 5-foot-wide, 25-foot-long and built into the stream bank; (2) a 11,000-foot-long, 36 to 24-inch-diameter pipeline/penstock; (3) a powerhouse containing a single 750 kW turbine-generator unit with an average annual generation of 3.0 GWh; (4) a 36-inch-diameter culvert pipe tailrace; and (5) 150 feet of 12.0-kV transmission line to connect the project to a Pacific Gas and Electric Company (PG&E) line. Project power would be sold to PG&E. The project would be partially located on Trinity National Forest lands.

An exemption, if issued, gives the exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A9, B, C, and D3a.

l. Exemptions for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectic exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

m. This application has been accepted for filing as of April 30, 1984, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd., 38 FERC ¶ 61,062 issued July 18, 1984.

8 a. Type of Application: Major Project, 5 MW or less.

b. Project No.: 7498-003.

c. Date Filed: October 22, 1984.

d. Applicant: Kentucky Hydro Associates.

e. Name of Project: Kentucky River Lock and Dam No. 5.

f. Location: Near the Town of Lawrenceburg, on the Kentucky River, in Anderson and Woodford Counties, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Bruce J. Wrobel, Kentucky Hydro Associates, 91 Newbury Street, Third Floor, Boston, Massachusetts 02116.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Kentucky River Lock and Dam No. 5 and would consist

of: (1) a new reinforced concrete powerhouse, 100 feet long and 80 feet wide, containing three turbine/generator units each rated at 1000 kW and operating at an average head of 13 feet; (2) a new steel access tower approximately 34 feet high; (3) a new concrete weir, 15 feet long to be located on the left side of the powerhouse; (4) the removal of approximately 95 feet of existing dam adjacent to the riverside lock wall. This will be replaced by a concrete stabilization saddle, 15 feet wide by 95 feet long, which will act as an anchor for the dam; (5) three new steel trash racks; (6) a new 15-kV transmission line approximately 550 feet long; (7) a new switching station; and (8) appurtenant electrical and mechanical facilities. The Applicant estimates the average annual energy production to be 13.3 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Fox Creek Rural Electric Cooperative Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.

8 a. Type of Application: License (over 5MW).

b. Project No.: 8179–000.

c. Date Filed: March 19, 1984.

d. Applicant: Southeastern Renewable Resources, Inc.

e. Name of Project: Opekiska.

f. Location: At the U.S. Army Corps of Engineers' Opekiska Locks and Dam on the Monongahela River, in Monongalia County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Edward Curland, SRR, Suite 2501, 1700 Broadway, New York, New York 10019.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Opekiska Locks and Dam and would consist of: (1) A new intake structure and powerhouse at the left end of the dam with 2 turbine-generator units with a total capacity of 6,500 kW; (2) a new 180-foot-long tailrace; (3) a new switchyard; (4) a new 23-kV and 1-mile-long transmission line; and (5) other appurtenances. Applicant estimates an average annual generation of 27,500,000 kWH.

k. Purpose of Project: Project energy would be sold to the Monongahela Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, and C.

10 a. Type of Application: Small Conduit Exemption.

b. Project No: 8239–000.

c. Date Filed: April 10, 1984.

d. Applicant: Nephi City Corporation.

e. Name of Project: Nephi Culinary System.

f. Location: Juab County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Mr. J. Randy McKnight, City Administrator, Nephi City Corporation, 21 East 100 North, Nephi, Utah 84648.

i. Comment Date: February 11, 1985.

j. Description of Project: The proposed project would utilize a proposed municipal water line which is being constructed to replace an existing but damaged water supply line which conveys water to Nephi City's culinary water storage tank from Bradly Springs, located approximately 5 miles east of the City. The proposed project would be located approximately ½ mile east of the City and on lands owned by the City and would consist of: (1) an intake tube, 16 inches in diameter, which runs from the 16-inch culinary water line; (2) a 17-foot by 12-foot powerhouse with the installation of one turbine/generator unit, operating at a hydraulic head of 478 feet, for a total installed capacity of 200 kW; and (3) appurtenant facilities. Water used for generation would be returned to the City's storage tank. The Applicant estimates the average annual energy generation to be 1.5 GWh.

k. Purpose of Project: The Applicant intends to use the power generated by the proposed facility in its municipal electrical distribution system.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

11 a. Type of Application: Preliminary Permit.

b. Project No: 8351–000.

c. Date Filed: June 6, 1984.

d. Applicant: Walter E. Steere Jr.

e. Name of Project: Hennicker Water Power.

f. Location: Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C 791(a)–825(r).

h. Contact Person: Mr. Brooke Pennypacker, Hydro Tech, Inc., P.O. Box 357, Marblehead, Massachusetts 01945.

i. Comment Date: March 1, 1985.

j. Description of Project: The proposed project would consist of: (1) an existing 12-foot-high, 202-foot-long dam at crest elevation 490 NGVD; (2) an existing reservoir with an impoundment of 5-acres; (3) a new powerhouse containing a generating unit with a rated capacity of 800-kW; and (4) a new 600-foot-long transmission line typing into the existing Public Service Company of New Hampshire system. The Applicant estimates a 3,103,200 KWh average annual energy generation. The existing dam and facilities are owned by Contoocook Valley Paper Company Inc. A preliminary permit, if issued, does not authorize construction. Applicant has requested a 36-month permit to conduct feasibility studies and prepare a license application at a cost of $40,000.

k. Purpose of Project: Power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

12 a. Type of Application: Preliminary Permit.

b. Project No. 8478–000.

c. Date Filed: July 31, 1984.

d. Applicant: Stephen J. Gaber.

e. Name of Project: Thompson Creek.

f. Location: In the Mt. Baker-Snoqualmie National Forest, on Thompson Creek, Near Glacier, in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Steven J. Gaber, 10 Canyon Lk. Rd., Deming, Washington 98244.

i. Comment Date: February 25, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 35-foot-long reinforced rock and earth fill diversion dam with a concrete spillway, at elevation 3,500 feet; (2) an 8,000-foot-long, 24-inch-diameter penstock; (3) a powerhouse at elevation 1,500 feet containing a single generator with a rated capacity of 2.5 MW and an average annual energy production of 10 GWh; and (4) a 0.75-mile-long transmission line to an existing Puget Sound Power and Light Company Line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $231,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Power may be marketed to Puget Sound Power and Light Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 8607–000.

c. Date Filed: September 20, 1984.

d. Applicant: Prospect Associates Company.

e. Name of Project: Shady Cove.

f. Location: On the Rogue River, near the town of Shady Cove, in Jackson County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: David G. Young, 851 S.W. Sixth Avenue, Portand, Oregon 97204.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would consist of: (1) A 15-foot-high concrete diversion dam; (2) a 9,600-foot-long flume with a hydraulic capacity of 1,750 cfs; (3) two 200-foot-long, 10.5-foot-diameter steel penstocks; (4) a powerhouse containing two generating units with a combined capacity of 16,000 kW and an average annual generation of 97,000,000 kWh; and (5) a 3,000-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $500,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to an investor-owned utility or to the Bonneville Power Administration.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 8608–000.

c. Date Filed: September 20, 1984.

d. Applicant: Timothy R. Fallon.

e. Name of Project: Erie Canal Lock 29.

f. Location: On the Erie Canal in Wayne County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Timothy R. Fallon, 3 Maplewood Point, Ithaca, New York 14850.

i. Comment Date: March 1, 1985.

j. Description of Project: The proposed project would consist of: (1) The existing 22.5-foot-high, 69-foot-long integrated concrete gravity Lock 29 Dam with an uncontrolled ogee center spillway section; (2) a reservoir having a surface area of 70 acres, a storage capacity of 1050 acre-feet, and a normal water surface elevation of 447 feet m.s.l.; (3) an existing intake structure; (4) an existing powerhouse containing new generating units having a total installed capacity of 245 kw; (5) an existing tailrace; (6) an existing 4.8–kV transmission line, 150 feet long; and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 1,267,720 kWh. The existing dam and project facilities are owned by the New York State Department of Transportation.

k. Purpose of Project: All project energy produced would be sold to the New York State Electric and Gas Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be $10,000.

15 a. Type of Application: Preliminary Permit.

b. Project No: 8643–000.

c. Date Filed: October 4, 1984.

d. Applicant: Energy GAP.

e. Name of Project: Lower Patterson Creek.

f. Location: On lands administered by the Bureau of Land Management, on Patterson Creek, in Lemhi County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Tim Jones, P.O. Box 2465, Twin Falls, Idaho 83303.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would consist of: (1) a 3–foot-high overflow spillway with inlet structure at elevation 6,240 feet; (2) a 6,460–foot-long, 54–inch-diameter steel penstock; (3) a powerhouse containing three generating units with a capacity of 1,350 kW and an average annual generation of 5,913,000 kWh; and (4) a 600-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $20,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Salmon River Electric Cooperative.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No: 8644–000.

c. Date Filed: October 5, 1984.

d. Applicant: Pacific Hydropower Company.

e. Name of Project: Sunset Falls.

f. Location: On the South Fork Skykomish River, near the town of Index, in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 971(a)–825(r).

h. Contact Person: Neil H. Macdonald, Pacific Hydropower Company, 1914 N. 34th St., Suite 200, Seattle, Washington 98103–1359.

i. Comment Date: March 1, 1985.

j. Description of Project: The proposed project would consist of: (1) a 16-foot-high dam at elevation 747 feet; (2) an intake structure approximately 2000 feet upstream from the dam; (3) a 1,100-foot-long, 15-foot-diameter steel and concrete lined tunnel; (4) a powerhouse containing two generating units with a combined capacity of 24 MW and an average annual generation of 94.3 million kWh; and (5) a 0.25-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $450,000. No new roads would be constructed during the feasibility study. Test borings would be conducted.

k. Purpose of Project: Project power would be sold to Puget Sound Power and Light Company or Snohomish County Public Utility District No. 1.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No: 8645–000.

c. Date Filed: October 5, 1984.

d. Applicant: Yankee Hydro Company.

e. Name of Project: Byron Project.

f. Location: East Branch of the Swift River near the Town of Byron, Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. George S. Bass, P.O. Box 1961, Boston, Massachusetts 02105.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 40-foot-long, 4-foot-high reinforced concrete dam; (2) a proposed 2,300-square foot reservoir impounding 28,000 gallons of water at elevation 1045 feet N.G.V.D.; (3) a proposed 2,600-foot-long, 24-inch-diameter conduit; (4) a proposed powerhouse containing one turbine/

generator unit rated at 99 kW; (5) a proposed 200-foot-long, 480-volt transmission line; and (6) appurtenant facilities. The estimated average annual generation is 485 MWh.

k. Purpose of Project: Project power would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: a preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of studies under permit would be $12,000.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 8647–000.

c. Date Filed: October 5, 1984.

d. Applicant: David Ames.

e. Name of Project: West Branch Indian Creek Power Project.

f. Location: On West Branch Indian Creek, near Happy Camp, within the Klamath National Forest, in Siskiyou County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. David Ames, Star Route Box 220, Kneeland, California 95549.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5-foot-high, 25-foot-long diversion dam at elevation 2,875 feet; (2) a 10-inch-diameter, 5,000-foot-long penstock; (3) a powerhouse with a total installed capacity of 200 kW operating under a head of 640 feet; and (4) a 1,000-foot-long, 12-kV transmission line from the powerhouse to connect to an existing Pacific Gas and Electric Company (PG&E) transmission line. The Applicant estimates the average annual energy generation at 1.44 million kWh to be sold to PG&E.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a 24-month preliminary permit to conduct technical, environmental and economic studies, and also prepare an FERC license application at an estimated cost of $5,000.

k. This notice also consists of the following standard paragraphs: A6, A7, A9, B, C and D2.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 8659–000.

c. Date Filed: October 12, 1984.

d. Applicant: Mega Renewables.

e. Name of Project: Morelli.

f. Location: On South Cow Creek, near Whitmore, in Shasta County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Fred G. Castagna, Executive Officer, Mega Renewables, 2576 Hartnell Avenue, Redding, California 96002.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) An intake structure on South Cow Creek at elevation 2,880 feet msl; (2) a 54-inch-diameter, 8,000-foot-long diversion conduit; (3) a 51-inch-diameter, 18,000-foot-long penstock; (4) a powerhouse located at elevation 1,820 feet msl with a total installed capacity of 5.0 MW; and (5) a 10,500-foot-long, 60-kV transmission line to interconnect to an existing Pacific Gas and Electric Company line. Applicant estimates the average annual energy generation at 17.5 GWh using 1,010 foot of head and 75 cfs of flow. Project power would be sold to a public utility.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $85,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

20 a. Type of Application: Preliminary Permit.

b. Project No: 8684–000.

c. Date Filed: October 23, 1984.

d. Applicant: Walter E. Steere Jr.

Name of Project: West Branch.

f. Location: West Branch of the Warner River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Hydro Tech Inc., P.O. Box 357, Marblehead, Massachusetts 01945, Attn: Mr. Brooke Pennypacker.

i. Comment Date: March 4, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 35-foot-long dam owned by the Applicant with a crest elevation of 901 feet MSL; (2) an existing reservoir with negligible surface area and storage capacity; (3) a proposed 18-inch-diameter, 200-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 8–KW; (5) a proposed 20-foot-long transmission line tying into the Applicant's residence; and (6) a proposed short length of tailrace 4 feet deep and 10 feet wide. The Applicant estimates a 28,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $3,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No: 8694–000.

c. Date Filed: October 30, 1984.

d. Applicant: Larry/Dana M. Darien and High Country, Hydro Inc.

e. Name of Project: Rapid Creek.

f. Location: Rapid Creek, Gunnison County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bruce D. Lewis, High Country Hydro, Inc., 0401 County Road 149B, Glenwood Springs, Colorado 81601.

i. Comment Date: March 25, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing small irrigation diversion structure; (2) a proposed penstock, approximately 5,000 feet in length to be installed in an existing irrigation supply ditch; (3) a proposed powerhouse with a single generating unit of approximately 500 kilowatts capacity; (4) a proposed tailrace; (5) a proposed transmission line section to connect with an existing 14.4-kV transmission line at a point approximately 1,600 feet from the proposed powerhouse; and (6) appurtenant facilities. The existing diversion structure and approximately 2,000 feet of the existing irrigation supply ditch is located within the White River National Forest.

k. Purpose of Project: The estimated average annual generation of 1,700,000 kWh would be used by the Applicants for home and ranch needs, and any excess would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license. Applicant seeks issuance of a preliminary permit for a period of 18 months, during which time it would perform surveys and geologic investigations, determine the economic feasibility of the project, reach final agreement on sale of project power, secure financing commitments, consult with Federal, State and local government agencies concerning the potential environmental effects of the project, and prepare an application for a FERC license, including an environmental report. Applicant estimates the cost of the work under the permit would be $20,000.

22 a. Type of Application: Exemption (Less than 5 MW).

b. Project No: 7921–000.

c. Date Filed: December 15, 1983.

d. Applicant: Alden T. Greenwood.

e. Name of Project: Otis Falls.

f. Location: Souhegan River in Hillsboro County, New Hampshire.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 *as amended*).

h. Contact Person: Mr. Alden T. Greenwood, RR #1, Box 56, Greenville Road, Mason, N.H. 03048.

i. Comment Date: February 15, 1985.

j. Description of Project: The project consists of: (1) An existing 150-foot-long, 26-foot-high dam owned by the Applicant; (2) an existing 7-acre reservoir at an elevation of 825 feet M.S.L.; (3) an existing forebay; (4) an existing 6-foot-diameter, 16-foot-long steel penstock; (5) an existing mill building containing one existing turbine/generator unit with an installed capacity of 150 kW, operating under a head of 27 feet; (6) an existing tailrace; (7) a new 65-foot-long, 600-volt transmission line; and (8) appurtenant facilities. The estimated average annual generation would be 360,000 kWh.

k. Purposes of Project: Project power would be sold to Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A1, B, C, D3a, A9.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

23 a. Type of Application: 5 MW Exemption.

b. Project No.: 8015–000.

c. Date Filed: January 30, 1984.

d. Applicant: Little Rapids Corporation.

e. Name of Project: Shawano Paper Mills Dam.

f. Location: On the Wolf River in Shawano County, Wisconsin.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708, *as amended*).

h. Contact Person: Robert B. Olson, 2273 Larsen Road, P.O. Box 3629, Green Bay, Wisconsin 54303.

i. Comment Date: February 15, 1985.

j. Description of Project: The proposed run-of-river project is presently operating and would consist of: (1) An existing concrete dam with overall length of approximately 242 feet and maximum height of about 12.5 feet; (2) a reservoir with normal pool elevation of 802.5 feet NGVD and storage capacity of approximately 2,400 acre-feet and surface area of about 230 acres; (3) an existing powerhouse approximately 38 feet by 20 feet, housing two existing turbine-generator units with a total installed capacity of 380 kW. Modifications will be made to unit number two to increase the efficiency; (4) an existing 480-volt transmission line approximately 400 feet in length; and (5) appurtenant facilities. Applicant estimates that the average annual energy would be 3,041,000 kWh. Owner of the dam and powerhouse is the Little Rapids Corporation.

k. Purposes of Project: The Applicant anticipates that project energy will be utilized in their paper mill operations.

l. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

24 a. Type of Application: Exemption (5 MW or Less).

b. Project No: 8376–000.

c. Date Filed: June 20, 1984.

d. Applicant: Stockport Milling Co., Inc.

e. Name of Project: Stockport Hydro.

f. Location: Muskingum River in Morgan County, Ohio.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Robert T. Grove, President, Stockport Milling Co., Inc., P.O. Box 127, Stockport, Ohio 43787.

i. Comment Date: February 15, 1985.

j. Competing Application: Project No. 7750–000. Date Filed: October 24, 1983.

k. Description of Project: The proposed project would consist of: (1) An existing Ohio Department of Natural Resources dam, 12.4 feet high and 480 feet long; (2) an existing reservoir at 640 feet M.S.L. with negligible storage and surface area; (3) an existing 160-foot-long, 36-foot-wide lock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 1,500 kW; and (5) a proposed 0.95-mile-long transmission line tying into the existing Ohio Power Company line. The Applicant estimates a 12 million kWh average annual energy production.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: A1, A9, B, C, and D3a.

25 a. Type of Application: Exemption Under 5 MW.

b. Project No: 8726–000.

c. Date Filed: November 19, 1984.

d. Applicant: Harold E. Foster and Robert Z. Walker.

e. Name of Project: Upper Cold Springs.

f. Location: Natural springs, near Copco, in Siskiyou County, California.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. Robert Z. Walker, Star Route Box 79, Montague, California 96064, (916) 459–5607.

i. Comment Date: February 15, 1985.

j. Description of Project: The proposed project would utilize 6 springs known as Upper Cold Springs and would consist of: (1) A 4-foot by 3-foot collection box; (2) a 750-foot-long, 12-inch diameter pipeline/penstock; (3) an existing powerhouse containing a new Pelton impulse turbine-generator unit rated at 66 kW and producing an estimated average annual generation of 0.462 GWh at a design head of 285 feet and a flow of 3.5 cfs; (4) a tailrace consisting of an irrigation channel; and (5) a tap transmission line to interconnect the project to an existing Pacific Power & Light Company (PP&L) line. Project power would be sold to PP&L. The project would be located on Bogus Creek Ranch, Inc. lands. The project is a retrofit of a plant installed in 1929 to provide electricity for the Foster Ranch and Walker Ranch.

An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license

applicants that would seek to take or develop the project.

k. This notice also consists of the following standard paragraphs: A1, A9, B, C and D3a.

26 a. Type of Application: Minor License (5MW or Less).

b. Project No: 8517-001.

c. Date Filed: October 15, 1984.

d. Applicant: Prodek, Inc.

e. Name of Project: Jackson Gulch Dam Water Power Project.

f. Location: On the diversion of the Mancos River in Montezuma County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: David N. Raffel, President, Prodek, Inc., P.O. Box 12608, El Paso, Texas 79912 and George V. Allen Jr., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

i. Comment Date: February 19, 1985.

j. Description of Project: The Applicant would utilize an existing dam and lands under the jurisdiction of the Bureau of Reclamation. The proposed project would consist of: (1) Proposed powerhouse No. 1 would contain one generating unit rated at 175 KW, which would be located at the south toe of the dam. The water to the powerhouse would flow through a proposed 24-inch branch pipe, which would connect to the existing 6.5-foot diameter horseshoe conduit located at the base of the dam, and discharge into the existing outlet canal; (2) proposed powerhouse No. 2 would contain one generating unit rated at 200 KW, which would be located at the southeast end of the outlet canal. The water to the powerhouse would flow through a proposed 24-inch diameter penstock, which would connect to the proposed intake pipes of the outlet canal, and discharge into the existing stilling basin; (3) proposed powerhouse No. 3 would contain one generating unit rated at 450 KW, which would be located approximately 40 feet east of powerhouse No. 2. The water to the powerhouse would flow through a proposed 24-inch diameter penstock, which would connect to the proposed intake pipes of the outlet canal, and discharge into the existing stilling basin; (4) an existing tailwater channel, which empties the water into the West Mancos River; (5) proposed 12.47/7.2-KV buried transmission lines, 90 feet long and 3,350 feet long, respectively; The Applicant estimates the average annual energy output is 1,300,000 KWh; and (6) appurtenant facilities.

k. Purpose of Project: The power generated at the project would be sold to Colorado-Ute Electric Association, Inc.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, & D3a.

Competing Applications

A1. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A2. Exemption for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license or conduit exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit and small hydroelectric exemption will not be accepted in response to this notice.

A3. License or Conduit Exemption—Any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

This provision is subject to the following exception: if an application described in this notice was filed by the preliminary permittee during the term of the permit, a small hydroelectric exemption application may be filed by the permittee only (license and conduit exemption applications are not affected by this restriction).

A4. License or Conduit Exemption—Public notice of the filing of the initial license, small hydroelectric exemption or conduit exemption application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing application for license, conduit exemption, small hydroelectric exemption, or preliminary permit, or notices of intent to file competing applications, must be filed in response to and in compliance with the public notice of the initial license, small hydroelectric exemption or conduit exemption application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit: Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natural water feature project, must submit the competing application to the Commission on or before 30 days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A competing preliminary permit application must conform with 19 CFR 4.33 (a) and (d).

A6. Preliminary Permit: No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or where there are proposed major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 60 days

after the specified comment date for the particular application.

A competing preliminary permit application must conform with 19 CFR 4.33 (a) and (d).

A7. Preliminary Permit—Except as provided in the following paragraph, any qualified license, conduit exemption, or small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license, conduit exemption, or small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a license, conduit exemption, or small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33 (a) and (b).

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications on notices of intent. Any competing preliminary permit application, or notice of intent to file a competing preliminary permit application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing preliminary permit applications or notices of intent to file a preliminary permit may be filed in response to this notice.

Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified coment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent to file a small hydroelectric exemption application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

In addition, any qualified license or conduit exemption applicant desiring to file a competing application may file the subject application until: (1) a preliminary permit with which the subject license or conduit exemption application would compete is issued, or (2) the earliest specified comment date for any license, conduit exemption, or small hydroelectric exemption application with which the subject license or conduit exemption application would compete; whichever occurs first.

A competing license application must conform with 18 CFR 4.33(a) and (d).

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§ 385.210, .211, .214. In determining the appropriate action in take, the Commission will consider all protest or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Project Management Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file coments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined

to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the Energy Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: January 8, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-919 Filed 1-10-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. RF-001]

Energy Conservation Program for Consumer Products; Petition for Waiver of Refrigerator and Refrigerator-Freezer Test Procedure From Whirlpool Corp.

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Notice.

SUMMARY: Today's notice publishes a "Petition for Waiver" from Whirlpool Corporation (Whirlpool) of Benton Harbor, Michigan, requesting a waiver from the Department of Energy (DOE) test procedure for refrigerators and refrigerator-freezers. Whirlpool is a manufacturer of home appliances, including refrigerator-freezers. Whirlpool has developed an electronic adaptive defrost control for refrigerator-freezers that initiates defrost cycles in response to operating conditions and usage patterns. The petition requests DOE to grant Whirlpool relief from the DOE test procedure for refrigerators and refrigerator-freezers for its refrigerator-freezer models equipped with electronic adaptive defrost controls on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of such units. DOE is soliciting comments, data, and information regarding the petition.

DATE: DOE will accept comments, data and information not later than February 11, 1985.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Test Procedures for Consumer Products, Case No. RF-001, Mail Stop CE-113, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Mail Station CE-113, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9513.

Background

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163, 89 Stat. 917), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95-619, 92 Stat. 3266), which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

DOE has also prescribed procedures by which manufacturers may petition for waiver of test procedure requirements for a particular basic model of a product covered by a test procedure and the Department may temporarily waive such test procedure requirements for such basic model. Waivers may be granted when one or more design characteristics of a basic model either prevent testing of the basic model according to the prescribed test procedure or lead to results so unrepresentative of the model's true energy consumption as to provide materially inaccurate comparative data. These waiver procedures appear at 10 CFR 430.27. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

Refrigerator-freezers are one of the products covered by the Federal Trade Commission's (FTC) Appliance Labeling Program. The energy consumption of refrigerator-freezers, as determined using DOE's test procedure, forms the basis of the estimated annual operating cost figures which FTC requires manufacturers of refrigerator-freezers to disclose on an EnergyGuide label on each unit to assist consumers in making a purchasing decision.

Whirlpool filed a petition for waiver from the DOE test procedure for refrigerators and refrigerator-freezers on the grounds that the procedure yields materially inaccurate estimates of the energy consumed by its refrigerator-freezer models equipped with what Whirlpool terms electronic adaptive defrost controls. Whirlpool states that its electronic adaptive defrost control initiates defrost cycles on the basis of compressor run time, refrigerator and freezer door openings, and the length of the preceeding defrost period. The petition cites three faults with using the current DOE test procedure for refrigerators and refrigerator-freezers to evaluate the energy consumption of refrigerator-freezers equipped with electronic adaptive defrost controls.

First, the current test procedure has no provision for determining the interval between defrost cycles for refrigerator-freezers equipped with electronic adaptive defrost controls which would be comparable to normal usage patterns. Second, the current test procedure would likely underestimate the actual energy consumption of such products because the low humidity conditions normally encountered within the product during the test and the lack of refrigerator and freezer compartment door openings during the test lengthens the period between defrost cycles beyond that which would be expected under normal usage conditions. Third, this lengthening of the period between defrost cycles lengthens the duration of the test to the point that it is unduly burdensome to conduct.

Further, Whirlpool evaluated the applicability of two alternate test methods, both intended to cover refrigerator-freezers equipped with so-called demand defrost controls, and determined that neither was appropriate for use in testing units equipped with electronic adaptive defrost controls. Whirlpool contends that no acceptable alternate test procedure exists and that the development of such an alternate test procedure should await field data which reflects the actual performance of such products under varying conditions of use and operation.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, D.C., December 28, 1984.

Pat Collins,

Under Secretary.

November 13, 1984.

Mr. Michael J. McCabe,
Branch Chief, Testing and Evaluation, Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, NW., Room GF-217, Washington, D.C. 20585

Gentlemen: 1. *Petition for Waiver*—In accordance with 10 CFR Part 430.27, this is a Petition for Waiver from the test procedure specified in 10 CFR Part 430, Sub-Part B, Appendix A1, adopted August 10, 1982. Concurrently with the filing of this Petition for Waiver, Whirlpool Corporation is filing an Application for Temporary Exception with the Office of Hearings and Appeals of the DOE. A copy of the Application for Temporary Exception is attached hereto. Whirlpool Corporation has developed and is planning to market several refrigerator-freezer models with electronic adaptive defrost controls that are required to be tested under the provisions of 10 CFR Part 430, Sub-Part B, Appendix A1. 10 CFR Part 430, Section 430.22 prohibits a manufacturer from making any representation regarding energy consumption of a refrigerator-freezer that is not based on results of tests under Appendix A1. Further, 16 CFR 305.4 prohibits the manufacturer from selling or offering for sale a refrigerator-freezer that does not bear an Energyguide label specifying the estimated annual operating cost for that product based upon tests conducted in accordance with Appendix A1. In as much as Whirlpool may not make an energy representation regarding refrigerator-freezers unless such representation is based upon the results of tests conducted in accordance with Appendix A1, and Appendix A1 tests will not accurately represent the energy consumption of refrigerator-freezers with electronic defrost controls, we submit this petition.

2. *General Description of Petitioner's Business*—Whirlpool Corporation is a manufacturer of home appliances including refrigerator-freezers. Whirlpool has now developed an electronic adaptive defrost control for refrigerator-freezers that initiates defrost cycles for the refrigerator-freezer in response to operating conditions and usage patterns. The electronic adaptive defrost control will initially be installed on two models of side-by-side refrigerator-freezers.

3. *Electronic Adaptive Defrost Control Design Principles*—The electronic adaptive defrost control employs a microcomputer utilizing an algorithm that initiates defrost cycles on a non-timed basis depending on compressor run time, refrigerator and freezer door openings, and the length of the preceding defrost period. The actual interval between defrost cycles with this control could be from six (6) hours to twelve (12) days. The electronic adaptive defrost control is not a demand defrost system that initiates a defrost cycle based upon actual frost on the evaporator.

4. *DOE Test Does Not Adequately Determine the Period Between Defrost Cycles*—There is no provision in the refrigerator-freezer test procedure, 10 CFR Part 430, Sub-Part B, Appendix A1, to determine the interval between defrost cycles for a refrigerator-freezer with an adaptive defrost control which would account for compressor run time, refrigerator and freezer compartment door openings and the length of time of the previous defrost cycle which would be comparable to normal usage patterns. However, Appendix A1 does include a provision for long-time automatic defrost refrigerator-freezers. These specific provisions are found in Section 4.1.2.1 and 5.2.1.2 of Appendix A1. The rationale for treating long-time automatic defrost systems differently than standard products is found in the discussion in conjunction with adoption of the final rule and is found at pages 34521 and 34522 of **Federal Register**, Volume 47, No. 154, Tuesday, August 10, 1982. The different treatment for a long-time automatic defrost refrigerator is based on the premise that a minimum of 14 hours of compressor run time will elapse between defrost cycles. In the test measurements specified in Section 5.2.1.2 the time between defrost cycles is recorded as quantity CT. However, this test procedure is intended for products with a timed interval between defrost cycles resulting in a fixed CT. The long-time automatic defrost test procedure does not address determining CT for a product in which the interval between defrost cycles depends upon operating conditions as described above. Accordingly, the test methodology provided for in the case of long-time automatic defrost systems is not applicable to refrigerator-freezers with adaptive defrost controls.

5. *DOE Test is Unduly Burdensome*—In 10 CFR, Part 430, Sub-Part B, Appendix A1, a refrigerator-freezer test period is defined as the time span from one point during the defrost period to the corresponding point in the next defrost period. For a conventional automatic defrost refrigerator-freezer, total test time required for the stabilization and test period is typically on the order of three days of less. An automatic defrost refrigerator-freezer with an anti-sweat heater switch requires four tests to determine the total per cycle energy consumption for that unit. In order to achieve a 95% confidence level for a given model, a minimum of three products must be tested. Therefore to rate a given model having an anti-sweat heater switch at a 95% confidence level takes thirty-six test days. However, in the case of adaptive defrost refrigerator-freezers, the total test time required for the stabilization and testing appears to be nine days. Since this product incorporates an anti-sweat heater switch, four tests are also required. With a minimum of three units required to establish a 95% confidence level, approximately 108 test days are required to test an adaptive defrost control utilizing the standard test procedure. Thus the testing burden has increased by three times in order to conduct required testing for these products. Furthermore, it is likely that the potential extremely long test duration might be impossible to accomplish due to the difficulty in controlling conditions in the test room within the tolerances required by the test procedure over long time periods.

6. *DOE Test May Mislead the Public and Be Unfair to Petitioner*—Whirlpool believes that testing refrigerator-freezers having the electronic adaptive defrost control system under the test room conditions specified in the test procedure will result in intervals between defrost cycles that will be considerably longer than would be expected to be encountered in normal usage because of low humidity conditions normally encountered within the product during the test and lack of refrigerator and freezer compartment door openings. If Whirlpool Corporation were required to conduct tests in accordance with Appendix A1 on refrigerator-freezers having the electronic adaptive defrost control, the results will likely underestimate the actual energy consumption of such products in normal usage patterns for the reasons cited above. This result would be unfair to both consumers and to Whirlpool. The consumer, when comparing operating costs, might be misled into purchasing an adaptive defrost control product based on the incorrect labeling information. Whirlpool, on the other hand, would be placed in the position of providing cost of operation information for the Energyguide label, in accordance with the test procedure, which it believes is inaccurate. Thus, if Whirlpool Corporation were to attempt to conduct tests on refrigerator-freezers with electronic adaptive defrost controls in accordance with Appendix A1, the results would likely be misleading to consumers as well as unduly burdensome to Whirlpool Corporation. Failure to grant this petition will discourage future development of innovative control systems for not only refrigerator-freezers but other products as well since Whirlpool Corporation will realize that, unless the product is capable of being tested under the existing test procedures, it may well be actually or practically precluded from testing the product in order to comply with mandatory labeling or a minimum standard requirement.

7. *Proposed Alternate Test Method*—At the present time Whirlpool Corporation does not have a proposed alternate test method for refrigerator-freezers having an adaptive

defrost control system. However, the test procedure specified in Appendix A1, Section 4.1.2.1 and Section 5.2.1.2 relating to long-time automatic defrost products provides a basis for developing a test procedure for refrigerator-freezers having adaptive defrost systems of the type proposed by Whirlpool Corporation. The long-time automatic procedure separates the test period into the two distinct portions—the defrost/recovery portion and the steady state cycling portion. Such an approach would be an effective manner for testing adaptive defrost control products if an additional procedure was developed to establish the value of "CT" for the respective products. Whirlpool Corporation is actively engaged in investigating test methods for determining CT which will be representative for refrigerator-freezers having adaptive defrost control systems. A door opening test might provide some means to estimate a value for "CT", but would present several difficult problems. First, it would be difficult, if not practicaly impossible, to control ambient humidity conditions to the degree required to obtain repeatability in test results. Secondly, the cost and space required for door opening mechanisms would be prohibitive if adaptive defrost controls were used on many models in the product line. Whatever test method is ultimately designed to determine the length of time between defrost cycles, CT, such test method must, we believe, be based on field data reflecting actual experience, under varying operating conditions, of products having these systems.

8. *Other Test Methods Considered*—One test procedure considered and determined not to be applicable is discussed in a paper presented by Neil Lynch, at the 1984 International Appliance Technical Conference at Ohio State University entitled "Proposed Energy Test Procedure for Household Refrigerator Freezers Equipped with Demand Defrost Controls". As mentioned above, the adaptive defrost control does not respond to frost conditions found on the evaporator as is the case with demand defrost controls. Rather, the adaptive defrost control operates on an algorithm which accounts for events likely to be proportionate, in normal circumstances, to frost build-up on the evaporator. The procedure described by Mr. Lynch is one which provides for induced frost build-up on the evaporator. Mr. Lynch's proposed procedure is not applicable to adaptive defrost control products because the control does not respond directly to the frost load created by the Lynch test procedure.

A test procedure was considered by DOE and the National Bureau of Standards ("NBS") for demand defrost systems, as part of the proposed rule setting refrigerator test procedures. See Federal Register Vol. 45, No. 136, July 14, 1980, page 47398. In this proposal, a value of CT corresponding to one defrost every 24 hours would be assigned to all "demand defrost" systems. However, an arbitrary assignment of a common CT to all demand (or adaptive) defrost systems has the potential of either understanding or overstating the energy savings attributed to the defrost control mechanism. In the case of the adaptive defrost system in question, Whirlpool believes that the savings would be understated.

9. *Public Policy*—The granting of this waiver will serve to further the nation's energy conservation policy by encouraging manufacturers to develop new and innovative control systems to provide more energy-efficient appliances which, in the long run, will serve to reduce the energy consumption of products.

10. *Other Manufacturers*—It is our belief that no other appliance manufacturers in the United States market basic models of electric refrigerator-freezers which incorporate non-time initiated defrost systems that will be comparable to the adaptive defrost control system proposed by applicant.

If additional information is required, please contact Andrew Takacs (616/926-3219) or Robert Judd (616/926-5577).

Respectively,

A.J. Takacs.

[FR Doc. 85-814 Filed 1-10-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51553; FRL-2755-2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-eight PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 85-355, 85-356, 85-357, 85-358, 85-359, 85-360, 85-361, and 85-362—March 27, 1985.

PMN 85-363 and 85-364—March 30, 1985.

PMN 85-365, 85-366, 85-367, 85-368, 85-369, 85-370, 85-371, 85-372, 85-373, 85-374, 85-375, 85-376, 85-377, 85-378, 85-379, 85-380, 85-381, and 85-382—April 1, 1985.

Written comments by:

PMN 85-355, 85-356, 85-357, 85-358, 85-359, 85-360, 85-361, and 85-362—February 25, 1985.

PMN 85-363 and 85-364—February 28, 1985.

PMN 85-365, 85-366, 85-367, 85-368, 85-369, 85-370, 85-371, 85-372, 85-373, 85-374, 85-375, 85-376, 85-377, 85-378, 85-379, 85-380, 85-381, and 85-382—March 2, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51553]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 85-355

Manufacturer. Confidential.

Chemical. (G) Polyhalogenated alkyl phenol.

Use/Production. (S) Industrial chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: 2.8 g/kg; Irritation: Skin—Moderate to severe. Eye—Severe.

Exposure. Manufacture: dermal and inhalation, a total of 4 workers, up to 1 hr/da, up to 300 da/yr.

Environmental Release/Disposal. Trace amounts released to air.

PMN 85-356

Manufacturer. Confidential.

Chemical. (G) Alcohol sulfate, lithium salt.

Use/Production. (G) An additive used in the energy production industry. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 2-3 hrs/da.

Environmental Release/Disposal. 25 kg/day released.

PMN 85-357

Manufacturer. Confidential.

Chemical. (S) Polymer of ester diol 204, trimethylol propane, adipic acid, Desmondur-W, isocyanato ethyl methacrylate and butyl methacrylate.

Use/Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range: 70,000-210,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 to 180 kg/batch of resin and 0.2 to 1 kg/batch of paint released. Disposal by landfill.

PMN 85-358

Manufacturer. Confidential.

Chemical. (S) Polymer of 2,2 dimethyl-3-hydroxypropyl-1, 2 dimethyl-3-hydroxypropionate, methylene bis (4-cyclohexyl isocyanate), polycaprolactone triol, adipic acid, E-caprolactone.

Use/Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range: 184,000–307,600 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal and inhalation, a total of 6 workers, up to 0.5 hr/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 to 180 kg/batch of resin and 0.2 to 1 kg/batch of paint released. Disposal by landfill.

PMN 85-359

Manufacturer. The Dow Chemical Company.

Chemical. (G) Advancement product of triglycidyl ether of tri (hydroxyphenyl)methane.

Use/Production. (S) Industrial transfer molding of electronic parts and the manufacture of printed circuit boards, electrical laminates and structural composites. Prod. range: Confidential.

Toxicity Data. Acute oral: >2,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Not a primary irritant. Eye—No irritation.

Exposure. Manufacture: dermal, a total of 20 workers.

Environmental Release/Disposal. Up to 1 lb./sample released to air and land. Disposal by incineration, landfill and navigable waterway after treatment.

PMN 85-360

Manufacturer. The Dow Chemical Company.

Chemical. (G) Partial metal complex of aminomethylene phosphonic acid.

Use/Production. (G) Corrosion and scale inhibitor. Prod. range: Confidential.

Toxicity Data. Acute oral: >4,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Not a primary irritant. Eye—Slight; LC_{50} 48 hr (Daphnia magna): 740 mg/L; LC_{50} 96 hr (Fathead minnow): 960 mg/L.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to water. Disposal by navigable waterway.

PMN 85-361

Importer. Confidential.

Chemical. (G) Polymer of aliphatic diisocyanate, aliphatic diacid, aromatic diacid, aliphatic diol, aliphatic epoxide, urea, and formaldehyde.

Use/Import. (S) Industrial auxiliary for leather. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 ml/kg; Irritation: Skin—Slight, Eye—Non-irritant; 48 hr (Leiuciscus idus): 1,000 mg/1.

Exposure. Processing: dermal, inhalation and ocular, a total of 1 to 5 min/weighing, 3 weighings/da.

Environmental Release/Disposal. No release to air, water and land. Disposal by publicly owned treatment works (POTW).

PMN 85-362

Importer. Confidential.

Chemical. (S) Polymer of mercaptobenzimidazole and ethylene oxide.

Use/Import. (S) Industrial corrosion inhibitor for metals. Import range: Confidential.

Toxicity Data. Acute oral: >5.0 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

Exposure. Processing and use: dermal, inhalation and ocular.

Environmental Release/Disposal. No data submitted.

PMN 85-363

Manufacturer. SCM Organic Chemicals.

Chemical. (G) Alkyl substituted cyclopentanol acetate.

Use/Production. (G) Highly dispersive use. Prod. range: Confidential.

Toxicity Data. Irritation: Skin—Slight.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-364

Manufacturer. Confidential.

Chemical. (G) Hydrochloride salt of a substituted dialkyl amine.

Use/Production. (S) Industrial intermediate. Prod. range: 30,000–40,000 kg/yr.

Toxicity Data. Acute oral: Male—>3,846 mg/kg but <5,000 mg/kg, Female—2,701 mg/kg, Combined—3,704 mg/kg; Irritation: Skin—Not a primary irritant, Eye—Moderate; Ames test: Not mutagenic; Skin sensitization: Weak sensitizer.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 1.5 hrs/da, less than 225 da/yr.

Environmental Release/Disposal. Trace to 6 kg released.

PMN 85-365

Manufacturer. Confidential.

Chemical. (S) Polymer of cyclonhexanedimethanol, isophthalic acid, pentaerythritol, tetraisopropyl titanate and trimelletic anhydride.

Use/Production. (G) Plastics additive. Prod. range: 90,000–180,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: inhalation, a total of 10 workers, up to 6 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. About 5% released to air and about 11% to water. Disposal by POTW and approved landfill.

PMN 85-366

Manufacturer. Confidential

Chemical. (G) Short oil alkyd resin.

Use/Production. (G) Binder for industrial baking finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 5 workers.

Environmental Release-Disposal. Confidential.

PMN 85-367

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Haloalkyl substituted cyclic ether.

Use/Production. (G) Intermediate and solvent. Prod. range: Confidential.

Toxicity Data. Acute oral: 1,500 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild; Cardiac sensitization test: Not a cardiac sensitizer but a potent anesthetic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-368

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Haloalkyl substituted cyclic ether.

Use/Production. (G) Intermediate and solvent. Prod. range: Confidential.

Toxicity Data. Acute oral: 25,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Inhalation: 1,700 parts per million (ppm).

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 85-369

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Haloalkyl substituted cyclic ether.
Use/Production. (G) Intermediate and solvent. Prod. range: Confidential.
Toxicity Data. Acute oral: >25,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild; Inhalation: 1,300 ppm; Skin sensitization: Non-senitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-370

Manufacturer. E. I. du Pont de Nemours and Company, Inc.
Chemical. (G) Haloalkyl substituted cyclic ether.
Use/Production. (G) Monomer. Prod. range: Confidential.
Toxicity Data. Acute oral: 2,250 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85-371

Manufacturer. Confidential.
Chemical. (G) Acrylic alkyd resin.
Use/Production. (G) Binder for industrial baking finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, total of 5 workers.
Environmental Release/Disposal. Confidential.

PMN 85-372

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-373

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-374

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-375

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-376

Manufacturer. General Electirc Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polyer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-377

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-378

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-379

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-380

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-381

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

PMN 85-382

Manufacturer. General Electric Company.
Chemical. (G) Aliphatic dicarboxylic acid polymer with alkane diol.
Use/Production. (S) Polymer intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 120 workers, up to 10 hrs/da, up to 100 da/yr.
Environmental Release/Disposal. 10 kg/batch released for burning.

Dated: January 7, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-861 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59176b; FRL-2755-3]

Certain Chemicals, Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). TME–85–7. The test marketing conditions are described below.

EFFECTIVE DATE: December 31, 1984.

FOR FURTHER INFORMATION CONTACT: Anna Coutlakis, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–613B, 401 M St. SW., Washington, DC 20460, (202–382–2252).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–85–7. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. The volume imported must not exceed that specified in the application. All other conditions and restrictions described in this notice must be met. The following additional restrictions apply. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. The Company may not manufacture the substance in the United States. A Material Safety Data Sheet (MSDS) must accompany shipment, and workers are required to wear specified protective clothing and equipment. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance imported and must make these records available to EPA upon request.

2. The applicant must maintain records of determinations that the gloves are impervious to the TME substance.

3. The applicant must maintain records of names of persons who wear impervious gloves, chemical safety goggles and any other protective equipment required by the MSDS attached to the test market application during the processing and use of the TME substance.

4. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

5. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

TME 85–7

Date of Receipt: November 15, 1984.

Notice of Receipt: November 26, 1984 (49 FR 46483).

Applicant: Phillips Petroleum Company.

Chemical: (G) A titanium complex compound.

Use: (G) Plastic manufacturing catalyst.

Production Volume. Confidential.

Number of Customers: One.

Worker Exposure: Processing and use: dermal and inhalation, a total of 4 workers, up to 8 hrs/shift.

Test Marketing Periods: One year.

Commencing on: December 31, 1984.

Risk Assessment: The Agency has identified potential adverse health effects associated with acute exposure to substances analogous to the TME substance. However, under the conditions outlined above and the restrictions below, the estimated worker exposure to the test market substance will not be significant. Therefore, the test market substance will not pose an unreasonable risk to health during processing and use. No significant environmental concerns were identified. Therefore, the test market substance will not pose an unreasonable environmental risk.

Additional Restrictions: The Company is prohibited from manufacturing the test market substance in the United States. In addition, the workers are required to wear the protective equipment outlined in the Material Safety Data Sheet which was attached to the test market application.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: December 31, 1984.

E.F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 85–862 Filed 1–10–85; 8:45 am]

BILLING CODE 6560–50–M

[FRL No. 2756–7]

Pesticide Emergency Exemption Negotiated Rulemaking Advisory Committee Open Meeting

As required by the Federal Advisory Committee Act (Pub. L. 94–463), we are giving notice of a change in the starting time of the previously announced January 15th meeting of the Emergency Exemption Negotiated Rulemaking Committee (December 12, 1984; 49 FR 48379).

The meeting, which was previously scheduled to have begun at 1:00 p.m., will instead start at 9:00 a.m. It will be held in Room 1112, Crystal Mall Building #2, Arlington, Virginia, its original location.

The purpose of the meeting is to reach consensus on language to be used for the Notice of Proposed Rulemaking on Section 18 Emergency Exemptions.

If interested in attending, or in receiving more information, please contact Richard Harvey at (202) 382–5496.

Dated: January 8, 1985.

Milton Russell,

Assistant Administrator for Policy, Planning and Evaluation.

[FR Doc. 85–937 Filed 1–10–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2755–7]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information, (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed December 31, 1984 Through January 4, 1985 Pursuant to 40 CFR 1506.9

EIS No. 850000, Draft, FHW, NH, Nashua-Hudson Circumferential Highway, Construction, F.E. Everett Turnpike in Nashua to F.E. Everett

Turnpike in Merrimack, Hillsborough County. Due: March 1, 1985. Contact: William O'Donnell, (603) 224-3385.

EIS No. 850001, DSuppl, AFS, ID, WY, Targhee National Forest Land Management Plan. Due: April 19, 1985. Contact: Robert Williams, (208) 624-3151.

EIS No. 850002, Draft, AFS, OR, Willamette Pass Alpine Winter Sports Site, Expansion/Development, Klamath and Lane Counties. Due: March 4, 1984. Contact: Conny Frisch, (503) 782-2291.

EIS No. 850003, Draft, COE, CA, Guadalupe River Flood Control Plan, Improvements, Santa Clara County. Due: April 15, 1985. Contact: Arijs Rakstins, (415) 974-0379.

EIS No. 850004, Draft, AFS, KY, VA, WV, Jefferson National Forest Land and Resource Management Plan. Due: April 11, 1985. Contact: John Alcock, (404) 881-4177.

EIS No. 850005, Draft, AFS, MT, Helena National Forest Land and Resource Management Plan. Due: April 15, 1985. Contact: Robert Gibson (406) 449-5203.

EIS No. 850006, Final, NRC, NJ, Hope Creek Generating Station, Operating License, Salem County. Due: February 11, 1985. Contact: David Wagner, (301) 492-8525.

EIS No. 850007, Report, COE, MI, Sault Ste. Marie Federal Facilities, Soo Locks Closure, Chippewa County. Contact: Richard Makinen, (202) 272-0121.

EIS No. 850008, Final, ICC, REG, Nationwide Coal Rate Guidelines, Ex Parte No. 347 (Sub-No. 1). Due: February 11, 1985. Contact: Carl Bausch, (702) 275-0800.

EIS No. 850009, Draft, AFS, PR, Caribbean National Forest and Luquillo Experimental Forest Land and Resource Management Plan. Due: April 15, 1985. Contact: John Alcock, (404) 881-4177.

Amended Notices

EIS No. 840545, Draft, USN, NV, Fallon Naval Air Station, Supersonic Operations Area, Designation and Strike Warfare Center. Due: January 24, 1985. Published FR 12-7-84—Review extended.

EIS No. 840582, Final, FAA, FL, Palm Beach International Airport Fan Out Departure Procedures Elimination, Approval. Palm Beach County. Due: February 4, 1985. Published FR 1-4-85—Incorrect state.

Dated: January 8, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-935 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2755-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 24, 1984 through December 28, 1984 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-L65092-ID, Rating LO, Medicine Lodge Resource Area, Management Plan, ID. Summary: EPA stated that additional explanation on water quality standards compliance issues and water quality monitoring should be included in the FEIS.

ERP No. D-BLM-L70001-WA, Rating LO, Spokane District, Resource Management Plan, WA. Summary: EPA stated that additional explanation of the water quality evaluation and monitoring program should be included in the FEIS.

ERP No. D-FHW-C40118-NJ, Rating EC2, NJ-18 Freeway Completion, Deal Road to Wayside Road, NJ. Summary: EPA believes the FEIS should address slight modifications to the preferred alternative to avoid potential impacts to wetlands. The FEIS should also provide for mitigation measures to minimize potential impacts to wetlands and reduce construction related impacts.

Final EISs

ERP No. F-USA-G11006-00, Fort Bliss Ongoing Mission, Continuation, US Army Air Defense Artillery Center, TX, MX. Summary: The FEIS responded to EPA's comments on the DEIS and EPA identified no new issues of concern regarding the project.

Dated: January 8, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-936 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Investigation of Access and Divestiture Related Tariffs; Classification of Filing Procedures Regarding Petitions and Opposition to Petitions for Reconsideration

The Commission's Special Access Order, Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 84-524, released November 9, 1984, was published in the **Federal Register** on December 28, 1984, 49 FR 50457. Petitions for reconsideration of the Special Access Order shall be filed within 30 days of publication of the order in the **Federal Register**. After the expiration of the 30 day period, the Commission will issue a public notice listing the petitions for reconsideration filed. Oppositions to petitions for reconsideration shall be filed within fifteen days after the public notice listing the petitions is published in the **Federal Register**. *See* §§ 1.4 and 1.429 of the Commission's Rules. All oppositions to petitions will be due on the same date; oppositions to petitions which were filed early, i.e. those listed in the **Federal Register** on December 24, 1984, 49 FR 49906-07, will be due at the same time as oppositions to the later-filed petitions.

For further information contact Regina M. Keeney at (202) 632-6917.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-799 Filed 1-10-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

[No. 85-26]

Application for Approval To Increase Total Liabilities More Than 25 Percent

Dated: January 7, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Application for Approval To Increase Total Liabilities More Than 25 Percent", to the Office of Management and Budget for expedited approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are

welcome and should be submitted within 10 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Robert S. Monheit, Office of General Counsel, Phone: 202–377–6448.

By the Federal Home Loan Bank Board

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85–910 Filed 1–10–85; 8:45 am]

BILLING CODE 6720–01–M

[No: 85–27]

Direct-Investment Authorization

Dated: January 8, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection, "Direct-Investment Authorization", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 10 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Joseph Longino, Office of General Counsel, Phone: 202–377–6446.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Acting Secretary.

[FR Doc. 85–911 Filed 1–10–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 84-1300—Eastern Gas and Fuel Associates' proposed acquisition of voting securities of Houston Natural Gas Corporation.	Dec. 17, 1984.
(2) 84-1284—The Oxford Financial Group's proposed acquisition of assets of Glaco Corporation, (Tenneco, Incorporated, UPE).	Dec. 18, 1984.
(3) 84-1277—General Electric Company's proposed acquisition of voting securities of Decimus Corporation, (BankAmerica Corporation, UPE).	Do.
(4) 84-1309—Textron Incorporated's proposed acquisition of voting securities of Avco Corporation.	Do.
(5) 84-1310—Textron Incorporated's proposed acquisition of voting securities of Avco Corporation.	Do.
(6) 84-1250—Advance Voting Trust u/1/w/t of Samuel I. Newhouse's, deceased proposed acquisition of voting securities of The New Yorker Magazine, Inc.	Dec. 19, 1984.
(7) 84-1261—Quaker State Oil Refining Corporation's proposed acquisition of voting securities of The Helen Mining Company, (The North American Coal Corporation, UPE).	Do.
(8) 84-1270—The News Corporation Limited's proposed acquisition of assets of Ziff-Davis Publishing Company, (William B. Ziff, UPE).	Do.
(9) 84-1203—The British Electric Traction Company's proposed acquisition of voting securities of Distribution Systems, Inc., (Edward O. Gaylord, UPE).	Do.
(10) 84-1307—Smithfield Foods, Inc. and Alan T. Anderson's proposed acquisition of assets of Patrick Cudahy and Prestige Foods Corporation, (Northern Foods plc, UPE).	Do.
(11) 84-1311—Sunshine Mining Company's proposed acquisition of voting securities of Texas Energies, Incorporated.	Do.
(12) 84-1312—Brillion Iron Works, Inc.'s a Delaware Corporation (Charles Robins, UPE) proposed acquisition of voting securities of Brillion Iron Works, Inc., a Massachusetts Corporation, (Beatrice Companies, Inc., UPE).	Do.
(13) 84-1316—Fujisawa Pharmaceutical Company Limited's proposed acquisition of voting securities of LyphoMed, Inc.	Do.
(14) 84-1321—Charles J. Kubicki's proposed acquisition of assets of Midwest Corporation, (UNR Industries, Inc, UPE).	Do.
(15) 84-1323—Houston Natural Gas Corporation's proposed acquisition of voting securities of 6 subsidiaries of KMI Continental, Inc., (Peter Kiewit Sons', Incorporated, UPE).	Do.
(16) 84-1251—Horsehead Industries, Incorporated's proposed acquisition of voting securities of Great Lakes Carbon Corporation.	Dec. 20, 1984.
(17) 84-1266—Metropolitan Life Insurance Company's proposed acquisition of voting securities of Tesoro Petroleum Corporation.	Do.
(18) 84-1314—Royal Dutch Petroleum Company's, (Shell Oil Co., UPE) proposed acquisition of assets of KMI Continental, (Peter Kiewit Sons', Inc).	Do.
(19) 84-1286—The Coca-Cola Company's proposed acquisition of voting securities of The Louisiana Coca-Cola Bottling Company, Ltd.	Dec. 21, 1984.
(20) 84-1315—Equity Holdings' proposed acquisition of assets of Lapp Insulator Division, (Clevepak Corporation, UPE).	Do.
(21) 84-1337—The British Petroleum Company's proposed acquisition of assets of ITT Corporation.	Do.
(22) 84-1347—Beecham Group p.l.c.'s proposed acquisition of assets of Germaine Monteil Cosmetiques Company, (B.A.T. Industries, p.l.c., UPE).	Do.
(23) 84-1320—Fremont General Corporation's proposed acquisition of voting securities of HL Capital Management Corporation.	Dec. 24, 1984.
(24) 84-1290—The Fulcrum Partnership's proposed acquisition of voting securities of B. Foodservice Equipment, Inc., Bloomfield Industries, Canada, Ltd., World Dryer Co., Ltd., Taylor Freezer International S.r.l., (Beatrice Companies, Inc., UPE).	Dec. 26, 1984.
(25) 84-1304—Acquihold Corporation's proposed acquisition of voting securities of Schepps Dairy, Inc., Inc., (Harmon Schepps, UPE).	Do.
(26) 84-1208—W.R. Berkley Corporation's proposed acquisition of voting securities of Carolina Casualty Insurance Company.	Dec. 27, 1984.
(27) 84-1281—Geico Corporation's proposed acquisition of voting securities of Bond Investors Group Inc.	Do.
(28) 84-1296—Ingersoll-Rand Company's proposed acquisition of voting securities of SPS Technologies, Inc.	Do.

Transaction	Waiting period terminated effective
(29) 84-1297—Ingersoll-Rand Company's proposed acquisition of voting securities of SPS Technologies, Inc.	Do.
(30) 84-1298—Ingersoll-Rand Company's proposed acquisition of voting securities of SPS Technologies, Inc.	Do.
(31) 84-1299—SPS Technologies, Inc.'s proposed acquisition of assets of Ingersoll-Rand Company.	Do.
(32) 84-1318—Fleming Companies, Incorporated's proposed acquisition of assets of Alpha Beta Company, (American Stores Company, UPE).	Do.
(33) 84-1301—TLC Associates' proposed acquisition of voting securities of National InterGroup, Inc.	Dec. 28, 1984.
(34) 84-1338—Sonat, Incorporated's proposed acquisition of assets of ITT Corporation.	Do.
(35) 84-1341—Franz Haniel & Cie GmbH's proposed acquisition of voting securities of Steelmet, Incorporated.	Do.
(36) 84-1354—J.P. Industries, Incorporated's proposed acquisition of assets of Jim Walter Corporation.	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Elizabeth O. Williams,

Acting Secretary.

[FR Doc. 85-805 Filed 1-10-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 4, 1985.

Public Health Service

National Institutes of Health

Subject: Small Business Innovation Research Program, Phase I Application-Extension-(0925-0195)
Respondents: Small businesses or organizations
Subject: NLM Online Application Packet-Extension-(0925-0223)
Respondents: State or local governments

Health Resources and Services Administration

Subject: Maternal and Child Health/Crippled Children's Services Research Grant Program-Existing Collection
Respondents: State and local governments, non-profit institutions
Subject: 1985 National Household Survey on Drug Abuse
Respondents: Individuals
Office of the Assistant Secretary for Health
Subject: Evaluation of the Products and Services of PHS Clearinghouses—New
Respondents: State/local governments; businesses; Federal agencies
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: 1985 Supplemental Security Income Survey and Questionnaire—New
Respondents: Individuals
OMB Desk Officer: Robert J. Fishman

Health Care Financing Administration

Subject: Preclearance: Evaluation of the Clinic Laboratory Services Demonstration HCFA 467 (New collection)
Respondents: Participating laboratories
Subject: Laboratory Personnel/Qualifications Appraisal HCFA 3083 Extension-(0938-8049)
Respondents: Laboratory employees
Subject: Statement of Cumulative Expenditures for Demonstration Projects-HCFA 472 New collection
Respondents: HCFA Grant/Contract Awardees
OMB Desk Officer: Fay S. Indicello.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: January 7, 1985.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-788 Filed 1-10-85 8:45 am]

BILLING CODE 4150-040-M

Food and Drug Administration

[Docket No. 84N-0412]

Amprolium for Use in Pheasants; Availability of Data

Correction

In FR Doc. 84-33338, beginning on page 49940 in the issue of Monday, December 24, 1984, the Docket Number should read as it appears in the bracketed heading above.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intention to Convey Real Property

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to Public Law 98-401 (98 Stat. 1477), dated August 27, 1984 all right, title and interest of the United States to certain Federal lands described below, including any improvements thereon, are to be conveyed to the City of Brigham City, Utah.

Located in Sections 24 and 25 of Township 9 North, Range 2 West and Section 30 of Township 9 North, Range 1 West of the Salt Lake Base and Meridian, Box Elder County, Utah, described as:

Commencing at the section corner common to Sections 19 and 30, T9N, R1W, and Sections 24 and 25, T9N, R2W, Salt Lake Base and Meridian; thence North 0°39' West, 58.9 feet to the intersection of the east line of said Section 24 with the south line of 7th South Street of Brigham City, Utah; thence North 88°55' West, 346.19 feet along the said south line of 7th South Street to a point common to the easterly boundary of the Intermountain School premises and the westerly boundary of Box Elder County School District property, the True Point of Beginning; thence South 0°19'30" East, 578.85 feet along said common boundary to the southwest corner of the school district property; thence North 89°40'30" East, along the south boundary of the school district property to the southeast corner of the school district property, said corner also being on the west boundary of that property deeded to Brigham City Corporation in March 1983; thence Southerly along the said westerly boundary of the Brigham City Corporation property to an angle point

on said westerly bounday; thence South 9°04'31" West, 627.78 feet; thence South 0°13'25" West, 748.53 feet; thence South 88°24'03" West, 623.38 feet; thence South 1°38'23" West, 733.60 feet; thence South 61°29'28" West, 169.97 feet; thence South 89°36'03" West, 849.77 feet; thence South 73°31'13" West, 611.20 feet to a point on the northern boundary line of property conveyed to Brigham City Corporation in 1977; thence westerly along said northern boundary, 856.75 feet to a point on the easterly right-of-way of Main Street; thence northerly along the easterly right-of-way of Main Street, 3,036.19 feet to the south right-of-way line of 7th South Street; thence easterly along the said south right-of-way line of 7th South Street, 2,380.19 feet back to the point of beginning, containing 182.85 acres, more or less and subject to any valid rights-of-way or adverse claim; and,

2 parcels of land lying south of U.S. Highway 89-91 but adjoining each other in Sections 30, T9N, R1W and 25 of T9N, R2W, Salt Lake Base and Meridian, totalling 0.77 acres and being more particularly described as:

(1) A triangular portion of N1/2NE1/4SE1/4 of said Section 25, bounded on the northerly side by the south limited access line of U.S. Highway 89-91, on the east by the east section line of said section 25 and on the south by the south boundary of the Intermountain School premises, a line which bears South 89°53'30" East from a point on the north limited access line of U.S. Highway 89-91 opposite PC 130+04.7, as shown on right-of-way maps for the State Road Commission of Utah, Project No. F-001-8(3), dated June 21, 1962.

(2) A generally triangular shaped portion of the NW1/4SW1/4 of said section 30 bounded on the northerly side by the south limited access line of U.S. Highway 89-91, on the easterly side by the west right-of-way line of the Ogden-Brigham Canal and on the west side by the west section line of said section 30.

FOR FURTHER INFORMATION CONTACT: Mr. Bobby J. Railey, Special Assistant, Office of the Assistant Secretary for Indian Affairs, U.S. Department of the Interior, Washington, D.C., 20240, (202) 343-6031.

John W. Fritz,

Deputy Assistant Secretary—Indian Affairs (Operations).

[FR Doc. 85-993 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-02-M

Irrigation Operation and Maintenance Charges; Water Charges on the Wapato Irrigation Project, Washington

This notice of proposed operation and maintenance rate is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with § 171.1(e) of Part 171, Subchapter H, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessment and related information on the Wapato Irrigation Project for Calendar Year 1985 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of August 1, 1914, (38 Stat 583), and March 7, 1938, (45 Stat. 210) and September 26, 1961 (75 Stat 680).

The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1985 amount to $1.50 per acre on the Wapato-Satus Unit, and $12.50 per acre on the additional works unit.

Wapato Irrigation Project—General

Administration

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 171, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

Irrigation Season

Water will be available for irrigation purpose from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

Request for Water Delivery and Changes

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

Time for Payment of Water Charges

The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands direct to the project office, remaining unpaid on July 1 following the due date, there shall be added a penalty of one and one-half percent for each month, or fraction thereof, from the due date until the charges are paid.

Charges for Special Services

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1985 and subsequent years until further notices, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report	$15.00
(2) Requests for Verification of Account Delinquency Status, Per Report	$10.00
(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee) Per Bill	$10.00
(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill	$10.00
(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report	$10.00
(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee	$10.00

Ahtanum Unit

Charges

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1985 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Toppenish-Simcoe Unit

Charges

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1985 and subsequent years until further notice, is fixed at $7.00 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied on all tracts of less than one acre.

Wapato-Satus Unit

Charges

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1985 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts	$24.00
(2) Basis rate upon all farm units or tracts for each assessable acre except Additional Works lands	$24.00
(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre	$2.20
(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands	$25.10

(b) In addition to the foregoing charges there shall be collected a billing charge of $5 for each tract of land for which operation and maintenance bills are prepared. The bill issued for any tract will, therefore, be the basic rate per acre times the number of acres plus $5. A one acre charge shall be levied against all tracts of less than one acre.

Assessable Lands

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessemnts had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

Stanley M. Speaks,

Area Director.

[FR Doc. 85-813 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[NM 52375]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 185.97 acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by April 11, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505-988-6326.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of October 17, 1903, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 21 S., R. 1 W.,

Sec. 10, Lots 7, 9, 12, 13, 16, Lot 8 west of the railroad and Lots 14 and 15 east of Highway U.S. 85;

Sec. 11, SW¼SW¼ and that portion west of the railroad in Lots 1 and 2.

The area described contains approximately 185.97 acres.

The purpose of the withdrawal is for use in connection with the Rio Grande Reservoir site. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: December 28, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 85-820 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-FB-M

[NM 094367]

Notice of Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 2331.22 acre withdrawal for the Bureau of Reclamation continue for an additional 20 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by April 11, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505–988–6326.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 2721 of July 16, 1962, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714 The land is decribed as follows:

New Mexico Principal Meridian

T. 31 N., R. 5 W.,
Sec. 5, W½SW¼SE¼;
Sec. 8, NW¼NE¼NW¼, SW¼SW¼;
T. 32 N., R. 5 W.,
Sec. 7, W½ Lot 1.
T. 30 N., R. 6 W.,
Sec. 8, S½NW¼;
Sec. 9, SE¼SE¼;
Sec. 10, S½ Lot 3, 4.5, SW¼SW¼, S½NW¼SW¼, W½NW¼NW¼SW¼.
T. 31 N., R. 6 W.,
Sec. 2, NE¼SW¼SE¼;
Sec. 4, Lot 6, N½NW¼SE¼;
Sec. 20, NE¼SE¼, SW¼SE¼;
Sec. 22, SE¼NW¼;
Sec. 29, NW¼NE¼, SW¼NW¼;
Sec. 30, SE¼NE¼.
T. 32 N., R. 6 W.,
Sec. 10, Lots 1,2;
Sec. 16, E½SW¼NW¼, E½NW¼SW¼.
Sec. 24, NW¼NW¼NW¼.
T. 30 N., R. 7 W.,
Sec. 3, Lot 8, S½NE¼, SE¼NW¼;
Sec. 4, Lot 8, SW¼NW¼;
Sec. 5, S½NE¼, SE¼NW¼;
Sec. 10, SE¼SW¼SE¼;
Sec. 13, SW¼SW¼;
Sec. 14, SE¼, N½SW¼, N½S½SW¼, SE¼SE¼SW¼;
Sec. 15, NE¼SE¼, N½NW¼SE¼, SE¼NW¼SE¼, N½SE¼SE¼.
T. 31 N., R. 7 W.,
Sec. 18, Lot 7;
Sec. 23, S½SE¼SW¼;
Sec. 25, NW¼SE¼;
Sec. 26, E½NE¼NE¼, W½W½NE¼, NE¼NW¼, E½E½W½W½, W½NW¼SE¼;
Sec. 27, SW¼SE¼NW¼, S½SW¼NW¼, W½E½SW¼;
Sec. 28, SE¼NE¼SE¼;
Sec. 33, S½NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 34, S½N½NE¼;
Sec. 35, SW¼NW¼.
T. 30 N., R. 8 W.,
Sec. 1, Lot 1, S½NE¼, E½SW¼, N½SE¼, SW¼SE¼.

The area described aggregates 2331.22 acres.

The purpose of the withdrawal is for reclamation purposes in connection with the Navajo Unit, Colorado River Storage Project.

The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a periods of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration for the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: December 28, 1984.

Charles W. Luscher

State Director.

[FR Doc. 85–821 Filed 1–10–85; 8:45 am]

BILLING CODE 4310–FB–M

[NM 0263503]

Notice of Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 270 acre withdrawal for the Bureau of Reclamation continue for an additional 10 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by April 11, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505–988–6326.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 2885 of January 18, 1963, be continued for a period of 10 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 24 S., R. 29 E.,
Sec. 20, SW¼, W½W½SE¼, SE¼SW¼S E¼;
Sec. 29, N½N½NW¼, N½NW¼NE¼.

The area described contains 270 acres.

The purpose of the withdrawal is for reclamation purposes in connection with the Malaga Bend Unit, McMillan Project, Pecos River Basin.

The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: December 28, 1984.

Charles W. Luscher,

State Director.

[FR Doc. 85–822 Filed 1–10–85; 8:45 am]

BILLING CODE 4310–FB–M

[F–14868–B]

Alaska Native Claims Selection; K'oyitl'ots'ina, Ltd.

Correction

In FR Doc. 85–33814, appearing on page 50793 in the issue of Monday, December 31, 1984, the fourth line of the last complete paragraph should have read "1985, to file an appeal. However, parties".

BILLING CODE 1505–01–M

Availability of Record of Decision for the Kremmling Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision for the Kremmling Resource Management Plan, including the designation of the North Park Phacelia Research Natural Area and the

Kremmling Cretaceous Ammonite Research Natural Area, two areas of critical environmental concern.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, has prepared a Record of Decision on the Kremmling Resource Management Plan. Initiation of actions which implement this plan can begin with the signing of the Record of Decision.

Concurrently, with the signing of the Record of Decision, two areas of critical environmental concern are designated as Research Natural Areas, pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (Section 202(c)(3)) and 43 CFR Parts 1610, 8223, and 8351.2.

DATE: The Record of Decision and the Research Natural Area designations thereunder became effective with the signing of that document on December 19, 1984 by Bob Moore, Acting State Director for Colorado.

ADDRESS: Questions on specific activity plans, management plans, research opportunities or development/protection plans should be addressed to: Harold Belisle, Bureau of Land Management, P.O. Box 68, Kremmling, CO 80459. Telephone: (303) 724–3437.

Copies of the Record of Decision are available upon request at the Kremmling Resource Area Office, Bureau of Land Management, P.O. Box 68, Kremmling, CO 80459.

SUPPLEMENTARY INFORMATION:

Alternatives Analyzed

Seven alternatives for managing 398,000 acres of public land in the Kremmling Resource Area were analyzed in the resource management plan/environmental impact statement:

The Continuation of Present Management Alternative provides for management of all resources at current levels. This is the No Action Alternative required by the National Environmental Policy Act.

The Energy and Minerals Alternative emphasizes the exploration, development and transportation of energy, energy minerals and critical mineral resources.

The Economic Benefit Alternative emphasizes the production of goods and services on public lands in the Kremmling Resource Area in order to meet anticipated local and regional demands.

The Renewable Resources Alternative emphasizes management of renewable resources on a sustained yield basis in order to support the local economy and meet local, regional and national needs.

The Recreation Alternative emphasizes the enhancement of recreational opportunities on the public lands both for existing use levels and projected long-term demand.

The Natural Environment Alternative emphasizes the protection, maintenance and enhancement of the current natural environment.

The Proposed Resource Management Plan (the Preferred Alternative in the Draft Resource Management Plan/Environmental Impact Statement) emphasizes management, production and use of renewable resources on the majority of the public lands in the Kremmling Resource Area on a sustained yield basis.

Decision

The decision is to adopt the Proposed Plan as the Kremmling Resource Management Plan. Major actions contained in the plan are to:

- Leave open to entry all locatable minerals on Federal lands in the planning area under provisions of the Mining Law of 1872 as amended, except for exclusions under protective withdrawal.
- Apply intensive management to substandard or unstable stream channels and sensitive watersheds.
- Improve forage production and conditions for livestock and big game population on targeted allotments.
- Intensively manage approximately 40,000 acres of forested lands to produce forest products on a sustained yield basis.
- Manage wildlife habitat for optimum population levels as determined by Colorado Division of Wildlife Strategic Plan.
- Manage the Upper Colorado River and the North Sand Hills as Special Recreation Management Areas.
- Recommend the Troublesome Wilderness Study Area as not suitable for wilderness designation.
- The Windy Gap and North Sand Hills cultural sites will be intensively managed.
- Consolidate ownership of public lands in the Kremmling Resource Area.
- Place ORV restrictions on approximately 12 percent of the public land in the Kremmling Resource Area.
- Designate two areas as Research Natural Areas.

Research Natural Areas

The Research Natural Areas are described below:

1. North Park Phacelia Research Natural Area, an Area of Critical Environmental Concern. Maintain the area primarily for scientific study and education. Approximately 300 acres are designated. Site provides critical habitat for Phacelia formosula, a federally listed endangered plant species.

2. Kremmling Cretaceous Ammonite Research Natural Area, an Area of Critical Environmental Concern. Manage the area for research and resource protection. Approximately 200 acres are designated. Site is a type location for a significant marine invertebrate fossil.

Mitigation Measures

All practicable measures will be taken to mitigate adverse impacts. These measures will be strictly enforced during implementation. Monitoring will tell how effective these measures are in minimizing environmental impacts. Therefore, additional measures to protect the environment may be taken during or following monitoring.

Dated: January 2, 1985.

William J. Pulford,

District Manager.

[FR Doc. 85–815 Filed 1–10–85; 8:45 am]

BILLING CODE 4310-JB-M

[NM 52381]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 990.99 acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by March 12, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Sante Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505–988–6326.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of March 26, 1908, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 14 S., R. 4 W.,
Sec. 4, lot 12;
Sec. 5, lots 5, 6;
Sec. 7, lots 5, 6, 7, 29;
Sec. 17, lots 1, 2, E½SE¼;
Sec. 18, lot 8, SW¼SW¼;
Sec. 19, lot 5, W½NW¼, NW¼SW¼;
Sec. 20, lots 2, 3, 4, E½E½;
Sec. 29, E½NE¼, NE¼SE¼;
Sec. 32, SE¼NW¼, E½SW¼.

The area described contains 990.99 acres.

The purpose of the withdrawal is for use in connection with the Rio Grande Project. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: January 2, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-817 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-FB-M

[NM 52376]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 519.31 acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by March 12, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1449, Santa Fe, NM 87504.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, New Mexico State Office, 505-988-6326.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of October 31, 1903, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 8 S., R. 2 W.,
Sec. 20, SE¼SE¼;
Sec. 21, lots 1,2,3;
Sec. 29, Lots 3, 4, N½NW¼;
Sec. 30, Lots 1,4,5, NE¼NE¼, SW¼NE¼.
T. 9 S., R. 3 W.,
Sec. 23, SE¼NW¼.
T. 10 S., R. 3 W.,
Sec. 17, SW¼SE¼;
Sec. 22, Lot 1.
T. 11 S., R. 3 W.,
Sec. 33, W½SE¼.

The area described contains 519.31 acres.

The purpose of the withdrawal is for use in connection with the Elephant Butte Reservoir site. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: January 2, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-816 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-FB-M

[W-81752]

Wyoming: Realty Action; Postponement of Realty Action for Public Land Sale in Hot Springs and Washakie Counties, WY

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Postponement of sale date for realty actions in Hot Springs and Washakie Counties.

SUMMARY: The sale scheduled for January 15, 1985, under realty action (W-81752) in Hot Springs and Washakie Counties published in the **Federal Register** on Tuesday, October 23, 1984 (49 FR 42645/42646 inclusive), is hereby postponed until further notice. This sale is delayed pending an analysis and final decision by the State Director of a protest to the proposed sale. Any bids received will be returned immediately to the bidder.

When the protest is resolved, the sale date will be rescheduled and all affected and interested parties will be contacted.

Dated: December 31, 1984.

P.D. Leonard,

Associate State Director, Wyoming.

[FR Doc. 85-848 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-22-M

[DES 85-1]

Yuma District Draft Resource Management Plan and Environmental Impact Statement; Yuma District, AZ; Availability and Public Hearings

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of draft Resource Management Plan-Environmental Impact Statement and public hearings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202(f) of the Federal Land Policy and Management Act of 1976, a draft Resource Management Plan-Environmental Impact Statement (RMP-EIS) has been prepared for the BLM Yuma District. The Draft RMP-EIS addresses future management options for approximately 1,192,000 acres of federal lands along the lower Colorado River in southwestern Arizona and southeastern California. In addition, 205,105 acres in 18 wilderness study areas are analyzed for recommendation as suitable or non-suitable for wilderness designation. Counties within the planning area include Yuma, La Paz and Mohave in

Arizona, and Riverside, San Bernardino and Imperial in California.

Public Participation: A copy of the Draft RMP–EIS will be sent to all individuals, agencies, and groups who have expressed interest in the Yuma District planning process. In addition, a limited number of copies of the Draft RMP–EIS are available upon request from the Yuma District Office, P.O. Box 5680, Yuma, AZ 85364. Public reading copies may be reviewed at public libraries in the Yuma District planning area and at the following locations:

BLM, Office of Public Affairs, Interior Building, 18th & C Streets, NW., Washington, DC 20240;

BLM, Arizona State Office, 3707 North 7th Street, Phoenix, AZ 85019, (602) 241–5504;

BLM, Yuma District Office, 3150 Winsor Avenue, Yuma, AZ 85364, (602) 726–6300;

BLM, Havasu, Resource Area Office, 3819 Sweetwater Avenue, Lake Havasu City, AZ 86403, (602) 855–8017.

The Draft RMP-EIS will be available for review through April 19, 1985. Written comments should be sent by this date to: RMP–EIS Team Leader, BLM, Yuma District Office, P.O. Box 5680, Yuma, AZ 85364.

Oral or written comments will also be received at formal public hearings to be held on:

Tuesday, February 26, 1985 at 7:00 p.m. at the Nautical Inn Convention Center, Island, Lake Havasu City, Arizona;

Wednesday, February 27, 1985, at 7:00 p.m. at the Ruth Brown School Cafetorium, 241 North 7th Street, Blythe, California;

Thursday, February 28, 1985, at 7:00 p.m. at the Yuma Civic and Convention Center, 1440 Desert Hill Drive, Yuma, Arizona; and

Tuesday, March 5, 1985, at 7:00 p.m. at the Maricopa County Board of Supervisors Auditorium, 205 West Jefferson, Phoenix, Arizona.

In conjunction with the hearings, open house meetings will be held from 3:00 to 6:00 p.m. on the same day and at the same location as the hearings to provide an opportunity for informal discussions with BLM personnel who participated in development of the draft RMP–EIS.

All comments received during the review period, whether written or oral, on the adequacy of the draft RMP–EIS will be considered in preparing the final RMP–EIS for the Yuma District. Written comments received after the close of the comment priod may not be considered.

SUPPLEMENTARY INFORMATION: Six alternatives are described and analyzed in the RMP–EIS, including the BLM's Preferred Alternative. Alternative A, the No Action alternative, represents a continuation of present management direction. The other four alternatives (Alternatives B through E) provide a full range of management options from emphasis on resource production to emphasis on resource protection.

The Preferred alternative proposes that 51,510 acres in two wilderness study areas be recommended suitable for wilderness designation (50,550 acres in Cactus Plain WSA 5–14 and 960 acres in Chemehuevi/Needles WSA 5–4). Fifteen wilderness study areas (131,855 acres), and parts of the Cactus Plain WSA (19,810 acres) and the Kofa Unit 4 Northern Addition WSA 5–33 (920 acres) are recommended as non-suitable for designation. No recommendation is made for the remainder of the Kofa Unit 4 WSA (980 acres). A description of the affected environment and an analysis of the environmental impacts of the alternatives are included in the draft RMP–EIS.

FOR FURTHER INFORMATION CONTACT: A. Dennis Turowski, RMP–EIS Team Leader, BLM Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364. Telephone: (602) 726–6300.

Dated: January 7, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85–847 Filed 1–10–85; 8:45 am]

BILLING CODE 4310-32-M

Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Pub. L. 97–451, a petition for reinstatement of oil and gas lease M 49619 Acq., Petroleum County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination, November 1, 1984.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

January 1, 1985.

Cynthia L. Embretson,

Chief, Fluids Adjudication Section.

[FR Doc. 85–854 Filed 1–10–85; 8:45 am]

BILLING CODE 4310-84-M

California Desert District Advisory Council: Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of the California Desert District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 and 94–579 that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on February 14 and 15, 1985, in the Arrowhead Room of the Inland Empire Hilton, 285 E. Hospitality Lane, in San Bernardino, California.

Agenda items for the meeting will include a progress report on the Bureau's microwave communications siting study; formal recommendations from the Council on the proposed 1984 amendments to the California Desert Plan; progress report on several proposals for crude oil pipelines in Southern California; and, a presentation on inventory and planning efforts underway by the California State Department of Conservation, discussion of 1985 Desert Plan review and amendment schedule and public land withdrawals. The Council will also receive follow-up information and proposals regarding microwave communication sitting.

All formal Council meetings are open to the public, with time allocated for public comments and time made available by the Council Chairman for comment during agenda item presentation.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Frank W. DeVore, c/o Bureau of Land Management, Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Contact the Bureau of Land Management, California Desert District Public Affairs Office, 1695 Spruce Street, Riverside, CA 92507, (714) 351–6383.

Dated: January 2, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85-918 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-40-M

[AA-8104-2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance (DIC) under the provisions of Sec. 12(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611(c) (1976), will be issued to AHTNA, Incorporated, for approximately 4.75 acres. The lands involved are within U.S. Survey No. 3579, lot 9.

Upon issuance, the DIC will be published once a week, for four (4) consecutive weeks, in the Copper Valley Views. For information on how to obtain copies, contact the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until February 11, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E (as amended, 49 FR 6371, February 21, 1984) shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-809 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-JA-M

[N-40994]

Realty Action; Sale of Public Land in Elko County, NV

Correction

In FR Doc. 84-32632 beginning on page 48809 in the issue of Friday, December 14, 1984, make the following correction:

On page 48809, third column, under **Mount Diablo Meridian**", the second line was inaccurate and should have appeared as follows:

Sec. 1, E½NW¼SW¼SE¼NW¼.

BILLING CODE 1505-01-M

Notice of Revision of the Form for Leasing Solid Minerals Other Than Oil, Gas, Geothermal, Oil Shale and Combined Hydrocarbons

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of revision of the Combined Mineral Lease Form.

SUMMARY: This notice makes revisions to certain sections of the combined mineral lease form, Bureau of Land Management Form 3520-7, as a result of continuing internal review and public comments. These changes will clarify the form and more accurately reflect the intent of the Mineral Leasing Act of 1920, as amended and supplemented, and the 1984 amendments to the regulations in 43 CFR Group 3500.

EFFECTIVE DATE: February 11, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Zareh Mozian, (202) 343-3258.

SUPPLEMENTARY INFORMATION: This notice revises the combined mineral lease form, Bureau of Land Management Form 3520-7. These changes are a result of a continuing internal review of the Form and suggestions for changes made by the public. The changes will clarify the Form and more accurately reflect the intent of ther Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), and the 1984 amendments to the regulations in 43 CFR Group 3500.

The changes are procedural in nature and impose no additional requirements on the public; therefore, the changes are being published in final form and the Department of the Interior finds it is in the public interest to make them effective upon publication.

The principal author of the changes is Zareh Mozian, Branch of Leasable Minerals, Bureau of Land Management.

The changes are as follows:

1. Part I, section 1, the first line preceded by a square is revised to read: "Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181-287), hereinafter referred to as the Act;".

2. Part II, section 1(a), is amended by removing the word *"Gilsonite"* where it appears and replacing it with the word *"Asphalt"*.

3. Part II, section 2(b), is revised to read:

"(b) *MINIMUM ANNUAL PRODUCTION AND MINIMUM ROYALTY*—(1) Lessee shall produce on an annual basis a minimum amount of 3/M, except when production is interrupted by strikes, the elements, or casualties not attributable to the lessee. Lessor may permit suspension of operations under the lease when marketing conditions are such that the lease cannot be operated except at a loss. (2) At the request of the lessee, made prior to initiation of the lease year, the authorized officer may allow in writing the payment of $3 per acre or fraction thereof minimum royalty in lieu of production for any particular lease year. Minimum royalty payments shall be credited to production royalties for that year."

4. Part II, section 3, is renumbered as section 4.

5. Part II is amended by adding a new section 3 to read:

"Sec. 3 *REDUCTION AND SUSPENSION*—In accordance with Section 39 of the Mineral Leasing Act (30 U.S.C. 209), the lessor reserves the authority to waive, suspend or reduce rental or minimum royalty, or to reduce royalty, and reserves the authority to assent to or order the suspension of this lease."

6. Part II is amended by removing section 4 in its entirety.

7. Part II, section 6, is amended by revising the first sentence thereof to read "Lessee shall exercise reasonable diligence, skill, and care in the operation of the property, and carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and of waste or damage to any water or mineral deposits." And by revising the third sentence thereof to read "Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, and the approved mining plans in a manner that minimizes adverse impacts to the land, air, water, to cultural, biological, visual, minerals, and other resources, and to other land uses or users."

7. Part II, section 9, is amended by removing from the last sentence thereof the phrase "incidental thereto" and replacing it with the phrase "on leased lands".

December 31, 1984.

James M. Parker,

Acting Director.

[FR Doc. 85-828 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-687543

Applicant: Wallace L. Boldt, San Antonio, TX

The applicant requests a permit to import one trophy of a male bontebok (*Damaliscus dorcas dorcas*) culled from the herd of Walter Pringle, Bedford, South Africa, for enhancement of propagation.

PRT-688260

Applicant: National Park Service, Islands National Park, Ventura, CA

The applicant requests a permit to take seeds of the Santa Barbara Islands live-forever (*Dudleya traskiae*) from the population in the Channel Islands National Park California, for enhancement of propagation.

PRT-688240

Applicant: Hexagon Farm, San Juan Bautista, CA

The applicant requests a permit to import one captive-born female Temminck's (=golden) cat (*Felis temminckii*) from Germany, for enhancement of propagation.

PRT-688155

Applicant: Knoxville Zoological Park, Knoxville, TN

The applicant requests a permit to Export two males and one female captive born Puerto Rican boas (*Epicrates inornatus*) to the Reptile Breeding Foundation, Picton, Ontario, Canada, for enhancement of propagation.

PRT-687538

Applicant: Joseph A. Burgess, Diamondale, MI

The applicant requests a permit to import five captive-born Elliot's pheasants (*Syrmaticus ellioti*) from Fred MacDonald, Ontario, Canada, for enhancement of propagation.

PRT-688235

Applicant: Roeding Park Zoo, Fresno, CA

The applicant requests a permit to import one captive-born female mandrill (*Papio sphinx*) from the Metro Toronto Zoo, Canada, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 601, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: January 7, 1985.

Steve Funderburk,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-827 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-55-M

Report on Implementation of Title VIII of the Alaska National Interest Lands Conservation Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has prepared a draft report on implementation of the subsistence management and use provisions of Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3121, for eventual submission to the President of the Senate and the Speaker of the House of Representatives. In accordance with the provisions of section 813, the report is being made available to the public for comment.

DATE: Comments on the report must be submitted on or before February 25, 1985.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: Robert Leedy).

FOR FURTHER INFORMATION CONTACT: Robert Leedy, Subsistence Specialist, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, telephone (907) 786-3443.

Copies of the section 813 report have been sent to all participating Federal and State agencies, local advisory committees and regional council members. Additionally, all others who have already requested copies have been added to the mailing list. Individuals wanting copies of the draft report for review should contact Mr. Leedy. Copies of the report are also available for review in the Anchorage regional office of the Service at the above address, and at the following other Service locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, 18th and C Streets NW., Room 2347, Department of the Interior, Washington, DC 20240

U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, 500 NE Multnomah Stree, Portland, OR 98232

U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue, SW, Room 1306, Albuquerque, NM 87103

U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111

U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, GA 30303

U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158

U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service has produced a draft of the first periodic report to Congress on subsistence management and use of fish and wildlife on Federal lands, as required by section 813 of ANILCA. The Service produced this comprehensive document in consultation with other Federal resource managers in Alaska, and with the Alaska Department of Fish and Game. The report provides an overview of subsistence management and use in Alaska, based on consultations and information from existing literature and studies. As an initial report, it attempts to demonstrate regional and sub-regional differences in subsistence lifestyle, to highlight potential issues and to provide a basis for determining trends. As required by section 813, the report includes:

(1) An evaluation of the results of the monitoring undertaken by the Secretary pursuant to section 806 of ANILCA.

(2) The status of fish and wildlife populations on public lands that are subject to subsistence uses.

(3) A description of the nature and extent of subsistence uses and other uses of fish and wildlife on public lands.

(4) The role of subsistence uses in the economy and culture of rural Alaska.

(5) Comments on the Secretary's report by the State, the local advisory councils and regional advisory councils and other appropriate persons and organizations.

(6) A description of those actions taken, or which may need to be taken to permit the opportunity for continuation of subsistance activities on public lands.

(7) Such other recommendations the Secretary deems appropriate.

Comments received during the public review period will be included as a supplement to the report. During this public review, it is hoped that reviewers will provide additional information and documentation where appropriate, especially in the data presented in tables depicting use of fish and wildlife in each subregion, and the nature of subsistence use in Native regions. Public comments that point out substantive errors, misconceptions or mischaracterizations in the draft will be considered for incorporation in the final report.

Dated: January 7, 1985.

F. Eugene Hester,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 85-810 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Development Operations Coordination Document; Seagull Energy E & P 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 Seagull Energy E & P Inc., has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 6004 and 3043, Blocks 828 and 831, respectively, Mustang Island Area, offshore Texas. 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 Harbor Island, Texas.

DATE: The subject DOCD was deemed submitted on January 2, 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 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 Section 250.34 of Title 30 of the CFR.

Dated: January 2, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-853 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Alaska Region, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be undertaken:

1. Call to order
2. Roll call
3. Introduction of visitors and guests
4. Minutes
5. Old business
   a. Agency reports
   b. Definition of key terms
   c. Traditional use areas
   d. Recommendations to Secretary
6. New business
   a. Bylaws and operating procedures
7. Village concerns
8. Meeting schedule
9. Adjournment

DATE: The meeting will be held at 1:00 p.m. on January 23, 1985, at the Bureau of Land Management, District Headquarters, Fort Wainwright, Fairbanks, Alaska. Written comments and recommendations received prior to January 21, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

FOR FURTHER INFORMATION CONTACT: Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707, Phone (907) 456-0281.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act Pub. L. 96-487.

Dated: January 4, 1985.

Robert Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 85-922 Filed 1-10-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

Alcoa Inter-America, Inc., Delaware
Alcoa Recycling Co., Delaware
Alcoa Steamship Co., Inc., New York
American Powdered Metals Co., Delaware
Buckeye Molding Co., Delaware
H.C. Products Co., Delaware
Jonathan's Landing Inc., Delaware
Northwest Alloys, Inc., Delaware
Penn Way Trucking Co., Delaware
Pep Industries, Inc., Tennessee
Rea Magnet Wire Co., Inc., Delaware
The Stolle Corp., Ohio
Tifton Aluminum Co., Inc., Delaware
Vancouver Extrusion Co., Inc., Delaware

1. Parent corporation and address of principal office: Champion International Corporation, One Champion Plaza, Stamford, Connecticut 06921.

2. Wholly owned subsidiary which will participate in the operations and State of incorporation: (i) St. Regis Corporation, a New York Corporation.

1. Parent corporation and address of principal office: Giant Eagle, Inc., 101 Kappa Drive, RIDC Park, Pittsburgh, PA 15238.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and states of incorporation:

Name	State
Giant Eagle, Inc.	PA
Giant Eagle, Inc., Giant Eagle Markets Co. Division	PA
Giant Eagle, Inc., O.K. Grocery Co. Division	PA
The Tamarkin Co.	OH

Name	State
Butler Refrigerated Meats, Inc	PA

1. Parent Corporation and Address of Principal Office: PacifiCorp, 920 SW Sixth Avenue, Portland, OR 97204.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation: Western Distribution Service, Inc., a Oregon Corporation.

1. Parent corporation and address of principal office: Scott Housing Systems, Inc., Route 4, Box 285–E, Waycross, GA 31501.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation: (1) Scott Transportation Systems, Inc., Georgia Corporation.

James H. Bayne,

Secretary.

[FR Doc. 85–866 Filed 1–10–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–19; Sub-99]

Rail Carriers; the Baltimore and Ohio Railroad Co.; Abandonment in Somerset County, PA; Findings

The Commission has issued a certificate authorizing The Baltimore and Ohio Railroad Company (B&O) to abandon its 4.81-mile rail line between Meyersdale (milepost 4.00) and West Salisbury (milepost 8.81) in Somerset County, PA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.

James H. Bayne,

Secretary.

[FR Doc. 85–867 Filed 1–10–85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28089 Sub-1]

Rail Carriers; Bangor and Aroostook Railroad Co.; Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C 11301 the proposal of Bangor and Aroostook Railroad Company for the modification of terms and the extension of maturity date of certain first mortgage series A bonds in the principal amount of $327,000.

DATES: This exemption will be effective on February 11, 1985. Petitions for reconsideration must be filed by January 31, 1985. Petitions for stay must be filed by January 21, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 28089 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: William M. Houston, North Maine Junction Park, RR 2, Bangor, ME 04401.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7445.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll-free (800) 424–5403.

Decided: December 28, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett, Gradison, Simmons, Lamboley, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–869 Filed 1–10–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–6; Sub-239X]

Rail Carriers; Burlington Northern Railroad Co., Abandonment Exemption in Ottawa County, OK

The Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments*. The segment of line to be abandoned is between milepost 165.30 near Quapaw and milepost 167.50 near Central Mill, in Ottawa County, OK, a distance of 2.20 miles.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Oklahoma has been notified in writing at least 10 days prior to the filing of this 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 February 10, 1985, (unless stayed pending reconsideration). Petitions to stay the effective date of exemption must be filed by January 21, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by January 31, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: Peter M. Lee, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

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 the exemption is conditioned upon environmental or public use conditions.

Decided: January 7, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–868 Filed 1–10–85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB–6; Sub-No. 207]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment in Grays Harbor County, WA; Findings

The Commission has found that the public convenience and necessity permit the Burlington Northern Railroad Company to abandon its 10.26-mile rail line between milepost 3.0, near South Aberdeen Junction, and milepost 13.26, near Markham, in Grays Harbor County, WA.

A certificate will be issued authorizing this abandonment unless

within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85–870 Filed 1–10–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report. Whether small businesses or organizations are affected. An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval. An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOP, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

EXTENSION

Employment and Training Administration
Standard Job Corps Center RFP and Related Contractor Information Gathering
1205–0219
On occasion; weekly; monthly; quarterly; semi-annually; annually
State or local governments; Business or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations
76 respondents; 174,450 hours

Standard Request for Proposal for the operation of a Job Corps Center completed by prospective contractors for competitive procurements and Federal paperwork requirements for contract operators of such centers.

Job Order Form
1205–0005; ETA 514
On occasion
Individuals or households, State or Local governments
See attached for respondents; 358,736 hours; 1 form

The Job Order Form is used to record basic job information to provide assistance to employers in need of workers and jobseekers in the need of employment. The information describes job requirements for jobseekers and is also used for statistical purposes and program operations to Target Labor Market penetration efforts.

Mine Safety and Health Administration
Fire Protection—Escape and Evacuation Plan 1219–0051
On occasion
Businesses or other for profit; small businesses or organizations
702 respondents; 2,744 hours

Requires coalmine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting structures.

Escape and Evacuation Plan
1219–0046
Semi-annually
Businesses or other for profit; small busineseses or organizations
707 respondents; 16,968 hours

Standard requires development of a specific escape and evacuation plan for each underground metal and nonmetal mine. It additionaly requires revisions as mining progresses, availability to inspectors, and conspicuous posting for the benefit of affected miners. Plans are required to be reviewed every six months.

Signed at Washington, D.C., this 8th day of January, 1985

Marizetta L. Scott,

Acting Departmental Clearance Officer.

[FR Doc. 85–928 Filed 1–10–85; 8:45 am]

BILLING CODE 4510–43–M

Bureau of Labor Statistics

Meetings of the Committees of the Business Research Advisory Council

The regular winter meetings of the Committees of the Business Research Advisory Council will be held on January 28 and 29, 1985. All of the meetings will be held in the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Business Research Advisory Council advises the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of officers from American business and industry.

The schedule and agendas of the meetings are as follows:

Monday, January 28

10 a.m.—Committee on Wages and Industrial Relations, Room N3437 A & B:

1. Review of Work in Progress
2. New Area Sample and Definitions for the Area Wage Survey Program

3. Service Sector Expansion for the Employment Cost Index
4. How Should We Deal With Lump-Sum Payments in the Aerospace Industry? Kim Hazelbaker, John Tucker
5. Data Needs for Use in Collective Bargaining: Status Report—Tom Swan
6. Other Business

10 a.m.—Committee on Economic Growth, Room N5437 A & B:

1. Overview of the 1995 Projection Revisions
2. Labor Force Projections
3. Macroeconomic Projections
   (a) Selection of New Macroeconomic Model
   (b) Preliminary Assumptions and Results
4. Potential Changes in Employment Projections for Selected Industries
5. Evaluation of the BLS 1980 Projections
6. How Workers Receive Training—Survey Results
7. Other Business

2 p.m.—Committee on Productivity/Foreign Labor, Room N5437 A & B:

1. Election of Officers
2. Work on Government Productivity Measurement
3. Multifactor Productivity Measurement in Steel and Autos
4. Technology Studies
   (a) Employment and Unemployment
   (b) Compensation
   (c) Productivity and Labor Costs
5. Status of Work on International Comparison of Labor Statistics
6. Other Business

2 p.m.—Committee on Price Indexes, Room N3437 A & B:

1. Status Report on the Consumer Price Index Revision
2. Service Sector Intitiative Progress
3. Consumer Expenditure Survey Results
4. Other Business, including election of Vice Chair

Tuesday, January 29

9:30 a.m.—Committee on Occupational Safety and Health Statistics, Room S4215 A, B & C:

1. Results of OSH 1983 Annual Survey
2. Recent and Planned Activities: Work Injury Reports (WIR)
3. Recent Developments in Recordkeeping/Guidelines
4. Plans for Quality Measurement
5. Status of FY 1985 Budget and State Grants
6. Recent and Planned Activities: Supplementary Data System (SDS)

10:00 a.m.—Committee on Employment and Unemployment, Room N5434 A & B:

1. Election of Vice Chair
2. Reports on Status of:
   (a) BLS/Census Report on Trade and Employment
   (b) Report on Permanent Layoffs and Plant Closings
3. Discussions on:
   (a) Proposed New Methodology on Local Area Unemployment Statistics
   (b) Establishment Survey Modernization Program
   (c) Meeting Users Needs for Employment and Unemployment Data
   (d) Results of the January 1984 CPS Supplement of Displaced Workers
   (e) Issues in the Proposed 1987 SIC Revision
4. Other Business

These meetings are open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, BRAC, on Area Code (202) 523–1347.

Signed at Washington, D.C., this 8th day of January 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85–929 Filed 1–10–85; 8:45 am]

BILLING CODE 4510-24-M

Meeting of the Board of the Business Research Advisory Council

The regular winter meeting of the Board of the Business Research Advisory Council will be held at 1:30 p.m., January 29, 1985, in Room S–4215 A,B&C of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW, Washington, D.C.

The Business Research Advisory Council advises the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of officers from American business and industry. The agenda for the meeting is as follows:

1. Chairperson's Opening Remarks—William J. Hawkes
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   (a) Wages and Industrial Relations
   (b) Economic Growth
   (c) Productivity/Foreign Labor
   (d) Price Indexes
   (e) Employment and Unemployment
   (f) Occupational Safety and Health Statistics
4. Other Business
5. Chairperson's Closing Remarks

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, BRAC, on Area Code (202) 523–1347.

Signed at Washington, D.C., this 8th day of January 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85–930 Filed 1–10–85; 8:45 am]

BILLING CODE 4510-24-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel (Film/Video Production Prescreening Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Production Prescreening Section) to the National Council on the Arts will be held on January 28–30, 1985 from 9:00 am to 5:30 pm in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: January 7, 1985.

John H. Clark,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 85–912 Filed 1–10–85; 8:45 am]

BILLING CODE 7537-01-M

Media Arts Advisory Panel (Children's Television Series on the Arts); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Media Arts Advisory Panel (Children's Television Series on the Arts) to the National Council on the Arts will be held on January 22, 1984 from 10:00 am to 6:00 pm and on January 23–24, 1985 from 9:00 am–6:00 pm at the

Hyatt Regency Baltimore, 300 Light Street, Baltimore, MD.

This meeting is for the purpose of recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: January 2, 1985.

John H. Clark,

Director, Office of Council & Panel Operations, National Endowment for the Arts.

[FR Doc. 85–849 Filed 1–10–85; 8:45 am]

BILLING CODE 7537–1–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cellular Physiology

Date and Time: Monday, Tuesday and Wednesday, January 28, 29, and 30, 1985, from 9:00 a.m. until 5:00 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550

Type of Meeting: Closed

Contact Person: Maryanna P. Henkart, Program Director, Cellular Physiology, Room 332, Telephone: 202/357–7377.

Purpose of Advisory Panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Dated: January 8, 1985.

M. R. Winkler,

Committee Management Coordinator Officer.

[FR Doc. 85–892 Filed 1–10–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–2998]

Finding of No Significant Impact; Issuance of Special Nuclear Material License No. SNM–1943; Gulf States Utilities Co. and Cajun Electric Power Cooperative; River Bend Generating Station, Unit 1, West Feliciana Parish, LA

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of Special Nuclear Material License SNM–1943 to permit the receipt, possession, inspection, and storage of unirradiated nuclear fuel assemblies at the River Bend Generating Station near West Feliciana Parish, Louisiana. The unirradiated fuel assemblies will be for eventual use in the River Bend Station, Unit 1, once its operating license is issued.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the issuance of Special Nuclear Material License No. SNM–1943. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427–4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 3rd day of January, 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Section Leader, Uranium Process Licensing Section, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85–900 Filed 1–10–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Kansas Gas & Electric Co.; Environmental Assessment and Findings of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Kansas Gas and Electric Company (the licensee) for the Wolf Creek Generating Station, Unit 1 located at the licensee's site in Coffey County, Kansas.

Environmental Assessment

Identification of Proposed Action: The exemption would eliminate the full pressure test required by paragraph III.D.2(b)(ii) of Appendix J normal air lock opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the licensee's request dated November 6, 1984.

The need for the Proposed Action: The proposed exemption is required to provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impacts of the Proposed Action: The proposed exemption grants the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage tests and the protection against excessive leakage afforded by the other tests required by Appendix J.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This

would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement related to the operation of Wolf Creek Generating Station, Unit No. 1," dated June 1982.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude 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 requests for the exemption dated November 6, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the William Allen White Library, Emporia State University, 1200 Commercial Street, Emporia, Kansas.

Dated at Bethesda, Maryland, this 4th day of January 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-901 Filed 1-10-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352, 50-353]

Philadelphia Electric Co. Limerick Generating Station, Units 1 and 2; Request for Action Under 10 CFR 2.206 Regarding Supplemental Cooling Water for the Limerick Facility

Notice is hereby given by its Petition dated November 21, 1984 that Del-Aware Unlimited, Inc. requests that the Director of Nuclear Reactor Regulation require the Philadelphia Electric Company (Licensee) to provide to the Commission a full disclosure of its intended sources of supplemental cooling water for the Limerick Generating Station and the environmental consequences associated with them prior to issuing a full commercial operating license. The Petition encloses a copy of a letter from the Philadelphia Electric Company to the Pennsylvania Public Utility Commission indicating that an interim supply of supplemental cooling water should be available by May 1985 to support commercial operation of Limerick Generating Station, Unit No. 1 in the third quarter of 1985. The current design of the Limerick Generating Station calls for its supplemental cooling water to be provided by the Point Pleasant Diversion Project which may not be completed by the time the Limerick Generating Station Unit No. 1 is available for commercial operation.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555 and at the local public document room for the Limerick Generating Station located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland the 7th day of January 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-902 Filed 1-10-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Decay Heat Removal; Meeting

The ACRS Subcommittee on Decay Heat Removal will hold a meeting on January 22, 1985, at the Sandia Laboratories, Albuquerque, NM.

A portion of the meeting will be open to public attendance; however, a portion of the meeting will be closed to discuss material relating to plant safeguards and security.

The agenda for subject meeting shall be as follows:

Tuesday, January 22, 1985—8:30 a.m. until the conclusion of business

The Subcommittee will continue the review of the NRR USI A-45 resolution effort. Specifically, the Subcommittee will discuss details of the draft report, "Shutdown Decay Heat Removal Analysis Plan".

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, Sandia Laboratories, their consultants, and other invited persons regarding this review.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: January 8, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-899 Filed 1-10-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Circular A-102, "Uniform Administrative Requirements for Grants to State and Local Governments"; Revision of Compliance Supplement

AGENCY: Office of Management and Budget.

ACTION: Final Policy.

SUMMARY: This notice revises the "Compliance Supplement" issued in December 1982, which provides guidance on features of major programs that should be tested as part of the single audits made in accordance with the provisions of OMB Circular A-102, "Uniform Requirements for Grants to State and Local Governments."

This revision adds the major compliance features for the Job Training

Partnership Act and Special Programs for the Aging. The Job Training Partnership Act replaced the Comprehensive Employment Training Act (CETA). Therefore, compliance features of the CETA programs will no longer be applicable when final expenditures are made and audits completed. The major compliance features of Special Programs for the Aging were inadvertently omitted from the original Compliance Supplement.

This revision also amends the compliance requirements for the National School Lunch Program and the Revenue Sharing Program. The amendment to the National School Lunch Program eliminates the requirement for the auditor to determine that meals served under the program contain the required amounts of food components. Monitoring the meal components will be done through a separate review.

The amendment to the Revenue Sharing Program deletes the compliance requirement for recipients to hold a public hearing on the proposed use of entitlement funds and adds a requirement for recipients to make audit reports available for public inspections. In addition, it adds four new requirements concerning the handicapped. These changes implement requirements of the 1983 Revenue Sharing Act.

For the convenience of users of the supplement the entire supplement for each of the aforementioned programs is printed below. Therefore, the pages can be substituted for the superseded pages.

The major features of these programs were developed in consultation with the appropriate grantmaking agencies and rely on their interpretation of the applicable regulations and laws.

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Financial Management Division, Office of Management and Budget, Washington, D.C. 20503, (202) 395-3993.

David A. Stockman,

Director.

Special Programs for the Aging Title III, Parts A and B, Grants for State and Community Programs on Aging

13.633

I. Program Objectives

The objectives of Title III of the Older Americans Act of 1965, as amended, are to (1) help older persons secure and maintain maximum independence and dignity in a home environment; (2) remove barriers to independence for older persons; and (3) provide a continuum of care for the vulnerable elderly.

Part A of Title III provides funds for State agency administration. Part B provides funds for supportive services and senior centers.

II. Program Procedures

Funds are provided to States, in accordance with a pre-defined formula, upon submission of a State plan to the Commissioner on Aging in the Department of Health and Human Services (HHS), and then allocated to area agencies on aging which make provision for the delivery of services based on a comprehensive services delivery plan for their respective planning and service areas.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed and Unallowed

Compliance Requirement: The State agency must use annually at least one percent of its Title III-B allotment or $20,000, whichever is greater, to operate a statewide long-term care ombudsman program unless it uses a similar amount of its own funds for such purposes (45 CFR 1321.189).

Suggested Audit Procedure:

- Ascertain the amount of the State agency's allotment for social services.
- Ascertain the amount of funds expended for the long-term care ombudsman services.
- Test expenditure and related records.

Compliance Requirement: A State agency or area agency may provide services directly only if it is decided by the State agency that it is necessary to ensure the adequate provision of services. A State agency may provide services directly only if the State has been designated as a single planning and services area (45 CFR 1321.103).

Suggested Audit Procedures:

- Review the State agency's procedures for determining the necessity of providing services directly and evaluate for adequacy.
- Examine the designation as a single planning and service area.
- Determine adherence to prescribed procedures.

Compliance Requirements:

- The area agency may award social services funds to public and nonprofit agencies to acquire, alter, lease, renovate or construct a facility for use a multipurpose senior center. Such awards may also be used to pay the costs of professional and technical personnel to operate the center.
- Funds used for the construction of senior centers require the prior approval of the State agency. Newly constructed senior centers must be used as senior centers for at least 20 years after completion of construction. Acquired facilities must be used as a senior center for at least 10 years after completion of the acquisition. Senior centers may not be used for sectarian instruction or religious worship (45 CFR 1321.121) (45 CFR 1321.129) (45 CFR 1321.131) (45 CFR 1321.133).

Suggested Audit Procedures:

- Review expenditure and other records and determine if there has been construction or acquisition of senior center facilities.
- Examine State approval for construction of centers.
- Consider visiting facilities constructed or acquired with current or prior year funds and determine their use.

B. Eligibility

The auditor is not expected to make tests for eligibility.

C. Matching Requirements

Compliance Requirement: Not more than 75 percent of the allotment for State agency administration may be used for the costs of administering the State plan. Not more than 8.5 percent of the combined allotments for social and nutrition services may be used by the State agency to pay not more than 75 percent of the cost of administering area plans. (45 CFR 1321.199).

Suggested Audit Procedures:

- Ascertain the amount of the allotments for State agency administration and social and nutrition services.
- Review financial reports and determine amounts expended for administering the State plan and area plans.
- Test expenditure and related records.

Compliance Requirement: The State agency must expend each fiscal year for supportive and nutrition services and administration combined, at least the same amount of State funds expended in the previous fiscal year. (45 CFR 1321.205).

Suggested Audit Procedures:

- Review financial records and reports and determine the amounts of State funds expended in the previous and current fiscal years for supportive and nutrition services and administration.

Compliance Requirement: The State agency must spend for services to older persons in rural areas at least 105

percent of total amount expended in fiscal year 1978 for social and nutrition services and multipurpose senior centers in rural areas under Titles III, V and VII of the Older Americans Act. (45 CFR 1321.185).

Suggested Audit Procedures:

• Review financial records and reports and determine amounts expended for social and nutrition services and multipurpose senior centers in rural areas in fiscal year 1978 under Titles III, V and VII of the Older Americans Act and compare to current year expenditures.

Compliance Requirement: The grantee must pay for at least 10 percent of the costs of the social and nutritional services funded with FY 80 or prior year's funds, and at least 15 percent of the costs of social and nutritional services funded with FY 81 or subsequent year's funds, the additional 5 percent provided by the State in the form of allowable State costs. At least 25 percent of the non-Federal share must be provided by State or local public agencies in the form of allowable costs or by local public agencies as third-party in-kind contributions (45 CFR 1321.199). (45 CFR 1321.201 and .203).

Suggested Audit Procedures:

• Ascertain the amounts expended for social and nutrition services.

• Review the financial records and determine the amount and source of the matching funds.

• Test procedures for valuation of contributions.

D. Special Reporting Requirements

There are no special reporting requirements for the auditor to test.

E. Special Tests and Provisions

Compliance Requirement: State agencies shall conduct on-site performance evaluations of each area agency at least annually (45 CFR 1321.45).

Suggested Audit Procedures:

• Obtain list of area agencies operating in the State.

• Review schedule for on-site evaluations.

• Review a sample of the evaluation reports.

Compliance Requirement: Area agencies must provide technical assistance, monitor on-going projects, and periodically evaluate the performance of all service providers (45 CFR 1321.93).

Suggested Audit Procedures:

• Review the procedures for providing technical assistance, monitoring activities, and evaluation of performance, and evaluate for adequacy.

• Review monitoring schedules and a sample of technical assistance projects and evaluation reports.

Compliance Requirement: Each service provider must offer older persons an opportunity to voluntarily contribute toward the cost of the services they receive under Title III programs. Such contributions must be used to expand the provider's services to older persons (45 CFR 1321.111, and 45 CFR 74.42).

Suggested Audit Procedures:

• Review procedures for offering contribution opportunities and using contributions and evaluate for adequacy.

Job Training Partnership Act

17.246 thru 17.250

I. Program Objective

The objective of the Job Training Partnership Act (JTPA) is to provide funds to States to use to establish programs to prepare youth and unskilled adults for entry into the labor force. These programs should afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment and who are in special need of such training to obtain productive employment.

II. Program Procedures

Except for funds made available under section 301a of the Act, funds are obtained by the States upon submission of a coordination and special services plan to the Secretary of Labor, in accordance with a pre-defined formula, and then distributed to Service Delivery Areas established by the Governor under Title I of the Act. The Service Delivery Areas provide training services for the disadvantaged under Title II of the Act and employment and training assistance for dislocated workers under Title III of the Act.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed and Unallowed:

Compliance Requirement:

• Funds can be expended for training, administration and participant support in accordance with guidelines on allowable costs issued by the Governor (20 CFR 629.37–38).

• Not less than 70 percent of the Titles I, II–A and III funds may be expended for training costs. Training costs include costs associated with on-the-job training services; employer outreach necessary to obtain job listings or job training opportunities; salaries, fringe benefits, equipment and supplies of personnel directly engaged in providing training (including remedial education); job related counseling for participants; employability assessment and job development; job search assistance (including preparation for work and labor market orientation); books and other teaching aids; equipment and materials used in providing training to participants; classroom space and utility costs; tuition and entrance fees that represent instructional costs which have a direct and immediate impact on participants; 50 percent of the costs of a limited work experience program; and 250 hours of youth tryout employment training costs. (20 CFR 629.38(e)(1)).

• Administration costs are limited to 15 percent of the available funds (20 CFR 629.39(a)(2)).

• Administrative and participant support costs combined are limited to 30 percent of the available funds, unless waived by the Governor (20 CFR 629.39(a)(2)).

• No funds made available under Titles I, II–A or III may be used for public service employment (20 CFR 629.2).

Suggested Audit Procedures:

• Review Governor's guidelines.

• Ascertain available funds.

• Test expenditure and related records.

• Examine Governor's waivers.

• Compare actual to maximum allowable cost.

B. Eligibility

Compliance Requirement: Each administrative entity is responsible for the eligibility of those enrolled in its programs. Administrative entities may delegate eligibility determinations, if the delegation and related safeguards are included in an approved job training plan (Pub. L. 97–300, Sec. 141(i)).

Suggested Audit Procedures:

• Review the eligibility determination system and evaluate for adequacy.

• Review selected participant files and determine the appropriateness of eligibility determinations.

C. Matching, Level of Effort and/or Earmarking Requirements

Compliance Requirements:

• Cooperative agreements between State education agencies, administrative entities in Service Delivery Areas, and local education agencies shall provide for a contribution by the State agencies and local education agencies of an amount equal to the Federal funds provided (Pub. L. 97–300, Sec. 123(b); 20 CFR 629.40).

• In order to qualify for Title III employment and training assistance for dislocated workers, a State shall expend for purposes of services under this title, an amount from public or private non-Federal sources equal to the Federal funds made available to the State under JTPA Section 301(b) (Pub. L. 97-300, Sec. 304(a)(1); 20 CFR 631.14).

Suggested Audit Procedures:

• Ascertain the total allocations for cooperative agreements and Title III.

• Review the financial records and ascertain the amount and source of the contributions.

Compliance Requirement: Funds provided by the Federal Government shall be used only for activities which are in addition to those which would otherwise be available in the area in the absence of such funds (Pub. L. 97-300, Sec. 141(b) and (h); 20 CFR 629.1(a)).

Suggested Audit Procedures:

• Review financial reports and records for previous year and determine amount of recipient's funds expended to provide employment and training services similar to those provided for in the Act.

• Determine amount of funds provided by the recipient for those services for the current year.

D. Reporting Requirements

Compliance Requirement: Reports prescribed by the Secretary of Labor must be submitted quarterly the first year and annually thereafter (20 CFR 629.36(a)).

Suggested Audit Procedures:

• Ascertain reporting requirements prescribed by the Secretary of Labor.

• See Federal Financial Reports (VI) in the GENERAL REQUIREMENTS section of this document for procedures pertaining to Financial Reporting Requirements.

• Obtain copies of other reports and determine timeliness of submission.

• Trace data in selected reports to supporting documentation.

E. Special Tests and Provisions

Compliance Requirement: The State is responsible for assuring that financial and compliance audits are conducted of each SDA grant and other subrecipients of funds under Titles II and III of this Act, with the exception of subrecipients exempted from the audit requirements by the Secretary or the cognizant Federal audit agency. (P.L. 97-300, Sec. 164(a)(2); 20 CFR 629.42(a)(c)).

Suggested Audit Procedures:

• Determine whether there is a State requirement set forth in statute or regulations or included in contracts and agreements, that applies to organizations receiving block grant funds that require audits consistent with the Comptroller General's audit standards.

• Review the manner in which the State ensures that auditors are advised of JTPA grant financial and compliance audits.

• Ascertain whether the State reviews the audit reports for JTPA grant subrecipients for adequacy of the audit and reported deficiencies and then follows up accordingly; review the procedures and evaluate for adequacy.

Compliance Requirement: The Govenor shall submit an audit resolution report, documenting the disposition of reported questioned costs, within a timely period after submission of the audit report (20 CFR 629.42(d)).

Suggested Audit Procedures:

• Review the audit resolution report.

• Select a sample of actions reported in the report and trace disposition.

Revenue Sharing Program

21.300

I. Program Objective

The objective of the Revenue Sharing Program is to provide general fiscal assistance to local governments, giving them maximum flexibility in determining the programs and activities on which to expend the funds.

II. Program Procedures

Funds are allocated to general purpose local governments in accordance with a formula that considers population, per capita income, and general tax effort data furnished by the Bureau of Census. The monies can be used for any purpose which is a legal use of the recipient's own revenues.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed or Unallowed

The auditor is not expected to make tests for allowable or unallowable services.

B. Eligibility

The auditor is not expected to make tests for eligibility.

C. Matching, Level of Effort, and/or Earmarking Requirements

There are no matching, level of effort, or earmarking requirements.

D. Reporting Requirements

Compliance Requirement: The government is required to confirm or provide certain financial and population data to the Bureau of Census. These data are to be verified by the auditor. (31 CFR 51.12(d) 51.21, 51.107(b))

Suggested Audit Procedures:

• Obtain a copy of data provided to Census or prepared and submitted by Census to the local government for confirmation.

• Reconcile data to audited figures for the latest fiscal period available.

• If data were affected by a major disaster, contact the Office of Revenue Sharing (ORS) and determine allowable adjustments.

E. Special Tests and Provisions

Compliance Requirement: Recipients must account separately for entitlement funds; appropriate, obligate or use the funds within 24 months after the end of the entitlement period, or by the date of an extension granted by ORS; and comply with local laws and procedures for obligating, appropriating, or using funds. (31 CFR 51.101(a)(b)(c))

Suggested Audit Procedures:

• Determine whether the recipient has established a separate set of fund accounts or bank accounts for the revenue sharing funds.

• Determine whether any revenue sharing funds have not been appropriated, obligated, or used within the designated period of time.

• Ascertain whether there has been any instance of the recipient not observing the local laws and procedures.

• Determine if revenue sharing funds are involved.

Compliance Requirement: If entitlement funds are used after January 1, 1977, for the redemption of debt, recipients may not have expended the proceeds of such indebtedness in a manner violating the various compliance or civil rights requirements of the Act and the regulations thereunder.

Suggested Audit Procedures:

• Determine whether funds have been used for the redemption of debt whose proceeds were expended after January 1, 1977.

• Test the financial records and determine whether the expenditure of such proceeds violated any of the ORS compliance requirements or civil rights restrictions.

Compliance Requirement: Recipients cannot use revenue sharing funds to pay persons at rates below the prevailing wage paid to others employed by the recipient in similar occupations. (31 CFR 51.40(c))

Suggested Audit Procedures:

• Determine if revenue sharing funds have been used to pay wages.

• Determine wage rates for persons paid with revenue sharing funds.

• Determine prevailing wage rate for persons employed in similar occupations by the recipient.

Compliance Requirement: Recipients must hold a public hearing on the relationship of revenue sharing funds to the entire budget prior to enactment of the annual budget; publish a notice of the proposed hearing in a newspaper, or by an ORS-approved alternative means, at least 10 days prior to the hearing; and publish a notice within 30 days after budget enactment advising that a summary budget is available for inspection. (31 CFR 51.13(c), 51.14(a)(b)(c)(d))

Suggested Audit Procedures:

• Examine official minutes or other documents and ascertain whether a public hearing was held prior to enactment of the budget.

• Examine published notice of hearing, or documentation of the ORS-approved alternative, and note date.

Compliance Requirement: Recipients must publish notice of the availability for public inspection of the use report filed with ORS in a newspaper, or by an ORS-approved alternative means, within 10 days of filing. (Use reports describing the amounts and purposes for which revenue sharing funds have been spent, appropriated, or obligated during the past fiscal year.) (31 CFR 51.13(a))

Suggested Audit Procedures:

• Obtain use report and note filing date.

• Compare amounts in Use Report with audited amounts.

• Examine published notice, or documentation of ORS-approved alternative, of availability of the Use Report and note date.

Compliance Requirement: Recipients must not use revenue sharing funds to pay costs of influencing legislative body members on general revenue sharing program legislation. (31 CFR 51.43)

Suggested Audit Procedures:

• Review selected expenditures and related records and determine whether revenue sharing entitlement funds have been used to influence legislation regarding the program.

Compliance Requirement: Recipients must maintain records showing date of purchase and value; date of transfer, if applicable; location of property; and date of disposal of real or personal property, having a minimum value of $1,000, purchased in whole or in part with revenue sharing funds. (31 CFR 51.70)

Suggested Audit Procedures:

• Test expenditure records and identify real and personal property acquired with revenue sharing funds.

• Trace property acquired with revenue sharing funds to property records.

Compliance Requirement: Recipients are to make the audit report available for public inspection no later than 30 days following its completion and receipt by the government (31 CFR 51.108(a)(b))

Suggested Audit Procedures:

• Determine that publication of the prior audit report's availability for public inspection has been made in a newspaper of general circulation. For newspaper publication, inspection of proofs of publication, newspapers, or clippings therefrom shoud be made.

Compliance Requirement: Recipients must publicize an initial public notice that it does not discriminate on the basis of handicap in employment, admission or access to or treatment in its programs or activities. The notice should include the name of the employee who coordinates compliance with the handicap regulations. Also continuing notifications of pertient information are to be made to the public, including sight and hearing impaired individuals or groups representing such individuals. (31 CFR 51.55(e))

Suggested Audit Procedures:

• Examine available documentation verifying that an initial notice was made.

• Determine that the name of the coordinating employee has been disclosed.

• Determine that continuing notifications have been made, if applicable.

Compliance Requirement: Recipients must establish a grievance procedure available to all persons (except applicants for employment) for review of complaints alleging handicap discrimination. (31 CFR 51.55(d))

Suggested Audit Procedures:

• Determine whether such a procedure has been established.

Compliance Requirement: Recipients must complete a self-evaluation review of policies, practices, programs, and activities to determine if they discriminate against the handicapped. Handicapped individuals and organizations representing the handicapped must be included in the self-evaluation process. (31 CFR 51.55(c))

Suggested Audit Procedures:

• Determine that a self-evaluation review has been completed. A qualitative analysis of the self-evaluation need not be made by the auditor.

Compliance Requirement: Recipients must prepare a transition plan, including a time table for completion, describing structural change to be made to achieve accessibility for the handicapped. Such a plan is required only if the recipient decided during the self-evaluation that structural changes were needed.

Suggested Audit Procedures:

• Determine that the transition plan has been prepared in those instances where the self-evaluation indicates that structural changes to achieve accessibility for the handicapped is required.

School Breakfast Program

10.553

National School Lunch Program

10.555

I. Program Objectives

The objectives of the School Breakfast and the National School Lunch Programs are to: (1) assist States, through cash grants and food donations, in making breakfast and lunch available to school children, and (2) encourage the domestic consumption of agricultural commodities and other foods.

II. Program Procedures

The Food and Nutrition Service (FNS) administers these programs in cooperation with State Departments of Education, which in turn enter into agreements with School Food Authorities (SFAs) for the operation of the programs. In some States, the Department of Education by State law or constitution prohibition cannot administer the programs in private schools. In such States, private schools enter into agreements directly with the FNS Regional Offices. FNS makes payments to States for breakfasts and lunches served to eligible children based on national average payment factors multiplied by the number of meals served. These funds are used by the States to reimburse their SFAs. States also receive donated foods based on the projected levels of lunches served. These commodities are distributed to their SFAs at an annually adjusted per lunch value.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed or Unallowed

Compliance Requirement: Eligible meals must meet the minimum meal pattern requirements for food components. (7 CFR 210.10 and 220.8)

Suggested Audit Procedures:

• Review the school's system for ensuring that meals claimed for reimbursement contain the required number of components.

• Test the manner and frequency with which the procedures are applied.

B. Eligibility

Compliance Requirement:

• The State must prescribe eligibility standards in accordance with federally published guidelines, and participants must meet family-size income standards for free and reduced-price meals. (7 CFR 245.1, 245.11, 245.13).

• The SFA must approve proper applications submitted in accordance with these standards. (7 CFR 245.6(b))

Suggested Audit Procedures (State):

• Examine the *Federal Register* or correspond with FNS to ascertain the Federal guidelines.

• Review the State's family size and income standards.

• Review the State's eligibility determination and verification system and evaluate for adequacy.

• Review selected applications and determine whether they were properly approved.

Suggested Audit Procedures (School Food Authority):

• Review the SFA procedures for complying with the published eligibility guidelines and evaluate for adequacy.

• Review selected case files and determine whether there was adherence to the prescribed procedures. Verify the conclusions regarding eligibility.

• Determine the numbers of free and reduced price meals claimed for reimbursement in selected schools and determine whether it exceeds the number of approved applications.

C. Matching, Level of Effort, and/or Earmarking Requirements

Compliance Requirement (Applies to Lunch Program Only):

The State is required to contribute, from State-appropriated sources, an amount equal to at least 30 percent of all General Assistance funds (commonly referred to as Section IV funds of the National School Lunch Act, as amended) made available by FNS to the State in the last year. In certain States, whose per capita income has been designated lower by FNS, the 30 percent match may be proportionately lower. The listing of the match for all States is available from FNS on form SL-1 (untitled). (7 CFR 210.6(a))

Suggested Audit Procedures (State):

• Correspond with FNS to ascertain the amount of funds made available in the preceding school year.

• Correspond with FNS and determine if the State has been designated a low per capita income State.

• Ascertain the amount expended from State sources for the current year.

D. Reporting Requirements

Compliance Requirement: The State must submit a report of child nutrition operations (FNS-10) quarterly specifying the number of meals claimed, supported by meal counts from School Food Authorities (SFA), and the estimated number of meals served for which claims had not yet been received from SFA's. (7 CFR 210.13, .14(g); 220.13(b))

Suggested Audit Procedures (State):

• Obtain copies of submitted reports and review for completeness and timeliness of submission.

• Trace data in selected reports to supporting documentation.

Compliance Requirement: The following financial reports must be submitted periodically.

—Financial Status Report (SF 269)
—Request for Advance or Reimbursement (SF 270) or
—Request for Payment on Letter of Credit and Status of Funds Report (SF 183)

Suggested Audit Procedures: See Federal Financial Reports (VI) in the GENERAL REQUIREMENTS section of this document.

E. Special Tests and Provisions

There are no special tests and provisions for the auditor to perform.

[FR Doc. 85-889 Filed 1-10-85; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of the President Regarding Certain Alkaline Batteries

On Friday, January 4, 1985, the President notified the United States International Trade Commission that he disapproved its determination in Investigation No. 337-TA-165, *Certain Alkaline Batteries*. A statement of the President's determination, which was included with the notice to the Commission, is printed below.

William E. Brock,

United States Trade Representative.

Disapproval of the Determination of the United States International Trade Commission in Investigation No. 337-TA-165, Certain Alkaline Batteries

The United States International Trade Commission, following a finding of a violation of Section 337 of the Tariff Act of 1930, as amended, has ordered excluded from entry into the United States imports of certain alkaline batteries that were found to infringe a U.S. registered trademark and to misappropriate the trade dress of the batteries on which the trademark is used.

The President is authorized by Section 337(g)(2) to disapprove a Commission determination for policy reasons. I have notified the Commission today of my decision to disapprove its determination in this case.

The Commission's interpretation of section 42 of the Lanham Act (15 U.S.C. 1124), one of several grounds for the Commission's determination, is at odds with the longstanding regulatory interpretation by the Department of the Treasury, which is responsible for administering the provisions of that section. The Administration has advanced the Treasury Department's interpretation in a number of pending court cases. Recent decisions of the U.S. District Court for the District of Columbia and the court of International Trade explicitly uphold the Treasury Department's interpretation. Allowing the Commission's determination in this case to stand could be viewed as an alteration of that interpretation. I, therefore, have decided to disapprove the Commission's determination.

The Departments of Treasury and Commerce, on behalf of the Cabinet Council on Commerce and Trade, have solicited data from the public concerning the issue of parallel market importation and are reviewing responses with a view toward formulating a cohesive policy in this area. Failure to disapprove the Commission's determination could be viewed as a change in the current policy prior to the completion of this process.

[FR Doc. 85-921 Filed 1-10-85; 8:45 am]

BILLING CODE 3190-01-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.

• Discussion of Proposed Draft Economic, Demographic and Fuel Price Assumptions and response to comments.

• Discussion of Issue Paper on Assumptions for Financial Variable.

• 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, January 15, 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. 85–845 Filed 1–10–85; 8:45 am]

BILLING CODE 0000–00–M

Demand Forecasting Advisory Committee; Meeting

AGENCY: Demand Forecasting Advisory Commitee 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 ot December 3, 1984 meeting, and approval of agenda.

• Status report on Council contracts.

• CSI conservation analysis.

• Jerry Jackson commercial model.

• General Research Corp. programming.

• Discussion of model changes and testing of models.

• Discussion of forecasting issues of interest to the advisory committee members.

• Set dates for future meetings and discuss possible agenda items.

Adjourn meeting.

Status: Open.

Summary: Northwest Power Planning Council hereby announces a forthcoming meeting of its Demand Forecasting Advisory Committee.

Date: Friday, January 18, 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: Terry Morlan, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–846 Filed 1–10–85; 8:45 am]

BILLING CODE 0000–00–M

Industrial Conservation Advisory Task Force; Meeting

AGENCY: Industrial Conservation Advisory 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 Industrial Conservation Survey.

• Extropolation of Survey Results to Entire Industry.

• Industrial Conservation in Time of Surplus—Lost Opportunity Resources—Industrial Conservation Capability Building.

Status: Open.

Summary: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Industrial Conservation Advisory Task Force.

Date: Thursday, January 17, 1985, 9:30 a.m.

Address: The meeting will be held at the Council's Central Office at 850 S.W. Broadway; Suite 1100, in Portland, Oregon.

For further information contact: Tom Foley, (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–851 Filed 1–10–85; 8:45 am]

BILLING CODE 0000–00–M

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering 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:

• Pacific Northwest Hydro Assessment Study update.

• Cumulative Impacts Study status report.

• Update on FERC activities.

• Other.

• Public comment.

Status: Open.

Summary: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee.

Date: January 15, 1985, 10:00 a.m.

Address: The meeting will be held at the Council Hearing Room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

For further information contact: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–852 Filed 1–10–85; 8:45 am]

BILLING CODE 6000–00–M

POSTAL RATE COMMISSION

[Order No. 599; Docket No. A85–12]

Williams Mountain, WV 25212 (Rose Reynolds, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: January 4, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Henrietta F. Guiton.

Docket number: A85–12.

Name of affected post office: Williams Mountain, West Virginia 25212.

Name(s) of petitioner(s): Rose Reynolds, *et al.*

Type of determination: Closing.

Date of filing of appeal papers: December 31, 1984.

Categories of issues apparently raised:

1. Effect on employees [39 U.S.C. 404(b)(2)(B)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed: or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expetition within the 120-day decision schedule [39 U.S.C. 404(b)(5) the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before January 15, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

December 31, 1984—Filing of Petition.

January 4, 1985—Notice and Order of Filing of Appeal
January 25, 1985—Last day for filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
February 4, 1985—Petitioner's Initial Brief [*see* CFR 3001.115(b)]
February 25, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)]
March 12, 1985—(1) Petitioner's Reply Brief should petitioner choose to file one [*see* CFR 3001.115(d)].
March 19, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
April 30, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. (b)(5)].

[FR Doc. 85-898 Filed 1-10-85; 8:45 am]
BILLING CODE 7715-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Procedure for Submission of Information With Respect to Medical and Surgical Procedures and Services

AGENCY: Prospective Payment Assessment Commission.

ACTION: Notice

SUMMARY: The Prospective Payment Assessment Commission is required by Congress to adopt procedures allowing interested parties to submit information to the Commission with respect to medical and surgical procedures and services. To implement this mandate the Commission has developed guidelines that can be used by those parties interested in submitting information. The guidelines and material describing the process established by the Commission for reviewing and analyzing submitted information are available from the Commission. Information submitted shall be reviewed by the Commission and considered in its recommendations and reports to the Secretary of the Department of Health and Human Services and Congress.

To Acquire Materials Contact: Pamela Odom, Administrative Assistant, Prospective Payment Assessment Commission, Suite 301B, 300 7th Street SW., Washington, D.C. 20024.

SUPPLEMENTARY INFORMATION: In Pub. L. 98-21, Congress amended the Social Security Act (the "Act") to provide for a prospective payment system for Medicare payment of inpatient hospital services. Under this system, Medicare payment is made at a predetermined specific rate for each discharge. Hospital discharges are classified into diagnosis related groups (DRGs), and, at the present time, this list contains 470 specific groups. Congress, in Pub. L. 98-21, also provided for the establishment of the Prospective Payment Assessment Commission (the "Commission"). The Commission is directed in section 1886(d)(4)(D) of the Act to make recommendations to the Secretary with respect to adjustments to the DRG classification and weighting factors and report to Congress with respect to its evaluation of any adjustments made by the Secretary.

The Commission also makes recommendations to the Secretary, as provided in section 1886(e)(2) and 3, on the appropriate percentage change factor to be used in updating Medicare payments.

In connection with these responsibilities, the Commission is required, pursuant to section 1886(e)(6)(E) of the Act, to collect and to assess information on medical and surgical procedures and services in order to identify appropriate patterns of health resource use and to assess the safety, efficacy and cost effectiveness of new and existing medical and surgical procedures. One of the methods of collection and assessment prescribed by Congress is for the Commission to—

> Adopt procedures allowing any interested party to submit information with respect to medical and surgical procedures and services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress. Section 1886(e)(6)(E)(iii).

To implement section 1886(e)(6)(E)(iii) of the Act, quoted above, the Commission has prepared guidelines for submitting information for consideration and material explaining the Commission's mandate and process of analyzing submitted information. Any interested party who wishes to submit information to the Commission on new and existing medical and surgical procedures and services can request the guidelines and accompanying material.

At present, the guidelines focus on issues regarding medical and surgical procedures and services that may potentially require adjustments to the DRG classification or weights. The submissions of interested parties will be reviewed by the Commission staff and referred to the Subcommittee on Diagnostic and Therapeutic Practices. This subcommittee was established by the Commission to analyze issues related to new and existing procedures, services and technologies, particularly as these issues relate to changes that the Commission will recommend in the DRG classification and weight system used by the Medicare prospective payments system.

Use of the guidelines is not required nor are they intended to prescribe or limit the type of information submitted. However, they do identify the specific types of information that the Commission needs in order to analyze the procedure or service in question. Thus, their use will facilitate review. The Commission welcomes comments on the guidelines.

Donald A. Young,

Executive Director.

[FR Doc. 85-844 Filed 1-10-85; 8:45 am]
BILLING CODE 6820-BW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 23562; 70-7071]

Arkansas Power & Light Co. and Middle South Utilities, Inc.; Proposed Issuance and Sale of Common Stock by Subsidiary and Acquisition Thereof by the Holding Company

January 4, 1985.

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiary company, Arkansas Power & Light Company ("AP&L"), First Commercial Building, P.O. Box 551 Little Rock, Arkansas 72203, have filed a proposal with this Commission pursuant to sections 6, 7, 9(a), and 10 of the Public Utility Holding Company Act of 1935 ("Act").

AP&L proposes to issue and sell from time to time through December 31, 1985, and Middle South purposes to acquire, an aggregate of not in excess of 4,800,000 additional shares of AP&L's authorized but unissued common stock, $12.50 par value. This amount includes the 1,600,000 shares previously authorized to be issued and sold in 1984, none of which were sold (HCAR No. 23327 (June 8, 1984)). The common stock will be sold at $12.50 per share for an aggregate cash purchase price of $60,000,000. AP&L will use the proceeds of such sales for the financing in part of (including the retirement of short-term indebtedness incurred in financing) its construction program (estimated to be $226,200,000 for the calendar year 1985 and for other corporate purposes.

The proposal 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 January 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants 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 proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-837 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14306; 812-5930]

Mass Variable Life Separate Account I, et al; Application

January 4, 1985.

Notice is hereby given that Mass Variable Life Separate Account I (the "Variable Life Separate Account"), a registered unit investment trust, Mass Life Insurance Company of New York ("MLIC"), Massachusetts Mutual Life Insurance Company ("Mass Mutual"), MML Managed Bond Investment Company, Inc., MML Money Market Investment Company, Inc., MML Equity Investment Company, Inc., and MML Blend Investment Company, Inc. (the latter four collectively referred to as "Funds" and all above hereinafter collectively referred to as "applicants") 1295 State Street, Springfield Massachusetts 01111, filed an application September 4, 1984, and an amendment thereto on December 31, 1984, for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting the Applicants from certain provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representation contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant statutory provisions.

The Applicants propose that variable whole life insurance policies be issued through the Variable Life Separate Account, and that the assets of the Variable Life Separate Account be invested in shares of the Funds. The Applicants propose that the Funds also serve as the underlying investment medium for other accounts of Mass Mutual and its affiliates, several of which are variable annuity separate accounts (hereinafter such use of the Funds is referred to as "mixed funding"). In issuing variable life policies, the Variable Life Separate Account, MLIC, and Mass Mutual intend to rely, to the extent applicable, on the exemptions provided by Rule 6e-2(b) under the Act, except that subsection (b)(15) of the Rule will not apply. Applicants note that subsection (b)(15) affords exemptions from certain provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act to any unit investment trust, all the assets of which consist of shares of registered management investment companies that offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company. Applicants assert that since they may employ mixed funding, subsection (b)(15) of Rule 6e-2 is not available to the Applicants because the Funds will not offer their shares exclusively to the Variable Life Separate Account or other variable life separate accounts. Accordingly, Applicants request exemptions from the above-enumerated sections of the Act to the same extent as if subsection (b)(15) were applicable.

With respect to section 9(a), which prohibits certain persons from serving in certain capacities for a registered investment company, Applicants submit that there is no policy reason why the exemptions contained in Rule 6e-2(b)(15)(i) and (ii) should not apply to the Funds just because they are used for mixed funding, and that if section 9(a) were given literal application, the resulting monitoring costs would be enormous and would make it difficult to offer holders of variable life policies rates of return as favorable as could otherwise be offered. With respect to sections 13(a), 15(a), and 15(b), which all contain requirements for voting by investment company securityholders, Applicants assert that permitting them to vote the shares of the Funds held in the Variable Life Separate Account without regard to instructions from holders of the policies in certain instances, as would be permitted by Rule 6e-2(b)(15)(iii), would provide exemptions that the Commission, in recognition of certain authority of state insurance regulators, has deemed necessary to assure the solvency of the life insurer and the performance of its contractual obligations.

Applicants represent that the so-called exclusivity requirement in Rule 6e-2(b)(15) was probably designed to retain regulatory flexibility and that the following areas of specific concern may lie behind the requirement: (1) Possible conflicts of interest between a variable life separate account and other accounts where action regarding investment policies, investment advisers, or principal underwriters, is taken by a state insurance regulator or where the life insurer acts contrary to actions approved by variable life contractholders as contemplated by Rule 6e-2(b)(15)(iii)(B), (2) possible adverse tax treatment for the holders of variable life contracts or variable annuity contracts from the use of mixed funding, (3) different investment strategies might be more suitable for the variable annuity contracts than for the variable life contracts, and (4) prohibitions from state insurance laws or regulations relating to mixed funding.

Applicants state that in order to address the above concerns and any other concerns that might arise from mixed funding, they consent to several conditions, which are summarized as follows: (1) A majority of the boards of directors of the Funds will be persons who are not "interested persons" of the Funds, Mass Mutual, or MLIC (2) MLIC will advise in writing the insurance department of each state where the variable life policies are to be offered about the use of mixed funding, (3) Mass Mutual, as a matter of ongoing responsibility, will report to the Funds' boards as it occurs any development which Mass Mutual believes may create a material irreconcilable conflict between the interests of the owners of the variable life contracts and participants in the other accounts, and, with a view only to the interests of the participants in the Variable Life Separate Account and other accounts, will review and report to the boards at least annually for the board to determine whether any circumstances have arisen which would create the potential for a material irreconcilable conflict respecting certain areas of concern, including (a) whether, at annual or special meetings of shareholders of the Funds, a majority of votes attributable to other accounts voted differently from a majority of votes attributable to the Variable Life Separate Account, (b) whether a detrimental change in the tax treatment of variable life contracts or variable annuity contracts occurs, which results

from mixed funding, (c) whether the taxation of the investments supporting the variable life contracts and the variable annuity contracts changes, and (d) whether New York insurance law or regulations or any other applicable law prohibits or will prohibit mixed funding.

Applicants state that if a material irreconcilable conflict exists in the situations described in (3)(a) or (3)(d) above, Mass Mutual and MLIC will segregate the variable life insurance assets by taking such action at their own expense as may be required. Applicants further state that if a Fund's board determines that a material irreconcilable conflict exists in any other situation, or if MLIC or Mass Mutual determines that a material irreconcilable conflict exists, MLIC and Mass Mutual will either segregate the variable life insurance assets or submit the question whether such segregation should be effected to a vote of both of the holders of the variable life contracts and the variable annuity contracts, and that unless both groups of holders vote not to effect such segregation, MLIC and Mass Mutual will act promptly, at their own expense, to effect such segregation. Applicants represent that Mass Mutual and MLIC will take the above actions with a view only to the interests of the participants in the Variable Life Separate Account and the other accounts. Applicants also agree to the further condition that the prospectuses for variable annuity contracts and the variable life policies will disclose the possibility that material conflicts could arise between the holders of the variable life contracts and the holders of the variable annuity contracts.

Applicants believe that the requested exemptions are 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 January 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed 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.

John Wheeler,

Secretary.

[FR Doc. 85-839 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 23563; 70-7069]

New Orleans Public Service Inc. and Middle South Utilities, Inc.; Proposal To Issue and Sell Preferred Stock and First Mortgage Bonds, and To Capitalize Subsidiary

January 4, 1985.

New Orleans Public Service Inc., ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112 and its parent Middle South Utilities, Inc. ("MSU"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, have proposed a transaction to this Commission pursuant to sections 6(a), 7, 9(a), 10 and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 43 and 50(a)(3) thereunder.

NOPSI proposes to issue and sell up to $40,000,000 principal amount of its First Mortgage Bonds ("New Bonds") pursuant to Rule 50 procedures, as set forth in HCAR No. 22623, dated September 2, 1982. The New Bonds will be issued in one or more series from time to time not later than December 31, 1985. The price, exclusive of accrued interest, to be paid to NOPSI for each series of the New Bonds will be within a range specified by it to prospective purchasers of not more than five percentage points, but shall not exceed five percentage points above or below 100% of the principal amount of such series of New Bonds.

The New Bonds are to be issued under NOPSI's Mortgage and Deed of Trust, dated as of July 1, 1944, as supplemented and to be further supplemented. Each series of the New Bonds will mature within five to thirty years. None of the New Bonds of a particular series will be redeemed for a period of either four or five years, depending upon the term of that series, at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such bond through the use, directly or indirectly, of funds borrowed by NOPSI at an effective interest cost to it of less than the effective interest cost to it of such series of New Bonds.

Secondly, NOPSI proposes to establish one or more new series of its serial preferred stock having a par value of $100 per share, which shall consist in the aggregate of not more than 200,000 shares ("New Preferred Stock"), and to issue and sell, in one or more series from time to time not later than December 31, 1985, the New Preferred Stock, subject to Rule 50. By appropriate corporate action, NOPSI intends, with the consent of its parent MSU, to amend its Charter, to authorize each series of the New Preferred Stock, which, except as to designation, dividend rate, redemption prices and the terms and amount of sinking fund requirements, if any, will have the same characteristics as, and rank *pari passu* with, the presently outstanding 60,000 shares of 4.36% Preferred Stock, 60,000 shares of 5.56% Preferred Stock and 150,000 shares of 15.44% Preferred Stock.

The price to be paid to NOPSI for each series of the new Preferred Stock will be not less than $100 nor more than $102.75 per share, plus accrued dividends, if any. The terms of each series of the New Preferred Stock will include a prohibition for five years against refunding any shares of such series, directly or indirectly, with funds derived from the issuance of debt securities at a lower effective interest cost or from the issuance of other stock, which ranks prior to or on a parity with such series as to dividends or assets, at a lower effective dividend cost.

NOPSI may include provisions for a sinking fund for any series of the New Preferred Stock designed to redeem annually, commencing a specified period of time after initial issuance, at $100 per share plus accumulated dividends, a number of shares equal to a specified percentage of the total number of shares of such series, with NOPSI possibly having a noncumulative option to redeem annually an additional number of shares up to a specified percentage of the total number of shares of such series.

NOPSI also proposes to issue and sell to MSU, and MSU proposes to acquire from NOPSI from time to time through December 31, 1985 up to 4,000,000 shares of its common stock (par value, $10) ("Additional Common Stock") at par for an aggregate cash consideration of up to $40,000,000. NOPSI's Charter presently provides for 7,000,000 authorized shares of common stock of which 5,935,900 shares, are issued and outstanding and owned by MSU. Accordingly, NOPSI proposes, by appropriate corporate action and with the consent of MSU, further to amend its Charter to increase its authorized common stock from 7,000,000 to 10,000,000 shares.

NOPSI will use the proceeds to pay, in part, short-term borrowings; to finance, in part, its 1985 construction program, which provides for expenditures of approximately $39,300,000; and to pay, in part, NOPSI's obligations to MSU under a Power Purchase Advances Payment Agreement.

The proposal 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 January 29, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants 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 proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-840 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14305; 812-5969]

Van Kampen Merritt Insured Tax Free Income Fund Inc. and Van Kampen Merritt Inc.; Application

January 4, 1985.

Notice is hereby given that Van Kampen Merritt Insured Tax Free Income Fund Inc. (the "Fund"), registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified management investment company, and its proposed distributor, Van Kampen Merritt Inc. (the "Distributor") (collectively, "Applicants"), 1901 North Naper Boulevard, Naperville, Illinois 60566, filed an application on October 25, 1984, pursuant to section 6(c) of the Act, for an order of exemption from Section 22(d) of the Act to permit the sale of the Fund's shares at a reduced sales charge to participants in a reinvestment program offered to unit-holders of existing and future unit investment trusts (the "Trusts") sponsored by the Distributor. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

The application states that the Fund's investment objective is to provide a high level of current income exempt from federal income taxes, liquidity and safety of principal through investment in a diversified portfolio of municipal securities, and the principal and interest on which are insured by an independent insurance company. American Portfolio Advisory Service Inc. ("Adviser") is the investment adviser of the Fund. The application states that the Adviser and Bradford Trust Company are the portfolio supervisor and trustee, respectively, of various series of unit investment trusts sponsored by the Distributor, a broker/dealer registered under the Securities Exchange Act of 1934. According to the application, the Trusts seek to obtain income that is exempt from taxation and to conserve capital through investment by each of the Trusts in interest bearing obligations which, in the opinion of bond counsel, are exempt from federal, state, and local income taxes.

The application states that the Fund's shares will be offered for sale to the public at the net asset value plus a sales charge which varies from 4.75% to 1.00% of the offering price based upon the amount invested. The minimum initial investment is generally $1,500 and all subsequent investments must be made in amounts of $100 or more once the continuous offering of the Fund's shares is commenced. The sales charges and investment minimums are subject to reduction for participants in qualifying employee benefit programs that meet uniform cost savings criteria set forth in rule 22d-1(f) under the Act. The reduced sales charge and the criteria are the same as are set forth in the proposed reinvestment program that is the subject of the application.

The Fund has proposed a program to permit holders of units of the Trusts to reinvest distributions from the Trusts in shares of the Fund at a reduced sales charge of 1% and with no minimum initial or subsequent investment requirement. In order for a unitholder to participate in the proposed program, both the unitholders and the Trust administrator of the unitholder's trust must agree with the Distributor to meet certain uniform criteria. The administrator is required to make bulk orders and payments and provide computerized backup. The unitholders must invest in account form without share certificates and must agree to reinvest all distributions by the Fund in additional shares. A unitholder may elect to reinvest distributions of principal only, interest only, or principal and interest. Unitholders will receive a current prospectus of the Fund at or before the time they join the program and may terminate participation in the program at any time by five days written notice to their trust administrator.

Applicants submit that section 22(d) of the Act is intended to insure that all investors purchase investment company securities on an equal basis and to prevent dilution of existing shareholders' equity. In support of its request for an exemption from section 22(d), the Fund states that it believes that the sales costs associated with sales made pursuant to the reinvestment program will be lower than the costs associated with other sales of its shares. The Fund submits that such savings should be passed on to investors in the form of lower sales charges, and the Fund states that it believes the 1% sales charge to be sufficient to cover the increase in distribution expenses arising from the program. The Fund further states that its shareholders will benefit from the reinvestment program because an increase in the Fund's cash flow will better enable it to meet redemptions without liquidating investments in its portfolio and will enable it to diversify further its securities holdings. Therefore, Applicants submit that the exemption requested is appropriate in the public interest and consistent with the protection of investors and the purpsoes 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 January 28, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, 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 the 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.

John Wheeler,

Secretary.

[FR Doc. 85-838 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14304; 812-5999]

Application; Technology Fund, Inc., et al.

Notice is hereby given that Technology Fund, Inc., Kemper Total Return Fund, Inc., Kemper Growth Fund, Inc., Kemper Summit Fund, Inc., Kemper Income and Capital Preservation Fund, Inc., Kemper Money Market Fund Inc., Kemper Municipal Bond Fund, Inc., Kemper Option Income Fund Inc., Kemper High Yield Fund, Inc., Cash Equivalent Fund, Inc., Kemper U.S. Government Securities Fund, Inc., Kemper International Fund, Inc., Kemper Government Money Market Fund, Inc., Tax-Exempt Money Market Fund, Inc., Kemper California Tax-Free Income Fund, Inc. and Investment Portfolios, Inc. ("Applicants"), 120 South LaSalle Street, Chicago, Illinois 60603, all open-end, diversified management investment companies registered under the Investment Company Act of 1940 (the "Act"), filed an application on December 6, 1984, requesting a Commission order (1) pursuant to section 6(c) of the Act, exempting Applicants and such other investment companies as may be added to the group of investment companies having the same investment manager of which Applicants are a part (with Applicants, the "Kemper Funds") from the provisions of sections 13(a)(2), 18(f)(1) and 22 (f) and (g) of the Act to the extent necessary to permit each of the Kemper Funds to enter into a deferred fee agreement ("Agreements") with certain of their directors, and (2) pursuant to section 17(d) of the Act and Rule 17d-1 thereunder, permitting the Kemper Funds to effect certain affiliated transactions related to the Agreements. 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 and rules thereunder for the text of the provisions cited in the application.

Applicants state that Kemper Financial Services, Inc. ("Kemper") is the investment manager and principal underwriter for each Applicant (except that Kemper International Fund, Inc.'s investment manager is Kemper-Murray Johnstone International, Inc., a 50% owned subsidiary of Kemper, and Investment Portfolios, Inc.'s principal underwriter is Kemper Sales Company, an affiliate of Kemper). Applicants state that each Applicant's Board of Directors consists of ten persons, seven of whom are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors"). It is stated that each of the disinterested directors who is not an "interested person" of Kemper or any affiliate thereof receives director's fees in varying amounts for serving as a director of each Applicant plus a meeting fee in varying amounts for each Board and committee meeting attended. It is stated that none of the Applicants pays any other remuneration to its directors and that the amounts paid by each Applicant to its directors are, and are expected to continue to be, insignificant in comparison to the total net assets of such Applicant.

Applicants state that the purpose of each Agreement is to permit one or more of the disinterested directors of each Kemper Fund to elect to defer receipt of director's fees to enable a director to defer payment of income taxes on such fees, to avoid diminution or loss of social security benefits to which a director might otherwise be entitled, or for other reasons. Applicants believe that the availability of a deferred fee arrangement will enhance their ability to attract and retain directors of high caliber. Applicants state that an Agreements will allow disinterested directors to elect to defer receipt of all or any portion of the director's fees which otherwise would become payable to him by one or more Kemper Fund for services performed after the date of the Agreement. Such an election will continue in effect until the director delivers to the Secretary of a Kemper Fund a written revocation of the election with respect to the director's fees relating to services to be performed and payable after the date of such revocation.

Applicants state that each deferred fee will be credited at the time it otherwise would have been payable to a deferred fee account that will be established on the applicable Kemper Fund's books for each electing director. Applicants state further that all amounts credited to the deferred fee account (including interest credited to the account) will bear interest at a rate equivalent to the rate applicable to 90-day United States Treasury Bills at the beginning of each Kemper Fund's fiscal quarter. Amounts credited to the deferred fee account will not be evidenced by any note or other security and will not be secured in any way. It is stated that, in accordance with an Agreement, each Kemper Fund's obligation to make payments from the deferred fee account will be a general obligation of such fund, with a director's relationship to the fund under an Agreement being that of a general unsecured creditor. Applicants state further that an Agreement will not create a trust or fiduciary relationship between a Kemper Fund and its director or any other person, nor will it constitute a security interest of any kind in any property of a Kemper Fund in favor of a director or any third person.

Applicants state that the deferred director's fees and any interest thereon will become payable in cash at the time (termination of the director's service in such capacity, attainment of a certain age or the first or the latter of these to occur) and in the manner (lump sum or selected number of annual installments) as the director specifies. Deferred amounts will continue to accrue interest until paid. Applicants state further that, in the event of a director's death, amounts payable to him under an Agreement will thereafter be payable in a lump sum or annual installments to his designated beneficiary or to his estate; in all other events, the director's right to receive payments will be non-transferable.

Applicants represent that deferral of director's fees in accordance with an Agreement will have a negligible effect on a Kemper Fund's assets, liabilities, net assets and net income per share. It is further represented that an Agreement will not obligate a Kemper Fund to retain a director in such capacity, nor will be obligate such fund to pay any level of director's fees to any director. According to Applicants, the sole purpose of an Agreement would be to permit a director to elect to defer receipt of fees that he would otherwise receive on a current basis from a Kemper Fund.

Applicants assert that the requested exemption from the provisions of sections 18(f)(1) and 13(a)(2) of the Act would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants assert that an Agreement would possess none of the characteristics of senior securities which led Congress to enact section 18 of the Act. Applicants submit that the Kemper Funds would not be "borrowing" from their directors in the sense that concerned Congress. It is stated that all liabilities created by credits to a deferred fee account would be offset by essentially equal amounts of assets of each Kemper Fund which would not otherwise exist if the fees were paid on a current basis. It is

asserted that an Agreement would not induce speculative investments by any of the Kemper Funds or provide an opportunity for manipulative allocation of a Kemper Fund's expenses and profits. Applicants further assert that control of each Kemper Fund would not be affected; and given the widespread existence of deferred compensation agreements, an Agreement would not confuse a Kemper Fund's investors, make it difficult for them to value a Kemper Fund's assets or convey a false impression of safety. Applicants assert that an Agreement would not be inconsistent with the theory of mutuality of risk.

Applicants assert that the requested exemption from the provisions of sections 22 (f) and (g) of the Act would also be consistent with the standards of section 6(c) of the Act. Applicants contend that section 22(f) of the Act was designed to bar restrictions on transferability or negotiability either not disclosed to the holder of the subject security or expressly prohibited by Commission rule or regulation. Applicants contend that an Agreement would not have this effect in view of disclosure requirements applicable to director compensation. Applicants state that the restrictions under an Agreement would be clearly set forth therein, would be included primarily to benefit the director and would not adversely affect the interests of directors or of Kemper Fund shareholders. As to section 22(g) of the Act, Applicants assert that a Kemper Fund's obligation to make payments under an Agreement would not have a dilutive effect on the equity and voting power of the common stock of, or units of beneficial interest in, a Kemper Fund and would not be issued for services. Applicants contend that, although any director's fees which might become payable to a director would clearly be for services, any such fees would become payable independent of an Agreement. Applicants state that an Agreement would merely provide for deferral of payment of such fees and thus should be viewed as being "issued" not in return for services but in return for a Kemper Fund's not being required to pay such fees on a current basis.

Applicants assert that a Kemper Fund's participation in the deferred fee arrangement would not be on a basis different from or less advantageous than that of any other participant. Applicants assert that the effect of an Agreement would merely be to defer payment of fees that a Kemper Fund would otherwise be obligated to pay on a current basis. Liabilities created by credits to the deferred fee account would be offset by assets that would not otherwise exist if director's fees were paid on a current basis. Applicants contend that deferral of a director's fees in accordance with an Agreement would maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the fees were paid on a current basis. Applicants assert that payment of interest on deferred fees is necessary to prevent the director from being penalized by an election to defer fees.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 29, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, 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.

John Wheeler,

Secretary.

[FR Doc. 85-841 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21636, SR-MSE-84-9]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Midwest Stock Exchange, Inc. ("MSE") 120 South LaSalle Street, Chicago, IL, 60603, submitted on October 30, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Article I, Rule 1 of its rules to impose conditions on foreign members which do not maintain offices in the United States and which are responsible for preparing and maintaining financial and other reports required to be filed with the Commission and the MSE. Under the amendments, such foreign members must (1) prepare required reports in English, and maintain a general ledger chart of accounts in U.S. dollars; (2) reimburse the Exchange for examination expenses to the extent that the expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from the principal office of the Exchange, or in an amount the Exchange deems to be an equitable allocation of such expenses; (3) make available an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Exchange during examinations; and (4) utilize, either directly or indirectly, the services of a registerd broker/dealer or registered bank or clearing agency located in the United States in a clearing transaction involving members of the corporation unless both parties to the transaction agree otherwise.

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. 21503, November 20, 1984) and by publication in the **Federal Register** (49 FR 47144, November 30, 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 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

January 7, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-835 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21567; SR-NASD-84-32]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Order Granting Accelerated Approval of Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on December 11, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to adopt rules of

practice and procedures in order to implement, on a temporary basis, for a period of 60 days beginning December 14, 1984, its Small Order Execution System ("SOES"). The rules provide a series of definitional sections, requirements for registration of SOES participants in the capacity of either SOES market makers or SOES order entry firms, obligations with respect to the honoring of system trades, criteria for disqualification of SOES participants from the system, and the applicability of disciplinary procedures. The rule filing also provides for the application of fees assessable to SOES market makers for all transactions executed through the system. This filing would implement, on a temporary basis, the program proposed by the NASD on a permanent basis in File No. SR–NASD–84–28 and published for public comment in Securities Exchange Act Release No. 21458 (November 2, 1984); 49 FR 44838 ("the November 2 release").

The NASD requests approval for a period of 60 days to permit all necessary regulatory requirements to become operational as soon as practicable, while permitting the Commission additional time within which to consider the NASD's permanent proposal contained in File No. SR–NASD–84–28 and any comments received on that proposal.

In response to the November 2 Release, the Commission received comment letters from the Institutional Networks Corporation ("Instinet"),[1] and the Midwest Stock Exchange, Inc. ("Midwest").[2] Instinet, which operates its own automated execution system, stated that it "generally supports the basic notion of automating securities information delivery and trading in the over-the-counter ("OTC") market," and that it "even welcomes the emergence of competing professional, or wholesale, systems such as SOES." Instinet limited its objection to fees proposed by the NASD for SOES and to questions relating to possible linkages between SOES and competing systems. Instinet argues, among other things, that the NASD has failed to satisfactorily demonstrate that its SOES fees accurately reflect costs. In this regard, it contends that SOES fees are below cost, thereby adversely affecting Instinet's ability to compete with SOES. Instinet further argues that SOES should be structured to allow (1) competing systems to route orders to SOES, (2) orders entered into SOES to be received by competing systems, and (3) NASDAQ quotation entry through terminals other than those operated by the NASD. Finally, Instinet argues that NASD's rule filing is incomplete because it does not discuss the competitive implications of these issues.

The Midwest Stock Exchange's comment focused on unsuccessful attempts by a Midwest affiliate "to obtain access on reasonable terms to [an NASD information] service for use in its own over-the-counter execution service." [3] Consequently, Midwest argues against the approval of SOES until access is provided.[4]

Because the Instinet and Midwest letters raise important issues warranting careful consideration, the Commission requires additional time to consider these issues in more detail. At the same time, the Commission recognizes that SOES will provide major order routing, execution, comparison and clearance efficiencies in the OTC market and that the NASD has been preparing SOES for a start-up in December, 1984. The Commission does not believe that this system should be delayed unless there are significant policy or legal concerns with the initial operation of SOES.

In this regard, the Commission notes that Instinet does not take issue with the concept of SOES, but only with the fees attendant to the system and matters relating to system access. While the Commission will study these issues in depth as it considers the underlying SOES filing, the Commission does not believe that approval of SOES on a temporary basis would seriously prejudice Instinet's, or any other competing system's, interests. If the Commission agrees with Instinet's concerns, the Commission believes that requiring charges or additional access to SOES after the expiration of this temporary approval will adequately protect Instinet's interest. In any event, the Commission believes that any potential harm to Instinet or other competing systems in this 60 day period is more than outweighed by the benefit to the public of the timely implementation of SOES.

With respect to the Midwest's comment, the Commission understands that representatives of the NASD and Midwest have been negotiating on the terms of Midwest's access to NASDAQ Level 1 information and that the parties are close to finalizing an agreement on the matter.[5] By letter dated December 12, 1984, NASD informed Midwest that it would have no objection to Midwest instituting its service using NASDAQ Level 1 information, pursuant to the terms of their draft agreement, as amended by their discussions, assuming that Midwest continues to negotiate in good faith on the remaining issues.[6] Based on the NASD's agreement that Midwest can proceed with its service, the Commission believes that Midwest's objection to the implementation of SOES has been adequately addressed. The Commission will monitor the discussions between Midwest and the NASD and will readdress this area as part of its consideration of SR–NASD–84–28 if the parties have not resolved the remaining issues by that time.

Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting comments should file six copies with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments should refer to File No. SR–NASD–84–32. Copies of the submission and all related items, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of the filing also will be made available at the principal office of the NASD.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the

[1] Letter to Shirley E. Hollis, Acting Secretary, SEC, from Daniel T. Brooks, Counsel to Instinet, dated November 30, 1984.

[2] Letter to Shirley E. Hollis, Acting Secretary, SEC, from Kenneth I. Rosenblum, President, Midwest, dated December 7, 1984.

[3] Midwest seeks access to the "NASDAQ Level 1 Service," which provides, among other things, the best bid and best offer in a security. Midwest's affiliate presently provides an OTC automatic execution service in which Troster Singer is the sole dealer, and seeks to expand the service to include other dealers. The availability of this service is a prerequisite to the provision of an OTC automatic execution service.

[4] The NASD has submitted a letter to the Commission's Division of Market Regulation in response to the Midwest letter in which it argues that it has dealt with Midwest in good faith with respect to Midwest's access to NASDAQ Level 1 information and that SOES should not be delayed pending resolution of that dispute. Letter to Richard G. Ketchum, Director, Division of Market Regulation, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated December 12, 1984.

[5] Letter to Kenneth I. Rosenblum, President, Midwest, from C. Richard Justice, Executive Vice President, NASD, dated December 12, 1984. The letter states that "[t]he only issues remaining to be resolved are protection of the NASD's trademark and service market in "Nasdaq" and provision by [Midwest] of a sufficiently detailed description of the MAX–OTC service as envisioned by the contract."

[6] The Commission also will consider the parties' negotiating progress in connection with its review of SR–NASD–84–26, which contains a general description of SOES and must be approved prior to SOES moving from pilot status to a permanent system.

rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1)(B) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that accelerated approval and the commencement of SOES operation will benefit public investors by providing more rapid and cost-effective processing of transactions while assuring that such transactions are affected at the best price available in the market at any particular point in time. The Commission recognizes that the NASD has prepared its system for initial operation on December 14, 1984 and its members also have prepared for initial operation on that date. The Commission also notes that the issues involving SOES have been noticed for public comment and, as discussed above,[1] the Commission believes that the benefits of approval of this temporary rule change outweigh any potential adverse effects to the commentators or other market participants during the short period of the rule change's effectiveness.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-836 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

[SR-NYSE-84-36; RD. No. 21635]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

January 7, 1985.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, New York 10005, submitted on November 13, 1984, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to institute rate increases affecting initial and continuing annual listing fees for both equity securities and bonds. According to the NYSE, the fee increase, effective January 1, 1985, will serve to partially offset the increased costs of marketplace services provided by the Exchange.

[1] *See* pp 3-4, *Supra.*

Notice of the proposed rule change together with the specific revised rate increase for both equity securities and bonds was given by the issuance of a Commission release (Securities Exchange Act Release No. 21510, November 21, 1984) and by publication in the **Federal Register** (49 FR 47145, November 30, 1984). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552) were made available to the public at the Commission's Public reference Room.

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, and the Rules and the Regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned 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. 85-833 Filed 1-10-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Designation of Disaster Loan Area #6210; Amdt. #3]

Designation of Disaster Loan Area; California

The above numbered designation of Disaster Loan Area (49 FR 43142), Amendment #1 (49 FR 45516), and Amendment #2 (49 FR 47584) are amended by adding San Diego County within the State of California, as a result of Pub. L 98-473, El Nino related ocean conditions in the Pacific Ocean beginning December 1982. All other information remains the same, i.e., applications for loans for economic injury may be filed until the close of business on July 22, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 3, 1985.

Robert A. Turnbull,

Acting Administrator.

[FR Doc. 85-793 Filed 1-10-85; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0357]

Latigo Capital Partners II; Application for a License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), (15 U.S.C. *et seq.*), and the Rules and Regulations promulgated thereunder.

Applicant: Latigo Capital Partners II

Address: 23410 Civic Center Way, Suite E-2, Malibu, CA 90265

Donald Peterson, 23410 Civic Center Way, Suite E-2, Malibu, CA 90265—General Partner

Robert A. Peterson, 23410 Civic Center Way, Suite E-2, Malibu, CA 90265—General Partner

Latigo Ventures II, Limited Partner, Ownership—99 percent

Cambridge Partners, 23410 Civic Center Way, Suite E-2, Malibu, California—General Partner of Applicant's Limited Partner, 20% of Applicant's Partner

Donald Peterson owns 50 percent of Cambridge Partners

Proposed Private Capital: $1,010,000

Area of Operations: State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, and including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street NW, Washington, D.C. 20416.

A copy of this Notice should be published once in a newspaper of general circulation in the Malibu, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 4, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-792 Filed 1-10-85; 8:45 am]

BILLING CODE 8025-01-M

Notice of Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time an additional Small Business Development Center (SBDC) in Sacramento, California, during fiscal year 1985. Currently, there are 36 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be received until March 12, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson, (202) 653-6768.

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this SBDC and providing the mailing address of the proposal developer is provided below. In addition to his publication, a copy of ths notice is being simultaneously furnished to the affected State singly point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments must also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration 1441 L. Street, NW., Washington, D.C. 20416. Comments will be accepted by the relevant proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The relevant proposal developer will make every effort to accommodate these comments during the 60-day period. It the comments cannot be accommodated by the relevant proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish and explanation to the commener of why accommodation cannot be attained prior to funding the SBDC.

Description of the SBDC Program

Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under Section 21 of the Small Business Act (15 U.S.C. 648). SBDC's opeate pursuant to the provisions of Section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program announcement. The Program represents a partnership between SBA and the State-endorded organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business

owners or prospective small business owners in complex areas that require specilized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is reponsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district offfice.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: January 7, 1985.

Irenemaree Castillo,

Acting Administrator.

Address of Proposed SBDC and Proposal Developer

Ms. Christy M. Campbell, State of California Department of Commerce, 1121 L Street, Suite 600, Sacramento, California 95814, (916) 324-8102.

[FR Doc. 85-795 Filed 1-10-85; 8:45 am]

BILLING CODE 8025-01-M

Reporting and Recordkeeping Requirement Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting and Recordkeeping Requirement Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirement to OMB for review and approval, and to publish notice in the **Federal Register** that the agency has made such a submission.

DATE: Comments must be received on or before February 1, 1985. If you anticipate commenting on a submission but find that time to prepare will prevent you from submitting comments promptly, advise the OMB reviewer and the Agency Clearance Officer of your intent as early as possible before the comment deadline.

Copies: Copies of the form, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Elizabeth M. Zaic, Small Business Administration, 1441 L St., N.W., Room 200 Washington, D.C. 20416, Telephone: (202) 653-8538.

OMB Reviewer: Kenneth B. Allen, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building, Washington, D.C. 20503 Telephone: (202) 395-3785.

Information Collection Submitted for Review

Title: SBDC Clearinghouse Feasibility Study

Frequency: One time reporting

Description of Respondents: Information will be obtained from the small business development companies presently participating in the program. The information obtained will be used to determine, the type of clearinghouse needed, best location, required resources, issues surrounding computerization.

Annual Responses: 43

Annual Burden Hours: 150

Type of Request: New.

Dated: January 7, 1985.

Richard Vizachero,

Acting Chief, Information Resources Management Branch, Small Business Administration.

[FR Doc. 85-894 Filed 1-10-85; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Philadelphia, Pennsylvania, will hold a public meeting at 8:30 a.m. Wednesday, January 23, 1985, at the Federal Reserve Bank of Philadelphia.

100 N. 6th Street, Philadelphia, Pennsylvania, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William T. Gennetti, District Director, U.S. Small Business Administration, One Bala Plaza, Suite 400–East Lobby, 231 St. Asaphs Road, Bala Cynwyd, Pennsylvania 19004 (215) 596–5801.

Jean M. Nowak,

Director, Office of Advisory Councils.

January 7, 1985.

[FR Doc. 85–895 Filed 1–10–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review Enhancement (NARE)

Correction

In FR Doc. 84–32943 beginning on page 49402 in the issue of Wednesday, December 19, 1984, make the following correction:

On page 49402, second column paragraph (3), in the seventh line from the bottom, insert the following after the word "for":

"Administration, AAD–1. Also, the FAA Associate Administrators for"

BILLING CODE 1505–01–M

Federal Highway Administration

Environmental Impact Statement; Passaic County, NJ

The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Passaic County, New Jersey.

FOR FURTHER INFORMATION CONTACT: Lloyd J. Jacobs, Staff Specialist for the Environment, Federal Highway Administration, 25 Scotch Road, Second Floor, Trenton, New Jersey 08628, Telephone: (609) 989–2169.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Jersey Department of Transportation (NJDOT) will be preparing an Environmental Impact Statement on a proposal to construct, on new alignment, an extension of Route 21 Freeway (07N]810013) in Passaic County, New Jersey.

The proposed project would consist of the construction of a four-lane freeway between the existing terminus of Route 21 Freeway near Monroe Street, Passaic City, to Route 46 in Clifton, a distance of approximately two miles.

The purpose of the proposed project is to relieve congestion on local streets caused by through traffic and high truck volumes at the present terminus of Route 21 near Monroe Street in Passaic, and on other local streets such as Dayton Avenue, Parker Avenue, Randolf Avenue, and Lexington Avenue. The extremely high traffic volumes cause severe congestion and delays to local emergency services and unsafe conditions for motorists and pedestrians. The proposed extension of Route 21, in addition to relieving congestion on local roadways, would support local planning objectives.

Alternatives under consideration include (1) extension as a freeway from the present terminus of Route 21 Freeway in the vicinity of Monroe Street to Route 46, (2) Shift A, an easterly shift to reduce encroachment on the Dundee Canal, a site listed on the National Register of Historic Places, (3) Shift B, this alignment utilizes the land between the canal and the river and is also intended to avoid the canal, (4) the No-Build Alternative. The FHWA and NJDOT will consult with other government agencies on their areas of responsibility. A formal scoping meeting will be held if sufficient interest is expressed and Federal and State agencies with permit or commenting responsibilities will be invited. Information meetings will also be held for the public in the project area.

Issued on: January 4, 1985.

John J. Kessler, Jr.,

Division Administrator, Trenton, New Jersey.

[FR Doc. 85–920 Filed 1–10–85; 8:45 am]

BILLING CODE 4910–22–M

Research and Special Programs Administration

Applications for Renewal or Modification of Exemptions or Applications to Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc. they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes January 25, 1985.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2000-X	Union Carbide Corp., Danbury, CT	2000
2709-X	United Technologies Corp., San Jose, CA.	2709
3109-X	U.S. Department of Defense, Washington, DC.	3109
3109-X	HR Textron, Inc., Pacoima, CA	3109
4242-X	U.S. Department of Defense, Washington, DC.	4242
4884-X	Union Carbide Corp., Danbury, CT	4884
5022-X	United Technologies Corp., San Jose, CA.	5022
5022-X	Morton Thiokol, Inc., Elkton, MD	5022
5206-X	Mesabi Powder Co., Hibbing, MN	5206
5206-X	Austin Powder Co., Cleveland, OH	5206
5248-X	Rockwell International Corp., Anaheim, CA.	5248
5643-X	Union Carbide Corp., Danbury, CT [1]	5643
6126-X	Dow Chemical Co., Midland, MI	6126
6629-X	Fenwal, Inc., Ashland, MA	6629
6686-X	Chilton Metal Product Division, Chilton, WI	6686
6773-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	6773
7252-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	7252
7413-X	Chilton Metal Products Division, Chilton, WI.	7413
7708-X	HTL Industries, Inc., Duarte, CA [1]	7708
7862-X	General Electric Co., Milwaukee, WI.	7862
7873-X	Bromine Compounds, Ltd., Beer Sheva, Israel	7873
8017-X	Air Products and Chemicals, Inc., Allentown, PA [1]	8017

Application No.	Applicant	Renewal of exemption
8083-X	Matson Navigation Co., San Francisco, CA.	8083
8096-X	Pressure-Pak Container Company, Inc., East Hampton, CT [1].	8096
8129-X	University of Maryland, College Park, MD.	8129
8129-X	Union Carbide Corp., Danbury, CT	8129
8129-X	Hopkins Agricultural Chemical Co., Madison, WI.	8129
8129-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	8129
8129-X	Union Carbide Agricultural Products Co., Danbury, CT.	8129
8184-X	Trojan Corp., Salt Lake City, UT	8184
8214-X	Mercedes-Benz of North America, Inc., Montvale, NJ [1].	8214
8361-X	Yellow Spring Instrument Co., Inc., Yellow Spring, OH.	8361
8445-X	Rollins Environmental Services, Inc., Chadds Ford, PA.	8445
8516-X	Atlas Powder International, Ltd., Miami, FL.	8516
8523-X	Fauvot-Girel, Paris France	8523
8564-X	Eaton Corp., formerly Bunker Ramo Electronic Systems, Westlake Village, CA.	8564
8569-X	General Dyanmics Corp., Fort Worth, TX.	8569
8569-X	U.S. Department of Defense, Washington, DC.	8569
8571-X	EM Science, Cincinnati, OH	8571
8737-X	Webb Equipment Co., Santa Maria, CA.	8737
8814-X	Structural Composites Industries, Inc., Pomona, CA [1].	8814
8815-X	Atlas Powder Co., Dallas, TX	8815
8864-X	Miller Transporters, Inc., Jackson, MS.	8864
8872-X	Chase Bag Co., Oak Brook, IL [1]	8872
8901-X	Hopkins Agricultural Chemical Co., Madison, WI.	8901
8901-X	Soweco, Inc., Amarillo, TX	8901
8904-X	Keith Huber, Inc., Gulfport, MS	8904
8917-X	Morrison-Knudsen Co., Inc., Boise, ID.	8917
8940-X	Syntex Chemicals, Inc., Boulder, CO.	8940
8947-X	Townsend, Inc., Worcester, MA	8947
8948-X	Immuno Nuclear Corp., Stillwater, MN.	8948
8953-X	Foseco, Inc., Brookpark, OH	8953
8955-X	Dresser Industries, Inc., Houston, TX.	8955
8965-X	Pressed Steel Tank Co., Inc., Milwaukee, WI.	8965
8968-X	Degussa Corp., Teterboro, NJ	8968
8983-X	Universal Propulsion Co., Inc., Phoenix, AZ.	8983
8995-X	Olin Corp., Stamford, CT	8995
8995-X	Worum Chemical Co., Saint Paul, MN.	8995
9019-X	Completion Services, Inc., Lafayette, LA.	9019
9057-X	Olympic Chemical Co., Orange, CA [1].	9057
9306-X	R.M.B. Products, Inc., Simi Valley, CA [1].	9306

[1] To renew, to make certain proper shipping name, retest and travel time changes and to delete reference to certain venting reports and inspections.

[2] To authorize carbon dioxide with 2% by volume helium, nonflammable gas as additional commodity and to include an additional design pressure vessel.

[3] To authorize an additional gas mixture classified as an flammable gas.

[4] To authorize fiberboard containers for shipment of passive restraint systems.

[5] To renew and to modify the formula criteria and to modify data for cylinders over 4 feet in length.

[6] To authorize shipment of rubber scrap, flammable solid as an additional commodity and to authorize bulk bags to be manufactured of 3 mil polyethylene.

[7] To authorize an alternate angle valve similar to the one presently authorized except for shape of side port to be used on chlorine cargo tanks.

[8] To authorize nitric acid not to exceed 70%, classed as an oxidizer, as an additional commodity.

Application	Applicant	Parties to exemption
2582-P	Synthatron Corp., Parsippany, NJ	2582
5600-P	Synthatron Corp., Parsippany, NJ	5600
5951-P	Jones Chemicals, Inc., Caledonia, NY.	5951
6267-P	Imperial Plastics, Evansville, IN	6267
6762-P	Texo Corp., Cincinnati, OH	6762
7052-P	Ballard Technologies Corp., North Vancouver, B.C.	7952
8129-P	Environmental Technology Specialty Services, West Chester, OH.	8129
8129-P	Spencer Kellogg, Division of Textron, Inc., Buffalo, NY.	8129
8129-P	Radiac Research Corp., Brooklyn, NY.	8129
8129-P	Fred Hutchinson Cancer Research Center, Seattle, WA.	8129
8230-P	Seastar Chemicals, Div. of Seastar Instruments, Sidney, S.C., Canada.	8230
8445-P	SET Liquid Waste Systems, Inc., Wheeling, IL.	8445
8445-P	Radiac Research Corp., Brooklyn, NY.	8445
8445-P	Environmental Technology Specialty Services, West Chester, OH.	8445
8445-P	Environmental Response, Inc., Nashville, TN.	8445
8445-P	Northwestern University, Evanston, IL.	8445
8845-P	Four Way Logging & Perforating, Inc., Colorado City, TX.	8845
8968-P	Flopetrol Johnson, Houston, TX	8968
9294-P	Occidental Chemical Corp., Niagara Falls, NY.	9294
9374-P	Poly Cal Plastics, Inc., Stockton, CA.	9374

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 4, 1985.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-925 Filed 1-10-85; 8:45 am]

BILLING CODE 4910-60-M

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1-Motor vehicle, 2-Rail freight, 3-Cargo vessel, 4-Cargo-only aircraft, 5-Passenger-carrying aircraft..

DATE: Comment period closes February 11, 1985.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis Materials Transportation Bureau U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
9363-N	Columbia University, in the City of New York, New York, NY.	49 CFR 173.302	To authorize shipment of certain flammable and nonflammable gases in non-DOT specification cylinders comparable to DOT Specification 3A except they are manufactured of monel, to be incorporated in a specially designed gas system (mode 1).
9364-N	Security Chemical Company, Fort Valley, GA	49 CFR 173.359	To authorize shipment of a poison B liquid, n.o.s, in DOT Specification 12P fiberboard boxes each containing two 2½ gallon 2U containers (mode 1).
9365-N	Giles Tool Agencies, Limited, Scarborough, Ontario, Canada.	49 CFR 173.304(d)(3)(ii), note 2	To manufacture, mark and sell non-DOT specification containers similar to DOT Specification 2Q, except for larger capacity, for shipment of a liquefied petroleum gas mixture-propane/isobutane, classed a flammable gas (modes 1, 2).
9366-N	Dowell Schlumberger, Tulsa, OK	49 CFR 172.101, 175.30, 175.315	To authorize shipment of nitrogen, refrigerated liquid, classed as a nonflammable gas, in non-DOT specification portable tanks of 1,000 or 2,000 gallon capacity (mode 4).

NEW EXEMPTIONS—Continued

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
9367-N	Marino, Technology/Champion, International Corp., West Nyack, NY.	49 CFR 173.154, 173.182, 173.245b	To manufacture, mark and sell non-DOT specification polypropylene bags of approximately 2,000 pound capacity, for shipment of various oxidizer and corrosive solids (modes 1, 2).
9368-N	Wonder Corporation of America, Norwalk, CT	49 CFR 173.304(d)(3)(ii), 178.65, Note 2	To authorize shipment of a liquefied petroleum gas mixture, propane/butane, classed as flammable gas in non-DOT specification cylinders, not to exceed 12 ounce capacity, patterned after DOT Specification 39 (modes 1, 3).
9370-N	NI Industries, Inc., Longview, TX	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To manufacture, mark and sell non-DOT specification cylinders patterned after DOT Specification 3T, for shipment of those gases authorized in DOT 3AA and 3T cylinders (modes 1, 2, 3, 4).
9371-N	Ronson Aviation, Inc., Trenton, NJ	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment (mode 4).
9372-N	Gearhart Industries, Inc., Fort Worth, TX	49 CFR 173.110(c)(1), 173.53(u), 173.80(b)	To authorize transportation of charged oil well jet perforating guns equipped with detonator and arrest device, classed as explosive A or C (mode 1).
9373-N	T. H. Baylis Company, Warwick, RI	49 CFR 173.268	To authorize shipment of nitric acid, classed as an oxidizer, in DOT Specification 57 portable tanks (mode 1).
9374-N	Poly Processing Company, Inc., Monroe, LA	49 CFR 173.266, 178.19, Part 173, Subpart D, F	To manufacture, mark and sell non-DOT specification cross-link polyethylene tanks of approximately 200 to 400 gallon capacity for shipment of hydrogen peroxide, classed as an oxidizer and certain corrosive and flammable liquids (modes 1, 2, 3).
9375-N	Magnavox Government and Industrial Electronics Co., Fort Wayne, IN	49 CFR 173.64, 173.66, 173.69	To make a one-time shipment of various scrap explosives, whose true identity and classification cannot be ascertained, as Class A explosive (mode 1).

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 4, 1985.

Joseph T. Horning,

Chief, Exemptions and Approvals Division, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-924 Filed 1-10-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 8
Friday, January 11, 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

	Items
Federal Deposit Insurance Corporation	1
Federal Maritime Commission	2
Occupational Safety and Health Review Commission	3, 4
Uniformed Services University of the Health Sciences	5

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:25 p.m. on Tuesday, January 8, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in State Bank of Dannebrog, Dannebrog, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Monday, January 7, 1985.

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 matter 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 matter in a meeting open to public observation; and that the matter 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: January 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-1000 Filed 1-9-85; 3:05 pm]

BILLING CODE 6714-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 a.m., January 16, 1985.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTER TO BE CONSIDERED: Portions open to the public:

1. Petition of Several Conferences for Rulemaking Proceeding Concerning Determination of Shippers' Associations—Consideration of comments submitted in response to notice of filing of petition.
2. Docket No. 83-38—Notice of Inquiry and Intent to Review Regulation of Ports and Marine Terminal Operators—Consideration of Final Report of Inquiry Officer.

Portions closed to the public:

1. Petition of the American Intitute for Shippers' Associations, Inc., for Amended Statement of Policy Concerning Status of Shippers' Associations Under the Shipping Act of 1984—Consideration of comments submitted in response to the notice of filing of petition.
2. Request of "8900" Lines, et al. that the Federal Maritime Commission support their Petition Before the Interstate Commerce Commission To Institute Rulemaking Proceeding.
3. Matson Navigation Company Overall Rate Increase of 2.5 percent in the trade Between United States Pacific Coast Ports and Hawaii.
4. Docket No. 84-6—The Port Authority of New York and New Jersey v. New York Shipping Association, et al., and Docket No. 84-8—Puerto Rico Maritime Shipping Authority and Puerto Rico Marine Management, Inc. v. New York Shipping Association—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Assistant Secretary (202) 523-5725.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-1019 Filed 1-9-85; 3:58 pm]

BILLING CODE 6730-01-M

3

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, February 14, 1985.

PLACE: Suite 316, 1825 K Street, NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: January 9, 1985.

Earl R. Ohman, Jr.,

Acting General Counsel.

[FR Doc. 85-994 Filed 1-9-85; 2:30 pm]

BILLING CODE 7600-01-M

4

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 49 FR 48649 December 13, 1984.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m. on January 17, 1985.

CHANGES IN THE MEETING: The meeting is rescheduled at 10:00 a.m. on January 24, 1985.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: January 9, 1985.

Earl R. Ohman, Jr.,

Acting General Counsel.

[FR Doc. 85-995 Filed 1-9-85; 2:30 pm]

BILLING CODE 7600-01-M

5

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:00 a.m., January 18, 1985.

PLACE: Uniformed Services University of the Health Sciences, Room D3-001, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

STATUS: Open—under 5 U.S.C. 552b(e)(3).

MATTERS CONSIDERED:

8:00 MEETING—BOARD OF REGENTS

(1) Approval of Minutes—November 19, 1984; (2) Faculty Appointments; (3) Report—Admissions; (4) Report—Associate Dean for Operations: Budget; (5) Report—President, USUHS: (a) University Awards, (b) Graduate and Continuing Education: (1) Certification of Graduate Students, (2) Associate Dean for Continuing Education; (c) F. Edward Hebert School of Medicine: Internship Selections; (d) Henry M. Jackson Foundation for the Advancement of Military Medicine; (e) Informational Items; (6) Comments by Members, Board of Regents; (7) Comments by Chairman, Board of Regents

New Business.

Scheduled Meetings: April 15, 1985.

CONTACT PERSON FOR MORE INFORMATION: Donald L. Hagengruber, Executive Secretary of the Board of Regents, 202/295–3049.

Dated: January 9, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–982 Filed 1–9–85; 12:34 pm]

BILLING CODE 3810–01–M

Federal Register

Friday
January 11, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Government Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA84-5022	Oct. 5, 1984.
CA83-5119	Sept. 16, 1983.
Illinois: IL83-2037	Apr. 29, 1983.
New York: NY84-3048	Dec. 7, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Illinois: IL82-2049(IL85-5002)	Oct. 15, 1982.
Minnesota: MN83-2001(MN85-5000)	Jan. 14, 1983.
Tennessee: TN83-1090(TN85-1001)	Dec. 30, 1983.
Virginia:	
VA83-3039(VA85-3000)	Sept. 30, 1983.
VA83-3030(VA85-3001)	Do.
VA83-3026(VA85-3004)	Do.

Signed at Washington, D.C., this 4th day of January 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CA84-5022-Mod.#3 (49 FR 39416-October 5, 1984) Alameda, Alpine, Amador Counties, etc., California	Basic Hourly Rates	Fringe Benefits
Omit:		
Electricians:		
Area 9:		
Electricians		
Cable Splicers		
Add:		
Electricians:		
Area 9:		
Zone 1:		
Electricians	$17.37	$4.45 + 3.25%
Cable Splicers	19.11	4.45 + 3.25%
Zone 2:		
Electricians	19.12	4.45 + 3.25%
Cable Splicers	21.03	4.45 + 3.25%
Zone 3:		
Electricians	20.37	4.45 + 3.25%
Cable Splicers	22.41	4.45 + 3.25%
Definition of Zones:		
Zone 1: Eight (8) road miles from the City Halls of Merced, Modesto and Turlock. 0-2 air miles from the intersection of Washington St. and Stockton Road, Sonora. All of Merced and Stanislaus Counties to that point 200 yds. west of and parallel to Highway I-5.		
Zone 2: 2-4 air miles from the intersection of Washington St. and Stockton Road, Sonora.		
Zone 3: All of Mariposa, Merced, Stanislaus and Tuolumne Counties not in Zones 1 or 2.		

DECISION NO. CA83-5119-Mod.8 (48 FR 41702 - September 16, 1983) San Diego County, California	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Carpenters	$19.16	$4.76
Piledriver	19.41	4.76
Millwright; Pneumatic Nailer; Hardwood Floorlayer	19.76	4.76

DECISION #IL83-2037-MOD#4 (48 FR 19583-April 29, 1983) Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin	Basic Hourly Rates	Fringe Benefits
CHANGE:		
DIPPER & HYDRAULIC DREDGING:		
*Chief Engineer	$21.21	2.23+a
Operators	21.04	2.23+a
Assistant Engineer	20.33	2.23+a
Welder	20.16	2.23+a
Craneman-Dipper Dredging	20.16	2.23+a
Spill Barge Operator Hydraulic Dredging	20.16	2.23+a
DRILL BOATS:		
Engineer	17.02	2.23+c
Blaster	17.20	2.23+c
Fireman	16.48	2.23+c
Driller, Welder, Machinist	17.03	2.23+c
Oiler	16.20	2.23+c
FLOATING EQUIPMENT CLAMSHELL DRAGLINE & MARINE CONSTRUCTION		
Projects less than $250,000.00:		
New York: (Cattaraugus, Chautauqua, Erie and Orleans Counties):		
Oiler	13.50	4.45+g
Projects $250,000.00 or more:		
All Areas:		
Engineer & Operator	21.65	i
Equipment Operator	19.20	i
Fireman	18.10	i
Oiler	16.00	i

DECISION NO. NY84-3048 MOD. # 1 (49FR 47963 - DECEMBER 7, 1984) JEFFERSON COUNTY, NEW YORK	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS & PIPEFITTERS	15.81	3.02

	Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: ILLINOIS
DECISION NUMBER: IL85-5002
COUNTIES: PEORIA & TAZEWELL
DATE: Date of Publication
Supersedes Decision No. IL82-2049, dated October 15, 1982, in 47 FR 46221
DESCRIPTION OF WORK: Building and Residential Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.00	$3.78
BOILERMAKERS	18.50	2.605
BRICKLAYERS; Stonemasons	15.91	3.22
CARPENTERS: Commercial:		
Peoria Co. (Chillicothe area)		
Millwrights	15.28	2.68
Carpenters; Piledrivermen; and Soft Floor Layers	15.03	.68
Tazewell Co. (N. 1/3) and Peoria (Remainder of Co.):		
Carpenters & Soft Floor Layers	15.68	3.07
Millwrights; Piledrivermen	16.18	3.07
Tazewell Co. (S. 2/3):		
Carpenters & Soft Floor Layers	15.68	3.07
Millwrights; Piledrivermen	16.18	3.07
RESIDENTIAL:		
Peoria Co.(Chillicothe area)	13.68	2.68
Tazewell & Peoria (Remainder)	14.36	2.82
CEMENT MASONS	15.43	3.15
ELECTRICIANS:		
Electricians	17.12	2.25+ 3.75%
Cable Splicers	18.82	2.25+ 3.75%
ELEVATOR CONSTRUCTORS:		
Mechanics	16.425	3.004+b
Helpers	70%	3.004+b
Probationary Helpers	50%	
GLAZIERS	16.24	2.004+ 7%
IRONWORKERS	15.665	3.66
LATHERS	12.67	1.14
MARBLE SETTERS; Terrazzo Workers & Tile Setters	15.56	3.22
MARBLE, TERRAZZO & TILE FINISHERS:		
Marble & Tile Finishers	14.74	3.05
Terrazzo Finishers and Floor Machine Operators	14.67	3.05
Base Machine Operators	15.12	3.05
PAINTERS:		
Brush	15.35	2.35
Spray, Steel, Sandblast	16.20	2.39
Residential Painter	14.35	2.38
PLASTERERS	15.59	3.15
PLUMBERS; Pipefitters; and Steamfitters:		
Peoria & Tazewell	16.84	3.50
ROOFERS	17.09	1.70
SHEET METAL WORKERS:		
Commercial	16.75	2.61+c
Residential	10.89	1.26+c
SPRINKLER FITTERS	16.67	2.83
LABORERS:		
Peoria Co. and the City of East Peoria in Tazewell Co.		
Group 1	14.07	2.93
Group 2	14.195	2.95
Group 3	14.32	2.95
Group 4	14.245	2.95
Group 5	14.445	2.95
Remainder of Tazewell Co.:		
Unskilled	14.67	2.35
Semi-skilled	14.67	2.35
Skilled	15.07	2.35
POWER EQUIPMENT OPERATORS:		
Group 1	16.64	2.95
Group 2	15.91	2.95
Group 3	14.98	2.95
TRUCK DRIVERS:		
Group 1	14.275	1.90+d
Group 2	14.675	1.90+d
Group 3	14.875	1.90+d
Group 4	15.125	1.90+d

FOOTNOTES:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day
b. Employer contributes 8% of regular basic hourly rate to vacation for employees with more than 5 year's service and 6% for less than 5 year's service.
c. 5% of gross earnings to SASMI
d. $55.00 per week
Welders receive rate for craft performing operation to which welding is incidental.
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii).

CLASSIFICATION DEFINITIONS

LABORERS: Peoria County & the City of East Peoria in Tazewell County.

GROUP 1 - Bricklayers' Tenders; Carpenter Tenders; Cement Mason Tenders; Common Laborers; Concrete Form Dismantler; Curing Concrete; High Pressure Hose; Stone & Tile Derrickmen; Tool Crib Men; Wall Men & House Movers; Window Washers; & Wrecking & Dismantling Old Buildings

GROUP 2 - Air Tamper; Cement Men & Sack Shakers; Chain Saw; Compactor, Rammer Type; Concrete Saw; Dismantler in Composite Crew With Carpenters; Drill Operator; Jackhammer; Kettlemen & Carriers; Men Handling Hot Stuff; Paving Breaker; Plasterers' Tenders; Setting Up & Using Laser Beam Equipment; & Signalling & Spotting of Buckets on Rig or Rig Men

GROUP 3 - Gunnite Pumpmen & Pots; Sandblasting Pump Men & Pots; Setting Up & Using Concrete Burning Bars; Tile Layers or Laterial Sewer; Underpinning & Shoring of Existing Buildings & Unloading & Handling of Creosote Materials

GROUP 4 - Power Wheel Barrow or Buggies

GROUP 5 - Cutting & Acetylene Torch; Gunnite Nozzle Men; Sandblastic Nozzle Men; & Woodblock Setters

LABORERS: Remainder of Tazewell County

Unskilled - Carpenter Tender; Tool Cribmen; Cleaning and Oiling of Machinery and Tools; Firemen or Salamander Tenders; Gravel box men; Form Handlers; Material handlers; Fencing Laborers; Cleaning Lumber; Pit Men; Landscapers; Unloading Explosives; Laying of Sod; Planting of Trees; Removal of Trees; Pile Driver Helpers; Asphalt Plant Helpers; Wrecking Laborers; Fireproofing Laborers; Driving of Stakes, String Lines for all Machinery; The Unloading and Laborers with Steel workers and re-bars; Mason Tenders; Scaffold Workers; Laborers with De-Watering Systems; Plaster Tenders; Truck Driver Helper to Load and Unload Materials

Semi-Skilled - Handling of materials treated with oil, creosote, asphalt and/or foreign material harmful to skin or clothing, by any mode or method; Track Laborers; Cement Handlers; Concrete Workers (Wet); Cloride Handlers; Tunnel Helpers in free air; Batch Dumpers; Kettle and Tar Men; Tank Cleaners; Plastic Installers; Motorized Buggies or Motorized Units used for wet concrete or building materials; Sewer Workers; Vibrator Operators; Mortar Mixer Operators; Cement Silica, Clay, Fly Ash, Lime and Plaster Handlers (bulk or bag); Cofferdam Workers; On concrete paving, placing, cutting and tying of reinforcing; Deck Hand, dredge hand and shore laborers; Bank men on floating plant; Asphalt workers and layers with machine; Grade checker, dumpmen, and spotter where grade is to be established; Power tools; Chain saw operators; Jackhammer and drill operators; Air tamping hammerman; Tree topping; Signalling and Spotting of Rigs and Equipment; Stripping Concrete Forms, with composite crew of Laborers and Carpenters. This applies only to forms erected by Carpenters with laborers tending them. High pressure water jetting workers

LABORERS: Remainder of Tazewell Co. (Cont'd)

Skilled - Caisson workers plus depth; Gunnite Nozzle men; Lead man on sewer work; Welders, Cutters, burners and torchmen to include but not limited to scrap; Layout man and/or tile layer; Steel form setters - street and highway; Concrete saw operator; Screenman on asphalt pavers; Front end man on chip spreader; Laborers tending masons with hot materials or where foreign materials are used; Multiple concrete duct - leadman; Lutenan; Curb asphalt machine operator; Ready mix scalemen, permanent, portable or temporary plant; Laborers handling masterplate or similar materials; Laser beam operator; Concrete burning machine operator; Coring machine operator; Underpinning and shoring of buildings; Dynamite shooter; Setting and Using of all laser beam equipment; Setting up and Using of all concrete burning bars, whether burning concrete or any type of material; Operation of high pressure water jetting (over 3000 PSII gun

POWER EQUIPMENT OPERATORS

GROUP 1 Cranes and Derrick Booms ($0.01 per hour per foot over 80ft including jib, $1.00 per hour over scale when crane or derrick boom is positioned 50' or more adjacent ground level or water level), Overhead cranes, Cradall, all cherry pickers, mechanics, central concrete mixing plant operator, road pavers (27E - dual drum - tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels, skimmer scoops, Koehring scooper, drag lines, backhoe, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types),motor patrol, Power blades - Dumote - elevating and similar types, tower cranes (crawler-mobile) and stationary, crane-type backfiller, Drott Yumbo and similar types considered as cranes, caisson rigs, dozer, tournadozer, work boats, Ross carrier, helicopter, tournapulls - all and similar types, scoops (all sizes), pushcats, endloaders (all types), asphalt surfacing machine, slip form paver, rock crusher, heavy equipment operator, CMI, CMI belt placer,auto grade & 3 track and similar types, side booms, multiple unit earth movers ($0.25 per hour for each scoop over one), crater crane, trench machine, Pumpcrete-belt-crete-squeeze cretes-screw type pumps and gypsum, bulker and pump, foreless finishing machine,Flaherty spreader or similar types, screed man on lay down machine, wheel tractors (industrial or farm type w/dozer-hoe-end loader or other attachments, F.W.D. & similar types, vermeer concrete saw.

GROUP 2 Dinkeys, Power launches, PH one-pass soil-cement machine and similar types, pugmill with pump, backfillers, Euclid loader, forklifts, Jeeps w/ditching machine or other attachments, tumeluger, automatic cement and gravel batching plants, mobile drills (soil testing) and similar types, gurries & similar types, 1 and 2 drum hoists (buck hoists and similar types), Chicago boom, boring machine & pipe jacking machine, Hydro boom, dewatering system, straw blower, hydro seeder, assistant heavy equipment greaser on spread, tractors (track type) without power unit pulling rollers, rollers on asphalt - brick macaden, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines & CMI texture & reel curing machines, cement finishing machine, Barber Green or similar loaders, vibro tamper (all similar types) self-propelled, winch or boom truck, mechanical bull floats, mixers over 3 bag to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, truck type hoptoe oilers, fireman, spray machine on paving, curb machines, truck crane oilers, oil distributor, 3-4 small equipment, oiler and one small equipment.

POWER EQUIPMENT OPERATORS (Cont'd)

GROUP 3 Air compressor 1 or 2, power subgrader, straight tractor, trac air without attachments, Herman Nelson heater, Bravo, Warner, Silent Glo and similar types one engineer will operate 1-5 and after 5 two operators will be required, self-propelled concrete saws, roller 5 ton and under on earth or gravel, form grader, crawler crane & skid rig oilers, freight elevators, pump 1 or 2, light plant 1 or 2, generator 3.5 kw and over (1 or 2), conveyor (1 or 2) operator will clean, welding machine (1 or 2) equal 300 amp or over (not to include electric welders), mixer (3 bag) and under (standard capacity with skip), bulk cement plant, oiler on central concrete mixing plant.

TRUCK DRIVERS:

Group 1 - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site, & Truck Driver Tenders

Group 2 - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-Frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group 3 - 2, 3, or 4 Axles hauling 16 tons or more; Dispatcher; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

Group 4 - Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: *See Below
DECISION NUMBER: MN85-5000
Supersedes Decision No. MN83-2001 dated January 14, 1983 in 48 FR 1910
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

*Anoka, Benton, Carlton, Chisago, Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, Washington, Winona, & Wright

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
AREA 1	$15.86	$3.87
AREA 2	14.82	1.90
AREA 3	16.47	
AREA 4	16.13	1.85
AREA 5	15.33	2.65
AREA 6	15.78	2.20
AREA 7	15.73	2.65
AREA 8	17.03	.95
AREA 9	16.73	1.00
AREA 10	15.88	1.10
AREA 11	14.33	2.90
AREA 12	14.53	4.10
CEMENT MASONS:		
AREA 1	17.03	2.02
AREA 2	14.95	.75
AREA 3	17.58	.95
AREA 4	15.20	.95
AREA 5	16.70	
IRONWORKERS:		
AREA 1	17.10	3.64
AREA 2	15.22	3.85
LINE CONSTRUCTION:		
Linemen; Cable Splicers; Dynamiters; Special Equipment Operators	17.19	3½%+1.00 +a
Equipment Operators	14.78	3½%+1.00 +a
Truck Drivers; Groundmen; & Pole Treating Truck Drivers	11.89	3½%+1.00 +a
PAINTERS:		
AREA 1:		
Brush; Roller	16.06	2.68
Sandblaster; Spray; Steel; Swing Stage; & Epoxy	16.81	2.68
AREA 2:		
Brush	12.48	1.59
Sandblaster; Spray; Steel; Stage; Belt; Tanks; & Bridgemen	13.48	1.59

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D):		
AREA 3:		
Brush	$14.61	$1.93
Spray; Steel	15.21	1.93
AREA 4:		
Brush	15.12	1.92
Sandblaster; Spray; Swing Stage; Boatswain Chair; Safety Belt; Erected Structural Steel; & Bridges	15.82	1.82
AREA 5:		
Brush; Roller	15.40	1.62
Steel	15.65	1.62
Sandblasting; Spray	15.90	1.62
WELL DRILLERS:		
Construction or Repair of Water Wells & Apurtenances:		
AREA 1:		
Driller - Pumpman	10.30	.20+b+c
General - Tender; Driver or Service Man	8.38	.20+b+c
Mechanic - Welder	9.52	.20+b+c
AREA 2:		
Driller - Pumpman	10.30	.20+b+c
Tender	7.31	.20+b+c
Mechanic - Welder	8.92	.20+b+c
Driver - Serviceman	7.84	.20+b+c
LABORERS, Landscape & Sod		
Layers	6.80	1.10
LABORERS:		
AREA 1:		
Class 1	12.35	2.85
Class 2	12.50	2.85
Class 3	12.55	2.85
Class 4	12.70	2.85
Class 5	12.80	2.85
Class 6	13.05	2.85
AREA 2:		
Class 1	10.00	2.75
Class 2	10.15	2.75
Class 3	10.20	2.75
Class 4	10.35	2.75
Class 5	10.45	2.75
Class 6	10.70	2.75

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	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
AREA 3:		
Class 1	$11.88	$3.00
Class 2	12.03	3.00
Class 3	12.08	3.00
Class 4	12.23	3.00
Class 5	12.33	3.00
Class 6	12.58	3.00
AREA 4:		
Class 1	12.68	2.20
Class 2	12.83	2.20
Class 3	12.88	2.20
Class 4	13.03	2.20
Class 5	13.13	2.20
Class 6	13.33	2.20
AREA 5:		
Class 1	12.15	1.70
Class 2	12.30	1.70
Class 3	12.35	1.70
Class 4	12.50	1.70
Class 5	12.60	1.70
Class 6	12.85	1.70
POWER EQUIPMENT OPERATORS:		
AREA 1:		
Group 1	16.16	2.65
Group 2	15.63	2.65
Group 3	15.48	2.65
Group 4	15.34	2.65
Group 5	13.22	2.65
Group 6	12.48	2.65

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
AREA 2:		
Group 1	$15.52	$2.65
Group 2	14.99	2.65
Group 3	14.83	2.65
Group 4	14.70	2.65
Group 5	12.59	2.65
Group 6	11.87	2.65
AREA 3:		
Group 1	13.78	2.65
Group 2	12.89	2.65
Group 3	12.70	2.65
Group 4	12.59	2.65
Group 5	11.16	2.65
Group 6	10.66	2.65
TRUCK DRIVERS:		
AREA 1:		
Group 1	14.95	2.10
Group 2	14.40	2.10
Group 3	14.30	2.10
Group 4	14.00	2.10
AREA 2:		
Group 1	12.87	2.10
Group 2	12.26	2.10
Group 3	12.13	2.10
Group 4	11.86	2.10
AREA 3:		
Group 1	14.45	2.10
Group 2	13.80	2.10
Group 3	13.70	2.10
Group 4	13.45	2.10

LABORERS CLASSIFICATIONS:
CLASS 1: Unskilled; Bituminous Batcherman (stationary plant); Blacksmith Tenders; Cement Coverman Batch Trucks; Cement Handler - Bulk, Bag; Carpenter Tender; Concrete Batcherman; Concrete Handler, Caisson, Footings, Columns, Piling, Slabs, etc.; Concrete Shoveler, Tamper & Puddler (paving); Concrete Longitudinal Floatman (manual bullfloat on paving); Dump Proofer below grade; Drill Runner Tender; Dumpman (dist, power, dumping batchtrucks, etc.); Hydrant & Valve Setter; Joint Filler (concrete pavement); Kettleman (bituminous or lead); Labor Wrecking Demolition; Landscape Gardener, sod, etc.; Pipe Derrickman (tripod, manual); Pipe Handler; Power Buggy Operator; Powder Monkey; Reinforced Steel Laborer; Reinforced Steel Setter (paving); Service Connection Maker (water, gas); Squeegeeman; Stabilizing Batcherman (stationary plant); Temporary Heater & Blower Tender; Tool Crib Checker; Top Man (sewer, water or gas trench); Winch Handler (manual)
CLASS 2: Bituminous Worker - Shoveler, Raker, Floater, Squeegee, Utility; Brick Tender; Compaction Equipment (hand operated); Conduit Layer; Curb Setter; Mortar Mixer; Sand Cushion Bedmaker; Torchman - gas, electric, thermal or similar device
CLASS 3: Chain Saw; Concrete Drilling; Concrete Mixer Operator; Concrete Sawer; Concrete Vibrator; Ditch & other work more than 6 ft. below starting level of manual work; Formsetter; Joint Sawer, Mortar; Pneumatic Tools, Jackhammer, Paving Buster, Chipping Hammer, etc.; Stone Tender; & Mason Tender

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LABORERS CLASSIFICATIONS (CONT'D):
CLASS 4: Bottom Man(sewer, water or gas trench) (more than 8 ft. below starting level of manual work); Brick or Block Paving Setter; Caisson Work; Cofferdam Work; Tunnel Laborer; Underground Laborer; & Underpinning
CLASS 5: Cement Gun Operator (1½" or over); Driller - Air Track or similar; Nozzleman (gunite, sandblasting, cement); & Pipelayer; Laser Beam (sewer, water, gas)
CLASS 6: Blaster Powder Man (Dynamite or substitute products); Tunnel Miner (atmospheric); & Tunnel Miner Tender

POWER EQUIPMENT OPERATORS CLASSIFICATIONS:
GROUP 1: Helicopter Pilot; Crane with over 135' Boom, excluding jib; Dragline and/or other similar equipment with Shovel-type controls 3 cu. yds. & over Mfg. rated cap.; Pile Driving when 3 Drums are in use
GROUP 2: Cableway; Concrete Mixer, Stationary Plant over 34E; Derrick (Guy or Stiffleg) (Power) (Skids or stationary); Dragline and/or similar equipment with Shovel-type controls, up to 3 cu. yds. Mfg. rated cap.; Dredge or Engineers, Dredge (power) & Engineer; Front End Loader, 5 cu. yds. & over; Grader or Motor Patrol, Finishing Earthwork & Bituminous; Locomotive Crane; Master Mechanic; Mixer (Paving) Concrete Paving, Road; Mole, inclu. Power Supply; Mucking Machine, inclu. Mucking Operations, Conway or similar type; Piledriving; Refrigeration Plant Engineer; Tandem Scraper; Tractor - Boom type; Truck Crane - Crawler Crane; & Tugboat - 100 HP & over
GROUP 3: Dual Tractor; Elevating Grader; Pumpcrete; Scraper - Struck Cap. 32 cu. yds. & over; Self-propelled Traveling Soil Stabilizer
GROUP 4: Air Track Rock Drill; Asphalt Bituminous Stabilizer Plant; Automatic Road Machine (CMI or similar); Backfiller; Batch Plant (Concrete); Bituminous Spreader & Finishing (Power); Boom Truck (Power operated Boom); Cat Tractors with Rock Wagons or similar types; Chip Harvester & Tree Cutter over 150 HP; Concrete Mixer on jobsite over 14S; Concrete Mobile; Crushing Plant (gravel & stone) or Gravel Washing, Crushing & Screening Plant; Curb Machine; Dope Machine (Pipeline); Drill Rigs, Heavy Rotary or Churn or Cable Drill; Fork Lift or Straddle Carrier; Fork Lift or Lumber Stacker; Front End Loader, over 1 cu. yd.; Hoist Engineer (power); Launcherman (Tankerman or Pilot License); Lead Greaser; Locomotive; Mechanic or Welder; Multiple Machines, such as Air Compressors, Welding Machines, Generators, Pumps; Paving Breaker or Tamping Machine (Power Driven) Mighty Mite or similar type; Paving Milling Machine; Pickup Sweeper, 1 cu. yd. & over Hopper cap.; Pipeline Wrapping, Cleaning or Bending Machine; Power Plant Engineer, 100 K.W.H. & over; Power Actuated Horizontal Boring Machine, over 6"; Pugmill; Roller, 8 tons & over; Rubber-tired Farm Tractor, Backhoe Attach.; Sheep Foot Rollers; Slip Form (Power Driven) (paving); Tie Tamper & Ballast Machine; Tractor, over D2, TD6 or similar HP with Power Take-off; Tractor, over 50 HP without Power Take-off; Trenching Machine (sewer, water, gas); Turnapull (or similar type); Well Point Installation, Dismantling or Repair Mechanic; Hydraulic Tree Planter
GROUP 5: Air Compressor, 450 CFM or over; Bituminous Spreader & Bituminous Finishing Machine (Tender) (Power); Concrete Distributor & Spreader Finishing Machine; Longitudinal Float, Joint Machine, & Spray; Concrete Mixer on jobsite 14S & under; Concrete Saw (multiple blade) (power operated); Form Trench Digger (power); Front End Loader, up to & inclu. 1 cu. yd.; Grader (motor patrol); Gunite Gunall; Hydraulic Log Splitter; Loader (Barber Greene or similar type); Payhauler or similar type; Power Actuated Augers & Boring Machine; Power Actuated Jacks; Pump; Roller; Self-propelled Chip Spreader (Flaherty or similar); Shouldering Machine (Power) Apsco or similar type inclu. self-propelled Sand & Chip Spreader; Stump Chipper; Tractor, D2, TD6 or similar HP without power take-off; & tree Farmer
GROUP 6: Conveyor; Dredge Deck Hand; Fireman or Tank Car Heater; Gravel Screening Plant (portable not crushing or washing); Greaser (Truck or Tractor); Leverman; Mechanic Tender; Mechanic, Space Heater (Temporary Heat); Oiler (Power Shovel, Crane, Dragline); Self-Propelled Vibrating Packer (Pad type) (35 HP & over); Tractor, 50 HP or less w/o Power take-off; & Truck Crane Oiler

TRUCK DRIVERS CLASSIFICATIONS:
GROUP 1: Boom; Mechanic; Off-Road; Tractor Trailer; Truck Driver (Operation of Hand & Power Operated Winches); & Truck Trains
GROUP 2: Tri Axles (Including Four Axles)
GROUP 3: Bituminous Distributor; & Tandem Axles
GROUP 4: Bituminous Distributor Spray Operator (Rear End Oiler); Dumpman; Pilot Car; Self-Propelled Packer; Single Axles; Slurry Operator; Tank Truck (Gas, Oil, Road Oil & Water); Teamster & Stableman; Tractor Operator (Wheel Type Used for any Purpose)

The Following Classifications Shall Come Under The Appropriate Axle Rate Wage Group:
"A" Frame; Dry Batch Hauler; Dump; Ready-Mix Concrete; Slurry; Tank (Gas, Oil, Road Oil & Water)

GEOGRAPHICAL JURISDICTIONS FOR CLASSIFICATIONS:

CARPENTERS & PILEDRIVERMEN:
AREA 1: Anoka, Chisago, Dakota, Hennepin, Ramsey, Scott (Except SW Tip), Sherburne (SE 1/4, Inclu. Big Lake, Elk River & Zimmerman), Washington, & Wright (SE Part, Inclu. Delano, Buffalo, & Montrose) Counties
AREA 2: Benton (S 3/4, Inclu. Foley), Sherburne (NW 3/4, Inclu. Clear Lake & Becker), Stearns, & Wright (NW Part, Inclu. S. Haven & Maple Lake) Counties
AREA 3: Benton (N 1/4, Exclu. Foley) County
AREA 4: Carlton County
AREA 5: Cook, Lake (S 1/2, Inclu. Two Harbors, Isabella & Finland), & St. Louis (S 1/3, Inclu. Fond Du Lac, Floodwood, Cotton, & Proctor) Counties
AREA 6: Lake (N 1/2, Exclu. Two Harbors, Isabella & Finland), St. Louis (NE 2/3, Inclu. Cook, Cusson, & Ely) Counties
AREA 7: St. Louis (City of Duluth) County
AREA 8: St. Louis (N. Part, Inclu. Rainy Lake Area) County
AREA 9: St. Louis (W. Strip, Inclu. Chisholm, Orr, & Greaney) County
AREA 10: Scott (SW Tip) County
AREA 11: Winona (Exclu. St. Charles) County
AREA 12: Winona (St. Charles) County

CEMENT MASONS:
AREA 1: Anoka, Chisago, Dakota, Hennepin, Ramsey, Scott, Sherburne, & Washington Counties
AREA 2: Benton & Stearns Counties
AREA 3: Carlton, Cook, & Lake Counties
AREA 4: St. Louis County
AREA 5: Winona County

IRONWORKERS:
AREA 1: Anoka, Benton, Chisago, Dakota, Hennepin, Ramsey, Scott, Sherburne, Stearns, Washington, Winona, & Wright Counties
AREA 2: Carlton, Cook, Lake, & St. Louis Counties

PAINTERS:
AREA 1: Anoka, Hennepin, Scott, Sherburne (E 2/3), & Wright Counties
AREA 2: Benton, Sherburne (W 1/3), & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis Counties
AREA 4: Chisago, Dakota, Ramsey, & Washington Counties
AREA 5: Winona County

GEOGRAPHICAL JURISDICTIONS FOR CLASSIFICATIONS (CONT'D):

WELL DRILLERS:
AREA 1: Anoka, Chisago (S. of T-35N), Dakota, Hennepin, Ramsey, Scott, Sherburne (S. of T-34N & E. of R-27W), Washington, & Wright (E. of T.H. 25) Counties
AREA 2: Benton, Carlton, Chisago (N. of T-35N), Cook, Lake, St. Louis, Sherburne (N. of T-34N & W. of R-27W), Stearns, Winona, & Wright (W. of T.H. 25) Counties

LABORERS (Excluding Landscape & Sod Layers):
AREA 1: Anoka, Chisago, Dakota, Hennepin, Ramsey, Scott, Sherburne, Washington, & Wright Counties
AREA 2: Benton & Stearns Counties
AREA 3: Carlton, Cook, Lake, & St. Louis (S. of T-55) Counties
AREA 4: St. Louis (N. of T-55) County
AREA 5: Winona County

POWER EQUIPMENT OPERATORS:
AREA 1: Anoka, Chisago (S. of the Northern boundary of T. 34-N, Inclu. Thompson, Cloquet, Scanlon, & Carlton), Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott, Sherburne (S. of the Northern boundary of T. 33-N & E. of the Western boundary of R. 27-W), Washington, & Wright (E. of & Inclu. Hwy #25) Counties
AREA 2: Benton (E. of the Western right-of-way of US Hwy #10), Carlton, Chisago (N. of the Northern boundary of T. 34-N, Exclu. Thompson, Cloquet, Scanlon, & Carlton), Sherburne (N. of the Northern boundary of T. 33-N & W. of the Western boundary of R. 27-W), Stearns (E. of the Western right-of-way of Minn. Hwy #15), Winona, & Wright (W. of & Exclu. Hwy #25) Counties
AREA 3: Benton (W. of the Western right-of-way of US Hwy #10) & Stearns (W. of the Western right-of-way of Minn. Hwy #15) Counties

TRUCK DRIVERS:
AREA 1: Anoka, Carlton, Chisago (S. of T. 34-N), Cook, Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott, Sherburne, Washington, & Wright Counties
AREA 2: Benton, Chisago (N. of T. 34-N), & Stearns Counties
AREA 3: Winona County

FOOTNOTES:
a. 8% of gross monthly pay
b. One year's service - one week's paid vacation; three years' service - two weeks' paid vacation; twelve years' service - three weeks' paid vacation; & twenty years' service - four weeks' paid vacation
c. 7 Paid Holidays: New Year's Day; Memorial Day; Fourth of July; Labor Day; Thanksgiving Day; Christmas Day & 1 Floating Holiday

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Tennessee COUNTIES: Statewide
DECISION NUMBER: TN85-1001 DATE: Date of Publication
Supersedes Decision Number TN83-1090 dated December 30, 1983 in 49 FR 57671.
DESCRIPTION OF WORK: Heavy Construction Projects (except Hamilton County), Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
BRICKLAYER	$ 8.84	
CARPENTER or LEAD PERSON	8.06	
CONCRETE FINISHER	8.10	
DRILL OPERATOR (CAISSON)	12.76	
ELECTRICIAN:		
Shelby County only	17.48	3½% + $1.65
Remaining Counties	13.46	
IRONWORKER:		
Reinforcing	8.12	
Structural	8.26	
LABORER:		
Class A	5.86	
Class B	7.28	
MECHANIC:		
Heavy Duty	9.17	
Light Duty	7.80	
PAINTER & SANDBLASTER	$ 8.31	
POWDER PERSON (BLASTER)	7.36	
TRUCK DRIVER	7.05	
POWER EQUIPMENT OPERATOR:		
Class A	8.56	
Class B	7.90	
Class C	8.00	
Class D	7.03	
Class E	7.05	
Class F	6.33	
WELDER - Receives Rate for Craft performing operation to which Welding is incidental.		

CLASSIFICATION DEFINITIONS:

LABORERS:
Class A - Unskilled Laborer
Class B - Skilled Laborers: Air Tool Operator, Asphalt Raker, Chain Saw Operator, Concrete Mixer Operator (Less than 1 yard), Concrete Rubber/Edger, Fence Erector, Form Setter (Steel Road), Guard Rail Erector, Mechanic's Tender (Tire Changer or Oiler), Mortar Mixer, Nozzleman or Gun Operator (Gunite), Pipelayer, Sign Erector.

POWER EQUIPMENT OPERATORS:
Class A - Backhoe/Hydraulic Excavator (3/4 yard & over), Crane, End Loader (3 yards & over), Motor Patrol (Finish), Pile Driver, Dragline.
Class B - Backhoe/Hydraulic Excavator (Less than 3/4 yard), Bull Dozer or Push Dozer, End Loader (Less than 3 yards), Motor Patrol Operator (Rough), Tractor (Crawler/Utility), Scraper, Shovel, Trenching Machine.
Class C - Asphalt Paver, Concrete Finishing Machine, Concrete Paver, Scale, Spreader (Self-Propelled), Concrete Grinder, Asphalt Milling Mach.

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CLASSIFICATION DEFINITIONS (Cont'd):

POWER EQUIPMENT OPERATORS (Cont'd):

Class D - Bobcat, Central Mixing Plant, Concrete Pump, Concrete Saw, Curb Machine (Automatic or Manual), Dozer or Loader Operator (Stockpile), Drill Operator (Piling), Mulcher or Seeder, Rock Drill (Truck Mounted), Roller (Asphalt), Roller (Compaction Self-Propelled), Soil Stabilization Machine, Tractor (Boom & Hoist), Bituminous Distributor Machine, Ditch Paving Machine, Pump, Track Drill.

Class E - Boring Machine Operator (Horizonal).
Class F - Farm Tractor Operator.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5 (a)(1)(ii)(A).

SUPERSEDEAS DECISION

STATE: Virginia

COUNTIES: Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise & Wythe

DECISION NO.: VA85-3000 DATE: Date of Publication
Supersedes Decision No. VA83-3039, dated September 30, 1983 in 48 FR 45003.
DESCRIPTION OF WORK: Highway Construction

	Basic Hourly Rates	Fringe Benefits
Asphalt Raker	$ 5.25	
Carpenter, Structure	6.17	
Carpenter Helper, Structure	4.94	
Concrete Finisher	5.51	
Electrician	6.75	
Guardrail/Fence Erector	4.29	
Ironworker, Reinforcing	7.00	
Laborer, Unskilled	4.19	
Mechanic	6.90	
Mechanic Helper	6.00	
Pipe Layer	5.41	
Powderman Blaster	5.00	
Asphalt Distributor Operator	5.05	
Asphalt Paver Operator	5.16	
Backhoe Operator	6.77	
Bulldozer Operator	6.47	
Crane, Derrick, Dragline Operator (1 yd. & under)	6.47	
Crane, Derrick, Dragline Operator (Over 1 yd.)	7.00	
Drill Operator	6.14	
Loader Operator (2 yds. & under)	6.14	
Loader Operator (over 2 yd.)	6.77	
Motor Grader Operator (Fine Grade)	7.25	
Motor Grader Operator (Rough Grade)	6.56	
Oiler Greaser	5.98	
Roller Operator (Rough)	4.89	
Roller Operator (Finish)	5.00	
Scraper Pan Operator	6.04	
Stone Spreader Operator	4.75	
Truck Driver, Heavy Duty (7 cy. & under)	5.53	
Truck Driver, Heavy Duty (Over 7 cy.)	5.53	
Truck Driver (Multi-Rear Axle)	$5.45	
Truck Driver (Single-Rear Axle)	4.06	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: VIRGINIA
DECISION NO.: VA85-3001
COUNTIES: SEE BELOW*
DATE: DATE OF PUBLICATION
Supersedes Decision No. VA83-3036 dated September 30, 1983 in 48 FR 45001.
DESCRIPTION OF WORK: Highway Construction

*Accomack, Greensville, Isle of Wight, James City, Northampton, Southampton, Surry, Sussex, York, The Cities of Emporia, Franklin, Suffolk, and Williamsburg

	Basic Hourly Rates	Fringe Benefits
ASPHALT RAKER	$4.84	
CARPENTER, STRUCTURE	6.91	
CARPENTER STRUCTURE HELPER	5.56	
CONCRETE FINISHER	6.85	
CONCRETE FINISHER HELPER	5.07	
FIREMAN	8.50	
GUARD RAIL/FENCE ERECTOR	4.85	
IRONWORKER, REINFORCING	8.00	
LABORERS, UNSKILLED	4.49	
LANDSCAPE WORKER	5.25	
MECHANIC	7.47	
MECHANIC HELPER	6.00	
MASON STRUCTURE	5.00	
PILEDRIVER LEADSMAN	6.00	
PIPELAYER	5.36	
SIGN ERECTOR	8.00	
POWER EQUIPMENT OPERATORS:		
Asphalt Distributor	5.96	
Asphalt Paver	5.91	
Backhoe	6.34	
Bulldozer	6.22	
Bulldozer Operator (utility)	4.75	
Drill Operator	8.75	
SLURRY SEAL MACHINE OP.	7.00	
CRANE, DERRICK, DRAGLINE (1 yd. & under)	9.45	
CRANE, DERRICK, DRAGLINE (over 1 yd.)	9.25	
LOADER (2 yds. & under)	5.99	
LOADER (over 2 yds.)	5.99	
MOTOR GRADER (FINE GRADE)	7.17	
MOTOR GRADER (ROUGH GRADE)	6.90	
OILER-GREASER	5.95	
POWER TOOL	6.00	
ROLLER (Rough)	4.61	
ROLLER (Finish)	5.09	
SCRAPER-PAN	5.79	
STONE SPREADER	5.75	
SLURRY SEAL PAVER TRUCK DRIVER	5.50	
STABILIZER OPERATOR	4.23	
TRACTOR, UTILITY	5.91	
TRUCK DRIVERS:		
Heavy Duty (over 7 c.y.)	4.50	
Heavy Duty (7 c.y. & under)	4.50	
MULTI REAR AXLE	$4.75	
SINGLE REAR AXLE	4.17	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: VIRGINIA
DECISION NO.: VA85-3004
COUNTIES: SEE BELOW*
DATE: DATE OF PUBLICATION
Supersedes Decision No. VA83-3028 dated September 30, 1983 in 48 FR 45000.
DESCRIPTION OF WORK: Highway Construction

*Caroline, Essex, Gloucester, King George, King & Queen, King William, Lancaster, Mathews, Middlesex, Northumberland, Richmond, Spotsylvania, Stafford, Westmoreland and the Independent City of Fredericksburg.

	Basic Hourly Rates	Fringe Benefits
ASPHALT RAKER	$6.15	
CARPENTER, STRUCTURE	7.41	
CARPENTER HELPER, STRUCTURE	5.85	
CONCRETE FINISHER	7.24	
CONCRETE FINISHER HELPER	5.00	
ELECTRICIAN	10.00	
FORM SETTER	7.50	
GUARDRAIL/FENCE ERECTOR	4.98	
IRONWORKER, REINFORCING	7.85	
IRONWORKER, REINFORCING HELPER	5.75	
IRONWORKER, STRUCTURAL	8.00	
IRONWORKER, STRUCTURAL HELPER	5.76	
LABORER, UNSKILLED	4.68	
MECHANIC	7.33	
MECHANIC HELPER	6.25	
PILEDRIVER-LEADSMAN	8.11	
PIPELAYER	5.44	
POWDERMAN BLASTER	6.65	
SIGN ERECTOR	7.88	
ASPHALT DISTRIBUTOR OPERATOR	5.83	
ASPHALT PAVER OPERATOR	6.50	
BACKHOE OPERATOR	7.00	
BULLDOZER OPERATOR	6.72	
BULLDOZER OPERATOR (Utility)	4.25	
CONCRETE PAVING MACHINE OPERATOR	6.40	
CONCRETE SPREADER OP.	5.44	
CRANE, DERRICK, DRAGLINE (1 yd. & under)	8.69	
CRANE, DERRICK, DRAGLINE (over 1 yd.)	8.69	
LINE MARKER OPERATOR	9.83	
LOADER OPERATOR (2 yds. & under)	6.56	
LOADER OPERATOR (Over 2 yds.)	7.07	
MOTOR GRADER OPERATOR FINE GRADE	7.91	
MOTOR GRADER OPERATOR ROUGH GRADE	6.50	
OILER-GREASER	$6.09	
POWER TOOL OPERATOR	5.31	
ROLLER OPERATOR-ROUGH	5.74	
ROLLER OPERATOR-FINISH	5.94	
SCRAPER PAN OPERATOR	6.22	
STONE SPREADER OPERATOR	5.20	
STABILIZER OPERATOR	5.00	
TRACTOR OPERATOR (CRAWLER)	6.50	
TRACTOR OPERATOR UTILITY	5.42	
TRUCK DRIVER, HEAVY DUTY:		
7 c.y. and under	4.74	
TRUCK DRIVER, HEAVY DUTY:		
over 7 c.y.	4.81	
TRUCK DRIVER:		
Single Rear Axle	4.69	
Multi Rear Axle	4.85	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

[FR Doc. 85-660 Filed 1-10-85; 8:45 am]
BILLING CODE 4510-27-C

federal register

Friday
January 11, 1985

Part III

Environmental Protection Agency

40 CFR Part 266

Hazardous Waste Management System: Standards for the Management of Specific Wastes and Specific Types of Facilities; Proposed Rule and Request for Comment

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 266

[SWH-FRL 2680-4]

Hazardous Waste Management System: Standards for the Management of Specific Wastes and Specific Types of Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: Under this proposal, the Environmental Protection Agency (EPA) would begin to regulate hazardous waste and used oil burned for energy recovery in boilers and industrial furnaces. The proposal contains both substantive controls on actual burning, and administrative controls on persons who market and burn hazardous waste and used oil for energy recovery. The substantive controls on burning would prohibit nonindustrial boilers from burning hazardous waste and off-specification used oil (i.e., used oil that did not meet particular specifications for toxic contaminants and for flash point). The administrative requirements include notification, use of a manifest or invoice system, and recordkeeping. This proposal would also expand coverage of existing storage standards to include storage of processed or blended hazardous waste fuels.

DATE: EPA will accept public comments on this proposed amendment until March 12, 1985.

Public Hearings: Public hearings will be held on the following dates to obtain comments on the issues summarized in Section XIII of the preamble: February 15, 1985, February 21, 1985, and February 26, 1985.

The hearings will begin at 9:30 a.m. (registration at 9:00 a.m.) and will end at 4:30 p.m., unless concluded earlier.

ADDRESSES: The hearings will be held at the following locations:

February 15—U.S. EPA, 26 Federal Plaza, Conference Room 305, New York, New York 10278

February 21, 1985—Ramada Inn Hobby Airport West,* 7777 Airport Boulevard, Houston, Texas 77061, (713) 644-1261

February 26, 1985—Torrance Marriott,* 3625 Fashion Way, Torrance, California 90503, (213) 316-3636

Comments on this proposal should be mailed to the Docket Clerk (Docket No. 3004, Burning of Waste as Fuel), Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Comments received by EPA may be inspected in Room S-212, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. from 9:00 A.M. to 4:00 P.M., Monday through Friday, excluding holidays. EPA encourages all interested persons to attend the public hearings. If you would like to present an oral statement at one of the hearings, please notify in writing Ms. Geraldine Wyer, Office of Solid Waste (WH-562), U.S. EPA, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-300. For technical information, contact David Sussman, Manager, Waste Combustion Program, Waste Management and Economics Division, Office of Solid Waste, WH-565A, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Telephone: (202) 382-7917. Single copies of the proposed rule are available by calling the RCRA Hotline at the number above.

SUPPLEMENTARY INFORMATION:

Preamble Outline

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I. Authority

These regulations are proposed under the authority of Sections 1006, 2002(a), 3001, 3002, 3003, 3004, 3005, 3007, 3010, and 3014 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976.

* Hotel rooms have been blocked for the convenience of attendees requiring overnight accommodations. When making reservations, please indicate you are attending the U.S. EPA public hearing.

the Quiet Communities Act of 1978, the Solid Waste Disposal Act Amendments of 1980, the Used Oil Recycling Act of 1980, and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6905, 6912(a), 6921, 6922, 6923, 6924, 6925, 6927, 6930, and 6932.

II. Overview of Today's Proposal

EPA is proposing today to extend the hazardous waste management regulations to apply to marketing and burning for energy recovery of hazardous wastes and used oils. The proposal would prohibit burning of hazardous wastes in nonindustrial boilers. Used oil could be burned in these boilers only if it conformed to specifications for certain toxic constituents and for flash point. For the time being, burning hazardous waste in industrial boilers and furnaces for legitimate energy recovery would continue to be exempt from regulation pending further study by the Agency of what type of regulation is needed to protect human health and the environment.

To enforce the prohibitions on burning these materials, EPA also is proposing administrative requirements that create a tracking system from initial waste fuel marketers, through distributors, to burners. These requirements include notification, receipt of identification number, compliance with manifest or (for used oil) invoice system, and recordkeeping.

Finally, this proposal would also expand coverage of existing storage standards to include storage of processed or blended hazardous waste fuel.

III. Existing Regulations Control Burning in Incinerators but Exempt Burning in Boilers and Industrial Furnaces

The Resource Conservation and Recovery Act ("RCRA" or "the Act") provides for the development and implementation of a comprehensive program to protect human health and the environment from the improper management of hazardous waste. The Act also requires EPA to develop standards to protect the public from hazards associated with recycled oil. The Environmental Protection Agency has, under RCRA, promulgated regulations for determining which wastes are hazardous (Section 3001); standards for generators (Section 3002) and transporters (Section 3003) of hazardous waste; requirements for the treatment, storage, and disposal of hazardous waste (Section 3004); procedures for obtaining a hazardous waste permit (Section 3005); procedures for the authorization of state programs (Section 3006); and requirements for notifying EPA of hazardous waste activity (Section 3010).

One area in which EPA has not yet completed regulatory action involves the burning of hazardous waste for energy recovery. Current regulations provide control for treatment of hazardous waste by incineration (40 CFR Parts 264 and 265, Subpart O), but there are as yet no Federal requirements for burning of hazardous waste for energy recovery in other types of combustion devices (e.g., boilers and industrial furnaces). Burning of used oil for energy recovery is likewise unregulated by Federal rules at the present time. (It should be noted, however, that EPA's regulations do regulate storage and transportation of hazardous waste destined for use as a fuel if the waste is listed in 40 CFR 261.31 or 261.32 or is a sludge (see 40 CFR 261.6(b)[1] The distinction exists because the Agency needed time to determine whether regulations for burning for energy recovery should differ from those for incineration, in light of the different scope of the practices and the different combustion units and wastes involved.

As a result, burning hazardous waste and used oil as fuel remains a source of potentially hazardous emissions that may adversely affect human health and the environment. The Agency recognizes the need to regulate this burning of hazardous waste and used oil. See 48 FR at 14481–482. Moreover, the recent Hazardous and Solid Waste Amendments of 1984 require the Agency to develop these standards within two years of enactment. (See RCRA amended Section 3004(q)). Today's proposal would begin this process.

[1] EPA has proposed to revise 40 CFR 261.6. (See 48 FR 14472 [April 4, 1983].) Under that proposal, storage and transportation of certain spent materials prior to use to produce a fuel would also be subject to regulation. In addition, the Agency proposed to retain (in § 261.6(b)(1)(v)) the exemption from the hazardous waste incinerator standards for listed wastes, sludges and certain spent materials—and for any fuels produced from these wastes—that are burned for energy recovery. Burning for energy recovery in devices that are not permitted hazardous waste incinerators, however, could be regulated immediately on a case-by-case basis. See generally, proposed §§ 260.10, 261.2(a)(2)(ii), 261.6(b)(v), 261.6(b)(vi), 261.6(g)(2); 48 FR 14507–511. Note: This footnote and all other references in this preamble to the Agency's intent to amend § 261.6 assumes the amendments have not yet been promulgated. However, given that those amendments and today's notice of proposed rulemaking are moving through the Agency's clearance procedures at the same time, the amendments to § 261.6 may be promulgated before today's rulemaking is proposed.

IV. Regulations Are Needed To Control Burning in Boilers and Industrial Furnaces

EPA today is proposing regulations to control the burning of hazardous waste and used oil for energy recovery because of the potential for substantial harm to human health and the environment from burning and handling these materials. Damage incidents involving these practices confirm this potential for harm. This potential likewise is corroborated by comments of diverse groups including some state officials, the Congress, and various industry and environmental groups, all of whom have strongly urged Agency action to halt a growing environmental problem.

A. Burning Hazardous Waste and Used Oil in Boilers Can Pose Substantial Hazards

Hazardous wastes and used oils pose the potential to cause substantial harm from the time they leave a generator or fuel processor or blender until and including the time they are burned. Used oils frequently arrive at fuel processing or blending facilities heavily contaminated with organic and inorganic toxic materials. These contaminants may be present as a result of use of the oil, or may have been added as a result of deliberate adulteration with hazardous wastes. Some fuel blenders also receive hazardous wastes that they then mix with used oil and sell as a fuel.

These contaminants rarely are removed when the used oils or hazardous wastes are processed to make fuels.[2] The methods of processing hazardous waste or used oil most commonly employed to make a fuel include filtering, settling, and sometimes dehydration. Processing is performed only to meet customer specifications, which are almost always related to the ASTM specifications for various grades of fuel oil (e.g., numbers 2, 4, 5 and 6). Such specifications provide limits on parameters including bottom sediment and water, heat value, flash point, and viscosity. These parameters are related mainly to how well a fuel burns or how easily it can be pumped from storage tanks and fired into the combustion device. The ASTM specifications do not limit toxic metals, chlorine, or any organic contaminants. This is significant because EPA has established that used oil commonly contains high levels of toxic metals and chlorinated organics.

[2] National Enforcement Investigations Center, U.S. EPA, *Summary of Waste Oil Recycling Facility Investigations*, October 1983.

Table 1 shows the composition of typical used oil and represents analyses of crankcase oils from cars and trucks, and industrial oils sampled prior to processing or blending. Hazardous wastes used as fuel may contain these same contaminants, plus many others as well.

Currently, processors and blenders of used oil or hazardous waste have no incentive to remove these potentially harmful contaminants. Product price is typically related only to whether a fuel meets a minimum BTU specification and how easily it can be pumped. Technologies such as distillation or chemical treatment that remove metals and other contaminants do exist, but processors who use these technologies often find themselves at a competitive disadvantage to those who only filter, settle, and blend. This has led the Agency to conclude that the marketplace cannot adequately control the composition of waste fuels and, therefore, that regulatory controls are necessary.

TABLE 1.—CONCENTRATION OF USED OIL CONTAMINANTS

	Number of samples	"Median" concentration at 50th percentile [1] (ppm)	Concentration at 75th percentile [2] (ppm)	Concentration at 90th percentile [3] (ppm)
Metals:				
Arsenic	527	5	5	18
Barium	752	48	120	250
Cadmium	744	3	8	10
Chromium	756	6.5	12	35
Lead [4]	835	240	740	1,200
Zinc	810	480	872	1,130
Chlorinated solvents:				
Dichlorodifluoromethane	87	20	160	640
Trichlorotrifluoroethane	28	160	1,300	100,000
1,1,1-Trichlorethlorie	618	200	1,300	3,500
Trichloroethylene	608	100	200	800
Tetrachloroethylene	599	106	600	1,600
Total chlorine	590	1,600	4,000	9,510
Other organics:				
Benzene	236	20	110	300
Toluene	242	380	2,400	4,500
Xylene	235	550	2,400	3,200
Benzo(a)anthracene	27	12	30	40
Benzo(a)pyrene	65	10	13	16
Naphthalene	25	330	580	800
PCB's	753	5	15	50

[1] At the median, 50 percent of the analyzed used oil samples had contaminant concentrations below the given value.

[2] Seventy-five percent of the analyzed used oil samples had contaminant concentrations below the given value.

[3] Ninety percent of the analyzed used oil samples had contaminant concentrations below the given value.

[4] Values for lead were taken from 1979–83 data only.

Source: Franklin Associates, Ltd., *Composition and Management of Used Oil Generated in the United States*, September 1984, p. 1–12.

Estimates of the quantities of waste fuels burned vary greatly. EPA's best estimate is that about 1–2 million tons of hazardous wastes and about 2.4 million tons of used oils are burned annually as fuel.[3, 4] It is known that such burning occurs in every conceivable circumstance—in utility, industrial commercial, institutional, and residential sectors, and throughout the country.

The major risk attributable to burning waste fuels is from exposure to emissions of toxic chemicals and toxic metals that are constituents of the fuel. These risks are described in more detail in Section VII–D of this preamble, where we discuss how certain contaminants were selected for the used oil fuel specification. This is by no means the only risk posed, however. Lack of proper labelling leaves burners unprotected, because they are without notice that they are storing and burning a potentially dangerous fuel. Waste fuels also can cause harm if transported without tracking, since they could be misdirected, or even dumped illicitly.

Harm resulting from improper storage or spills of waste fuels also is possible. If the waste fuel has a low flash point, there is risk of fire and explosion. Emissions of volatilized organic constituents could also pose a health hazard to exposed persons.

The residue from burning waste fuels could be heavily contaminated with hazardous wastes, toxic metals, or toxic combustion by-products that were neither destroyed during combustion nor emitted from the boiler.[5] It is unlikely that this residue would be handled as a hazardous waste, and its disposal in a sanitary landfill, rather than in a hazardous waste landfill, has potential for harm to those handling the residue as well as to the public and the environment.

Actual damage incidents involving waste fuels have been reported.[6] The best known of these incidents involves the Quanta facility, a used oil fuel blending facility located in New Jersey. This facility accepted contaminated used oil, including PCB-contaminated transformer oil, as well as hazardous wastes such as spent chlorinated solvents. Treatment of the oil was typical of that used in the industry and consisted only of settling out bulk solids and water; contaminants were not removed or neutralized. The blended mixture was marketed as a fuel, sometimes to retail fuel distributors, and in some cases directly to ultimate users, including both residential and industrial users. Investigators of ABC News in fact filmed trucks taking contaminated commercial fuel oil from Quanta to apartment buildings in New York City. Residents of those buildings began complaining of respiratory problems, headaches, nausea, and digestive problems shortly after these fuels began to be burned. Boiler residues at these buildings, when sampled, showed presence of PCBs and chlorinated solvents.[7]

B. States and Congress are Concerned About the Problem

EPA's concern about the potential for harm from burning waste fuels has been echoed by states, the Congress, and some industry and environmental groups. Many of these entities have direct experience in trying to control waste fuels. They are unanimous in urging a strong and immediate Federal regulatory presence to control a serious problem.

Officials of the States of New York, New Jersey, Michigan, California, Alaska, and Wisconsin have voiced special concern to EPA about this problem because of related illegal activities and damage incidents within their jurisdictions. At this time, New York, New Jersey, and Rhode Island have undertaken regulation of the composition of waste fuels.

Legislation to compel EPA action on this problem was introduced in both Houses of Congress in the 1982 session. The recent Hazardous and Solid Waste Amendments of 1984 adopted this legislation and require EPA to develop standards controlling production, distribution, and burning of hazardous waste fuels within two years of enactment. See RCRA amended Section 3004(q).

V. Congress Has Authorized the Agency to Regulate Burning in Boilers and Furnaces

In this proposal, the Agency would regulate the burning of used oil and hazardous wastes used as fuels. Authority to establish a fuel specification for hazardous constituents and fuel properties is contained in both the User Oil Recycling Act of 1980 and in the other provisions of RCRA itself.

[3] Based on data in : WESTAT, Inc., *Survey of Burners of Used or Waste Oil and Waste-Derived Fuel Material*, October 1984 (Draft report).

[4] Franklin Associated, Ltd., *Composition and Management of Used Oil Generated in the United States*, September 1984, p. 1–9.

[5] GCA Corp., *Environmental Characterization of Disposal of Waste Oils in Small Combustors*, May 1984, pp. 14 and 15.

[6] Hazardous Waste Treatment Council, *Damage Cases*, 1983 (Unpublished data).

[7] Transcript of ABC 20/20 Broadcast on Dec. 17, 1981; EPA Staff Interview with Kenneth Mansfield, Manager, Quanta facility, February 25, 1983.

Section 3014 of RCRA, added by the Used Oil Recycling Act, requires the Agency to promulgate "performance standards and other requirements" necessary to protect against hazards associated with "recycled oil". "Recycled oil" (Section 1004 (37)) means contaminated oil which is reused for any purpose, including burning. Thus, the Agency has express authority to control burning of used oil by means of performance standards. (See also S. Rep. No. 96-879, 96th Cong. 2nd Sess. 1, Stressing that the purpose of the Used Oil Recycling Act is to discourage improper burning of used oils; see also H. Rep. No. 98-198, 98th Cong. 1st Sess. 68, stating that EPA has authority to specify toxicant concentration levels for used oil being recycled.) The Agency also notes that this authority does not depend on whether used oil or used oil fuels are identified or listed as hazardous wastes. The authority granted in Section 3014 is over used oil being recycled.

Authority to regulate burning of hazardous waste fuels is provided explicitly by the Hazardous and Solid Waste Amendments of 1984. See RCRA amended Section 3004(q).

VI. Discussion of Major Regulatory Options

The Agency considered several nonregulatory approaches to address the hazards that can be posed by burning waste fuels in boilers and industrial furnaces and determined that they would be ineffective and impractical. Therefore, we are proposing regulatory controls that include substantive controls on burning, administrative controls for all marketers and burners, and storage controls for hazardous waste fuels. The controls on burning would, for the time being, focus on nonindustrial boilers—boilers that are used in residental, commercial, and institutional settings. The problems with nonregulatory approaches and the basis for proposing to control burning at this time only in nonindustrial boilers are discussed below.

A. Nonregulatory Alternatives are Ineffective and Impractical

The Agency has evaluated nonregulatory alternatives for managing recycled used oil (Sobotka & Company, Inc., *An Assessment of Nonregulatory Approaches for Encouraging the Recycling and Proper Use of Waste Lube Oil*, December 1981). We considered whether economic incentives would be preferable to regulatory controls in channeling used oil to desirable users such as refiners or "acceptable" burners. Given the large number of generators, collectors, processors, blenders, distributors, and burners, incentives could be preferable to regulatory controls. Regulatory controls aimed at all handlers could be very expensive to implement and could leave generators and collectors with little incentive to recycle (or properly dispose of) their used oil.

The Sobotaka Study concluded that the most promising incentive approach of several studied would be a tax-rebate system. Producers of virgin lube oils would pay a tax for every gallon of lube oil they produce, and preferred used oil users (e.g., rerefiners, "acceptable" burners) would receive a rebate on their taxes for every gallon of used oil they use. The total revenues received by the U.S. Treasury from the tax ideally would match tax rebates.

The agency believes that this approach would be ineffective in protecting human health and the environment and impractical to implement. The system would be ineffective in that it would create an incentive for any used oil, no matter how contaminated, to be channeled to preferred users without any pretense of assurance or any mechanism to determine that the incentive is adequate in fact to ensure that no used oil goes to unacceptable users. Used oil marketers may find it profitable to discount their used oil fuel by an amount equivalent to the rebate and continue to sell it to unacceptable users. Moreover, we do not believe that there are "acceptable" burners of used oil, without regard for the level of contamination of the oil. Used oil may be intentionally adulterated with hazardous waste or may contain high concentration of metals that were added to the oil during use. Such used oil may not be acceptable for burning in boilers without adequate controls. However, any burner who burns used oil fuel that meets the specification contained in the proposed rule would be considered "acceptable".

The tax/rebate system would be impractical for a number of reasons: (1) Many acceptable burners (of specification used oil) do not pay taxes; (2) Congress must set and periodically adjust the tax on virgin lube oil; (3) IRS must implement and enforce the rebate system; and (4) the administative costs to the federal government for a tax/rebate system to "control" burning in boilers and industrial furnaces may be far greater than the costs of a regulatory system.

B. Basis for Regulating Boilers by Boiler Use

The proposed regulation singles out nonindustrial boilers because EPA believes that burning hazardous waste and highly contaminated used oils in these boilers can frequently pose a severe and immediate hazard. Although burning of these materials in industrial boilers and furnaces (and utility boilers) can also pose substantial hazards, EPA believes that there are situations where many hazardous wastes and used oils can be burned without significant risk. We are not ready to propose controls for industrial boilers and furnaces, however, because we have not completed ongoing investigations to determine under that conditions such burning may be appropriate.

1. *Need for Immediate Controls for Nonindustrial Boilers.* The burning of hazardous wastes and contaminated used oils in nonindustrial boilers can pose substantial and unnecessary risks to human health and the environment for a number of reasons. First, nonindustrial establishments typically have very small boilers that are used for space heating or cooling. The small size of these boilers may increase the probability of incomplete combustion of toxic materials. Approximately 98% of commercial and institution boilers and virtually all residential boilers have a heat input capacity of less than 10 million BTU/hr—about the size of a boiler servicing a large hospital or large apartment or office building with a total floor area of approximately 190,000 ft.[2] [3] EPA believes that these very small boilers may not achieve the combustion and destruction efficiencies that large boiler can provide. Combustion controls on small boilers are much less sophisticated than those for large boilers. Larger boilers can be operated at peak combustion efficiency by maintaining optimum fuel and air flow rates under a wide range of boiler loads, and are usually equipped with devices to measure and control fuel firing rate, combustion temperature, and oxygen content in the flue gas. (Larger boilers also typically have trained operators in attendance.) The limited combustion controls on very small boilers make it very difficult to maintain maximum combustion efficiency as variations in fuel viscosity, heat value, and other properties typical of waste fuels affect fuel feed rate, flame temperature, and combustion air requirements.

In addition, very small boilers have a shorter residence time—the time that combustion gases are exposed to high temperatures in the combustion zone of the boiler. Thus, toxic organic

[3] Based on data in PEDCo Environmental, Inc., *A Risk Assessment of Waste Oil Burning in Boilers and Space Heaters*, August 1984, p. 3-3.

compounds are exposed to the highest temperatures in the firebox for a shorter period of time.

The risks posed by nonindustrial boilers from emissions of incompletely combusted toxic organic constituents in waste fuels and from emissions of toxic metal constituents in waste fuels is compounded because of the typical location of nonindustrial boilers. The number of nonindustrial boilers located in a given area can be expected to increase as population density and commercial activity increases. This can result in a series of compounding factors that can pose a severe hazard to public health. Stack emission plumes from multiple sources can overlap, increasing the ambient concentrations of toxic compounds. In addition, exposed individuals are frequently located above ground in apartment and office buildings (e.g., exposure through open windows or from building air in-take systems located on the roof) which can expose them to higher concentrations than if they were at ground level. In urban areas, some exposed individuals will also be located extremely close to the source, perhaps as close as 25 meters to smaller sources such as a boiler in a small apartment building, church, or school (i.e., less than 10 million BTU/hr sources). Finally, even in situations where a small boiler may have a tall stack simply because the stack projects from the roof of a multi-story apartment or office building, any dispersion that would have been provided by a tall stack may be negated by the "down-wash" typically associated with emissions from stacks that have tall structures nearby, as would be expected in most urban areas. Turbulence created by nearby structure that are as tall or taller than the stack can cause stack emissions to drop to near ground level immediately downwind from the stack.

The fact that most nonindustrial boilers are located in densely populated urban areas also increases the risk from spills, fires, and explosions during transportation storage and handling. These boilers are not subject to the same degree of zoning control as industrial boilers, increasing the possibility of large numbers of facilities storing and handling waste fuels containing toxic and highly ignitable materials in densely populated areas. This risk is compounded by the fact that nonindustrial boiler owners or operators rarely know that they are obtaining waste fuels and do not realize that a potential hazard exists.

Finally, nonindustrial boilers, because of their small size, are typically not controlled by federal, state and local point source air pollution standards. Even when the larger units are subject to a state or local standard, those standards do not specifically address the organic compounds and metals found in hazards waste and used oil. Although ambient air pollution standards potentially cover all sources, regardless of size, the implementation by state and local governments of source controls to meet these ambient standards usually focuses on larger sources for reasons of regulatory efficiency. Furthermore, existing ambient standards do not address most of the organic compounds and metals found in hazardous waste and used oil.

2. *Schedule for Regulating Industrial Boilers and Furnaces.* The Agency began an investigation of burning wastes in industrial boilers and industrial furnaces in fall 1982. The investigation includes emissions testing of various waste/boiler scenarios to determine under what conditions such burning does not pose significant risk to human health and the environment. That investigation and the subsequent analyses of control alternatives are not yet complete. The Agency intends to complete those analyses and propose technical controls (called "Phase II" controls in this preamble) for these units in 1985. In the interim, the Agency is today proposing administrative and storage controls for industrial boilers and furnaces. Today's proposed rules for nonindustrial boilers would in no way adversely affect the consideration of options under study to control burning in industrial burners.

B. Consideration of Other Approaches

The Agency considered other approaches to identify those high risk boilers that should be subject to immediate controls. Boiler size is one factor that is likely to affect the risk posed from emissions for reasons discussed above. The Agency is specifically asking for comments on extending the proposed prohibitions to include very small industrial boilers (see discussion in Section VII–G–1 of this preamble). However, we do not believe that boiler size is the single determinant of risk posed and, thus, do not believe that large nonindustrial boilers should be exempt from the prohibitions in the absence of any assurance that particular boilers achieve suitable destruction of toxic organics (e.g., 99.99% destruction) and that metal emissions are controlled (e.g., by a particulate emissions standard). Even though large boilers can generally achieve better destruction efficiences (for reasons discussed above), not all large boilers will be operated and maintained to achieve the 99.99% destruction and removal efficiency of toxic organic compounds required for hazardous waste incinerators. Given that nonindustrial boilers (both large and small) are typically located in densely populated areas, emissions of toxic organic compounds and metals can pose a significant and immediate hazard.

In addition to size of boiler, factors that can affect destruction efficiency include waste firing method, ratio of waste fuel to fossil fuel fired, heat value of waste fuel, boiler load, and too little or to much combustion air. The Agency is considering these factors in developing the Phase II controls for burning hazardous waste in boilers and industrial furnaces scheduled to be proposed in late 1985. That proposed rule is likely to include a range of controls on boilers depending on the factors listed above and irrespective of whether the boiler is a nonindustrial boiler or industrial boiler or whether the waste is burned for purposes of energy recovery or destruction. The proposed controls may range from controls virtually identical to those required for hazardous waste incinerators to controls that allow waiver of a trial burn for particular hazardous wastes when certain boiler design and operating conditions are met. In the interim, an owner or operator of a nonindustrial boiler who wants to burn hazardous waste may elect to consider his boiler an incinerator for regulatory purposes and comply with the hazardous waste incinerator standards of 40 CFR Parts 264 265.

VII. Proposed Substantive Controls on Burning

A. An Overview of the Proposed Controls on Burning

This proposed regulation would prohibit the burning of hazardous waste and used oil that does not meet certain specifications (hereafter referred to as "offspecification used oil") in nonindustrial boilers unless the boiler is permitted as a hazardous waste incinerator. The specification being proposed for used oil fuel sets allowable levels for lead, arsenic, chromium, cadmium, and flash point.[9] Used oil fuel that meets the specification and is not mixed with hazardous waste can be marketed and burned without restriction in any boiler. Used oil fuel that is mixed with hazardous waste would generally be subject to regulation as hazardous

[9] The specification also references the *de minimis* PCB concentration for waste PCBs established in 40 CFR Part 761 under authority of the Toxic Substances Control Act (TSCA).

waste.[10] To provide an objective test for determining whether mixing has occurred, a rebuttable presumption of mixing with chlorinated hazardous waste is proposed where used oil containing more than 4,000 ppm total chlorine is found. We are also proposing administrative controls to provide a tracking system to enforce the prohibitions and hazardous waste fuel storage controls. Those proposed controls are discussed in Sections VIII and IX, respectively, of this preamble.

The rules proposed today do not provide technical controls on burning waste fuels for energy recovery in industrial boilers and industrial furnaces. As stated above, the Agency intends to propose such controls for these units in late 1985.

Finally, we are specifically requesting comments on several issues including the following: (1) A lead specification for used oil fuel; (2) extending the universe of boilers prohibited from burning hazardous waste and off-specification used oil fuels to include industrial boilers with a heat input capacity of less than 5–10 million BTU/hr; and (3) conditionally exempting ignitable-only hazardous waste fuels with a flash point of 100°F or more from the prohibition on burning in nonindustrial boilers.

B. A Summary of the Prohibitions

This rule proposes to prohibit a person from burning hazardous waste amd off-specification used oil in a nonindustrial boiler.[11] With certain exceptions, it would also require marketers such as processors, blenders, and distributors to market such fuels only to persons who have notified the Agency of their waste-as-fuel activities and obtained an EPA identification number (e.g., to other processors, blenders, distributors, or to burners).

These proposed rules would require fuel marketers to manage as a hazardous waste any fuel that is or contains a hazardous waste, with limited exceptions discussed below. Not only are fuel marketers naturally situated to exert control, but they are far less numerous than subsequent burners, and are dealing with materials not yet so widely commingled as to be difficult to identify and track.

It should be noted that these prohibitions (and the related administrative standards) ordinarily have no applicability to generators because generators usually do not produce waste fuels; rather, they generate a waste which is sent to another person (i.e., a processor or blender) who determines to market the waste as a fuel. The initial generator thus would be subject to regulation under 40 CFR Part 262 like other generators. Generators would be affected by the new requirements in these regulations only when they deal directly with the persons who burn their hazardous waste or used oil, or when they burn these materials themselves. In these cases, they not only are generators, but also are fuel marketers or burners. (See H.R. Rep. 98–198 at 40, supporting this view).

C. Materials and Combustion Units to Which the Regulation Applies

The regulations proposed today would apply to "hazardous waste fuel" and "used oil fuel". These terms are explained in the following sections.

1. *Definition of Hazardous Waste Fuel.* These rules would apply to hazardous waste, and fuels produced by processing, blending, or other treatment of hazardous waste, that are burned for energy recovery in a boiler or industrial furnace that does not have a permit under the RCRA incinerator regulations. In this rule, such waste is termed "hazardous waste fuel".

On April 4, 1983, EPA proposed that all spent materials and sludges and listed by-products, burned for energy recovery were solid wastes, and if hazardous, hazardous wastes. (Proposed § 261.2(a)(2)(ii), 48 FR at 14508.) Based on public comment and further analysis, the Agency is considering asserting RCRA jurisdiction over *all* hazardous waste by-products, spent materials, and sludges that are burned for energy recovery. Accordingly, today's proposal should be read to include all such materials as hazardous waste fuels when so recycled.

The April 4 proposal also stated that a fuel that is produced from hazardous waste is itself a hazardous waste. (*Id.*) Such fuel is likewise included as hazardous waste fuel under today's proposal.

The Agency is aware that certain petroleum refineries reintroduce hazardous wastes generated during petroleum refining (such as EPA Hazardous Waste K048–K052) back into the refining process in order to recover the oil contained in the wastes. Fuels from the process are hazardous waste fuels for purposes of this regulation because they contain hazardous wastes as ingredients. We have had several discussions with American Petroleum Institute (API) representatives regarding recycling practices within the industry and the effect of recycling on levels of toxic constituents in commercial fuel oils. We understand that API is gathering data for our consideration that they believe will show that contaminants in the recycled waste do not add significant concentrations of contaminants to the fuel product. This is because the contaminants are either substantially removed by the refining process, or (when wastes are reintroduced at a point in the process where contaminants are not removed) do not significantly increase the level of contaminants in the fuels (i.e., the contaminants in the recycled waste are so diluted by the relatively large volumes of fuel oils produced that the concentrations of contaminants already present in the oil (originally present in the crude oil or added by other refinery operations) do not increase significantly). If the Agency obtains data during the comment period for this proposed rule that substantiates this premise, we intend to exempt in the final promulgation of this rule petroleum fuel products produced at refineries under the conditions discussed below. The Agency will notice in the **Federal Register** the availability of such data for public review and comment.

If granted, the exemption would be conditioned narrowly. It would apply only to petroleum fuel products containing hazardous waste that is generated by the refining process itself. It would not apply to fuels containing other wastes generated at a refinery such as spent solvents or discarded pesticides. These refining process wastes also would have to be reintroduced into the refining process and converted into petroleum fuel products along with normal process streams. Finally, the exemption would apply only to the hazardous waste fuel. It would *not* apply to the wastes before they are reintroduced into the refining process. Thus, generators would have to store these wastes in compliance with either 40 CFR 262.34 or the facility standards in 40 CFR Parts 265 and 265. Hazardous wastes sent off site for

[10] Used oil mixed with hazardous waste generated by a small quantity generator and exempt from regulation as hazardous waste under 40 CFR 261.5 would be regulated as used oil fuel when so recycled.

[11] The Agency considered developing a specification that would apply to all or certain nonindustrial boilers to identify hazardous waste that could be burned in these units without significant risk. We rejected this option because any such specification would be quite unwieldy, potentially addressing many of the constituents in 40 CFR Part 261, Appendix VIII. Not only are many of these compounds insufficiently characterized to develop toxic specification levels, but the burden of analyzing for these constituents would be expensive and time consuming. Given these difficulties, we have rejected the idea of a hazardous waste fuel specification.

reintroduction to another refining process would still need to be manifested and carried by a Part 263 transporter.

A similar situation exists in the iron and steel industry, where some plants take decanter tank tar sludge (EPA Hazardous Waste K067) and mix it with coal before charging to a coke oven, which produces coke. The coke, in turn, is used as a fuel in steel blast furnaces. The coke, so produced, is a hazardous waste fuel under this proposal. EPA will consider exempting it under the same circumstances as the hazardous waste fuels from petroleum refining.

2. *Determining When a Waste is Burned for Energy Recovery and Applicability of the Proposed Rules to Burning for Materials Recovery.* Today's regulations apply to hazardous waste burned for "energy recovery." This limitation raises two issues: how to distinguish burning for energy recovery from burning for destruction, and determining how to regulate if burning is conducted to recover materials.

The Agency has already addressed in part what is meant by burning for legitimate energy recovery. In a statement of Enforcement Policy issued January 18, 1983 (printed at 48 FR 11157 (March 16, 1983)), EPA stated that as a general matter, subject to individualized consideration of particular circumstances, burning of low energy hazardous waste as alleged fuel is not considered to be burning for legitimate energy recovery. This is the case even if the low energy hazardous waste is blended with high energy materials and then burned. Thus, under these principles, boilers and industrial furnaces burning low energy wastes could be considered to be incinerating them, and so be subject to regulation as hazardous waste incinerators. (See 48 FR at 11158 and 11159.)

Today's proposal leaves the principles of the statement in force. In the statement, EPA, however, indicated that sham burning was easiest to determine when burning occurs in nonindustrial boiler. We also said that larger industrial boilers are more efficient at recovering energy and so could be deemed, somewhat more often, to be burning lower energy wastes legitimately. (*Id.* at 11159.) Today's proposal would prohibit burning of hazardous wastes in nonindustrial boilers and thus supercedes the enforcement policy in that instance. If we were to apply the Enforcement Policy Statement to industrial boilers and furnaces, we would seek to enforce in situations where low energy hazardous waste adulteration was deliberate and massive. (We note, however, that the Policy Statement does not address burning for material recovery, or situations where a waste is burned for both material and energy recovery. In this situation, the fact that low energy wastes are involved would not necessarily indicate that legitimate recycling is not occurring, because material recovery also is involved.)

There also are other indicators of whether or not burning is for legitimate energy recovery. Obvious sham situations are when no usable heat is recovered from the combustion unit, or when the heat recovered is used only to preheat combustion air. Since no meaningful energy recovery ever occurs, we would maintain that these situations involve waste destruction.[12]

A second question is the scope of these regulations when burning involves material recovery. We address this question separately with respect to burning in boilers and burning in industrial furnaces. The Agency views today's regulations as applying whenever hazardous wastes are burned in boilers (unless the boilers are regulated as incinerators, in accordance with the discussion above). Boilers, by definition, recover energy. If materials are also recovered, this recovery is ancillary to the purpose of the unit, and so does not alter the regulatory status of the activity. (See proposed § 260.10—definition of "boiler" in 48 FR at 14507 (April 4, 1983).) Today's regulations also would apply when an industrial furnace burns hazardous wastes for energy recovery. The newly enacted Hazardous and Solid Waste Amendments of 1984 in fact require the Agency to regulate industrial furnaces burning hazardous waste fuels. See RCRA amended section 3004(q) and H.R. Rep. 98–198 at 40. Although the actual burning in the furnace is not addressed by today's regulations, hazardous waste fuel sent to an industrial furnace would be subject to notification, manifest, and interim status storage requirements.

The regulations also would apply when an industrial furnace burns the same material for both energy and material recovery. Examples are when blast furnaces burn organic wastes to recover both energy and carbon values, or when a cement kiln burns chlorinated wastes as a source of energy and chlorine. In general, EPA believes that RCRA expresses a strong mandate to take an expansive view of what constitutes hazardous waste management activities, and to regulate as necessary to protect human health and the environment.[13] See RCRA sections 1004(2), 1004(22), 1004(23), and 1004(24) (statutory definitions stating that secondary materials burned for energy recovery are solid wastes, and therefore, if hazardous, hazardous wastes); H.R. Rep. No. 94–1491, 94th Cong. 2d Sess. at 4 (Congress's concern in promulgating subtitle C of RCRA was to "eliminat(e) that last remaining loophole in environmental law", not to create new loopholes). The newly enacted RCRA reauthorization legislation likewise directs the Agency to regulate burning of hazardous waste fuels within a mandated time frame—by November 1986. We believe this mandate applies to industrial furnaces burning to recover energy and materials.

Burning solely for material recovery in industrial furnaces (as defined in 48 FR at 14507), however, raises different kinds of issues, principally the question of whether the purpose of burning affects either the Agency's jurisdiction or the Agency's regulatory strategy. The Agency will address this issue further as part of the Definition of Solid Waste rulemaking and the Phase II boiler and industrial furnace rulemaking. We note, however, that if the secondary material being burned is a hazardous waste, the purpose for which it is burned is not a factor in determining whether and how to regulate its burning. The issue is whether the burning needs to be regulated to protect human health and the environment, not whether the purpose of burning is destruction, energy recovery, or material recovery. We thus intend to develop regulations for industrial furnaces burning hazardous wastes—regardless of purpose—as part of the Phase II regulations for boilers and industrial furnaces discussed above.

3. *Identification of Used Oil Fuel Subject to Regulation.* Used oil would be subject to regulation under the proposed rules if the used oil, including any material produced from it by processing, blending or other treatment, is used as

[12] The Phase II controls for boilers and industrial furnaces scheduled to be proposed in late 1985 would regulate burning in these units irrespective of whether the waste is burned for energy recovery or destruction. However, our current thinking is to propose to regulate industrial furnaces and those boilers that burn low energy wastes (as well as other boilers that do not meet certain design and operating conditions) much like incinerators. For example, owners and operators could be required to demonstrate 99.99% destruction and removal efficiency of toxic organics. Thus, the enforcement policy (i.e., burning low energy waste is subject to the hazardous waste incinerator standards) is still consistent in outcome with current thinking on the technical controls for burning in boilers and industrial furnaces.

[13] EPA realizes that some of this discussion is inconsistent with a footnote in the preamble to the redefinition of solid waste. See 48 FR at 14485 n.19 (April 4, 1983). EPA withdraws the earlier footnote, to the extent it is inconsistent.

fuel for energy recovery in a boiler or industrial furnace that does not have a permit under RCRA incinerator regulations.

"Used oil" means any oil that has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical inpurities. (See RCRA section 1004(36).) Used oils include the following: (1) Spent automotive lubricating oils (including car and truck engine oil), transmission fluid, brake fluid and off-road engine oil; (2) spent industrial oils, including compressor, turbine, and bearing oils, hydraulic oils, metal-working oils, gear oils, electrical oils, refrigeration oils, and railroad draining and (3) spent industrial process oils.

These proposed rules would apply only to used oil and not necessarily to "oily waste." An oily waste, such as bottom clean-out waste from commercial fuel oil storage tanks, is not used oil because the oil was never "used" and, thus, would not be subject to these proposed rules (provided it is not mixed with used oil and that it is not a hazardous waste).

Today's proposal marks the first time the Agency has used the regulatory authorities created by the Used Oil Recycling Act of 1980 (UORA). (UORA is codified substantially as sections 1004 (36)–(39) and 3014 of RCRA.) UORA requires the Agency to establish "performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil." (See RCRA section 3014.) Burning used oil for energy recovery—the subject of this proposal—is an example or recycling. (See RCRA, section 1004 (37).)

The regulation of used oil fuels raises the legal question of how the provisions of UORA are to be integrated with other RCRA provisions. EPA believes that UORA authorities may be used independent of or as a supplement to Subtitle C of RCRA. If recycled used oil (called "recycled oil" under RCRA section 1004 (37)) is not also a hazardous waste, it is subject to regulation under the provisions of Section 3014 rather than sections 3001–3006, 3008, and 3010. This has certain significant implications. For example, permits are not necessarily required to manage recycled oil, the criminal enforcement provisions of section 3008 (d) do not apply, and the regulatory program may not be delegable to states under section 3006. (See Section XI of this preamble for a discussion of the impact of this rule on authorization of state programs.)

If recycled oil is also a hazardous waste, many of the Subtitle C regulations for other hazardous wastes (40 CFR parts 262–266 may apply. Section 3014, as amended the Hazardous and Solid Waste Amendments of 1984, provides detailed guidance on regulating recycled oil that is a hazardous waste.

4. *Distinguishing Between Hazardous Waste and Used Oil.* It is important to determine whether a waste fuel is a hazardous waste fuel or a used oil fuel because they would be regulated differently under today's rule. For example, hazardous waste fuel could not be burned in nonindustrial boilers under the proposed rules even if it were processed or blended to meet the specifications for used oil fuel.[14] Off-specification used oil could be processed or blended to meet the specification and then burned in nonindustrial boilers.

There are situations where it is difficult to tell if a waste is used oil or hazardous waste, particularly when a used oil contains toxic constituents. The Agency believes that it has discretion to determine whether a waste is to be classified as hazardous waste or as used oil.[15] See Rep. No. 98–284, 98th Cong. 1st Sess. at 38. In exercising this discretion, we are guided by three principles:

(1) Where possible, clear, objective tests are needed for classifying hazardous waste and used oil;

(2) The Agency should not adopt a scheme whereby most used oil would be classified as a hazardous waste ineligible for regulation under the section 3014 standards; [16] and

(3) Any objective test should ensure that massive adulteration of used oil with hazardous waste results in the mixture being defined as a hazardous waste not eligible for the special standards for recycled oil.[17]

We discuss below how we apply these principles to used oil containing chlorinated wastes, to used oil generated by small quantity generators, and to used oil that exhibits a characteristic of hazardous waste.

Used Oil Containing Chlorinated Wastes. Today's rule reiterates the principle found in § 261.3(a)(2) of the existing regulations that a hazardous waste mixed with a solid waste is a hazardous waste. Thus, under the proposed rule, mixtures of hazardous waste and used oil ordinarily are classifed as hazardous waste. It is not always possible, however, to prove (or to be sure) that mixing has occurred, particularly when no one has observed the act of mixing. Used oil containing small amounts of chlorinated compounds is an example where there may be uncertainty.

Since chlorinated compounds—many of them hazardous wastes—are frequently found in used oil (see Table 1 above), the Agency believes that a simple, objective test is needed to determine when used oil has been mixed with hazardous spent halogenated solvents (or other chlorinated hazardous waste) to avoid case-by-case confusion as to when mixing has occurred, and to aid in consistent enforcement of the regulation. The Agency is proposing a rebuttable presumtion that used oil containing more than 4,000 ppm total chlorine has been mixed with hazardous spent halogenated solvents(i.e., EPA Hazardous Waste No's. F001 and F002) or other hazardous chlorinated wastes and, therefore, is a hazardous waste under provision of the "mixture rule" of 40 CFR 261.3 (i.e., a mixture of a listed hazardous waste and other material is a hazardous waste unless delisted under provisions of 40 CFR 260.20). The presumption can be rebutted by demonstrating to enforcement officials that the chlorine content is inorganic or

[14] Although the used oil fuel specification (particularly flash point) in conjunction with the rebuttable presumption on mixing with chlorinated hazardous wastes address contaminants that we believe are frequently added to used oil by mixing with hazardous waste, the specification by no means comprehensively addresses the hazardous constituents that could be added if fixing were condoned. A specification that identified hazardous waste suitable for burning in nonindustrial boilers would need to consider the risks posed by burning the hundreds of toxic constituents listed in Appendix VIII of 40 CFR Part 261, an extremely difficult task given. For example, it would be difficult to set *de minimis* concentration levels for many constituents given limited dose-response health effects data at extremely low levels of exposure. Even if such a comprehensive specification could be developed, analytical costs to demonstrate compliance would likely discourage its use.

[15] Were used oil to be listed as a hazardous waste, we would have discretion to determine whether a waste is hazardous used oil or some other hazardous waste ineligible for the possibly special standards for recycled oil developed after consideration of section 3014 of RCRA.

[16] We think this principle evident because otherwise the Used Oil Recycling Act would have little meaning.

[17] The legislative history to the Used Oil Recycling Act indicates that Congress was especially concerned with environmental hazards created when toxic wastes are added to used oil, and was concerned that these mixtures were not identified or listed as RCRA hazardous wastes. (See, e.g., H.R. Rep. No. 96–1415, 96th Cong. 2d Sess., at 4–5.) The principle in the text also effectuates the objectives of RCRA to promote the protection of human health and the environment by regulating hazardous waste management. (See, e.g., RCRA Section 1003(4).)

that the chlorinated organics were not constituents of hazardous wastes.

We are proposing a total chlorine level of 4,000 ppm for the presumption because we are virtually certain that used oil with higher levels of chlorine has been massively adulterated with chlorinated solvents or other chlorinated hazardous waste. Such fuel would be ineligible for regulation under the potentially special standards under section 3014 (unless the presumption were rebutted) scheduled to be proposed in 1985 (i.e., the used oil listing/management proposed rule). Although used automotive oils can contain on the order of 3,000 ppm inorganic chlorine (from leaded gasoline blowby), higher chlorine levels would almost certainly indicate mixing with chlorinated solvents.[18] Used industrial oils, other than certain metalworking oils,[19] are not know to contain chlorinate compounds unless chlorinated wastes are addes. In addition, sampling data from hundreds of samples of all types of used oil indicated that both total hazardous spent solvent concentrations and total chlorine concentrations exceed 4,000 ppm 25% of the time.[20] Based on these data, the Agency believes that the level of 4,000 ppm is within the range or reasonable levels it could have selected to indicate hazardous waste adulteration. In addition, burning used oil with less than 4,000 ppm of chlorinated solvents will not pose a significant risk from emissions of either incompletely burned solvents (i.e., boilers will destroy from 99% to 99.99% of the solvent) or hydrochloric acid.[21]

The Agency solicists comments as to whether alternate chlorine levels are a more appropriate indicator of hazardous waste adulteration.[22]

Used Oil Generated by Small Quantity Generators. A large percentage, probably a majority, of used oil is generated by small quantity generators.[23] Some of this used oil is a hazardous waste under present regulations, either because it is mixed with hazardous waste or because it exhibits a characteric of hazardous waste. The Agency believes that Congress ordinarily intended used oil from small quantity generators to be classified as used oil subject to regulation under section 3014, not as hazardous waste ineligible for regulations under that section. See, e.g., H.R. Rep. No. 96–1415 at 6 assuming that automotive oil is used oil. Section 241 of the Hazardous and Soild Waste Amendments of 1984 likewise requires the Agency to deal with small quantity generators as a class in promulgating regulations for recycled used oil, and further states that recyled oil is not subject to otherwise applicable rules for small quantity generators. See RCRA amended section 3014(c); see also H.R. Rep. 98–198, *supra*, at 65–66 mandating speical administrative rules for small quantity generators of used oil.

Relying on both the Used Oil Recycling Act and the new legislation, we are stating in the rule in proposed § 266.40(c) that used oil generated by a small quantity generator is subject to regulation as used oil fuel (when so recycled). This is true even if the used oil exhibits a characteristic fo hazardous waste, or is mixed with a small quantity generator's hazardous waste.[24]

We do not think that this reading is inconsistent with the principle that used oil not be massively adulterated with hazardous waste because, as a factual matter, used oil from small quantity generators is generally not massively adulterated. Metals in the waste are present from use of the oil, not from adulteration. Analyses also indicate that small quantity generators—particularly automotive service and repair shops—are unlikely to generate used oil that contains more than on the order of 1000 ppm of halogenated solvents.[25]

As stated in the previous section, used oils containing greater than 4000 ppm chlorine are presumed under the regulation to be hazardous waste subject to full regulation. A marketer, blender or user might argue that the material is exempt from the hazardous waste regulations and remains a used oil because it was generated by a small quantity generator. They would have the burden of proof on this issue. See, e.g., *SEC* v. *Ralston Purina Co.*, 346 U.S. 119, 126 (1953) (party claiming the benefits of an exception to a broadly remedial statutory or regulatory scheme has the burden of proof to show that they meet the terms of the exception). As part of this burden, they would have to show that the used oil has never been commingled with hazardous waste (including used oil containing greater than 4000 ppm chlorine) from large quantity generators. Since used oil from small quantity generators is not typically adulterated at these levels, we do not think this burden can be satisfied other than in exceptional cases.[26]

Used Oil That Exhibits a Characteristic of Hazardous Waste. Used oil itself might be hazardous waste if it exhibits a characteristic of hazardous waste. The most likely

[18] Based on 26 samples of used oil taken from automotive service and repair shops (and, thus, known not to be adulterated with hazardous waste by collectors or processors/blenders). See Franklin Associates, Ltd., *Composition of Used Oil*, Appendix A. Also see NBS Technical Note 1130—*Test Procedures for Recycled Oil Used as Burner Fuel*, August 1980, p. 51.

[19] Some metalworking oils contain extreme pressure additives that are parafinic compounds with high chlorine levels. Thus, used metalworking oils may contain chlorine levels higher than 4,000 ppm even through they are not mixed with hazardous halogenated solvents. However, these oils comprise less than 3% of recycled used oil and, are typically disposed of because of their high water, sulfur, and chlorine content. (See Richard J. Bigda & Assoc., *Review of all Lubricants Used in the U.S. and Their Re-Refining Potential*, June 1980, pp. 63–70 and Franklin Associates, Ltd., *Composition of Used Oil*, p. 3–11 through 3–15.) Nevertheless, if a used oil processor were to manage such oil, he could rebut the presumption that it was a hazardous waste by showing that the chlorine was not attributable to hazardous solvents or other hazardous wastes.

[20] Frankling Associates, Ltd., *Composition of Used Oil*, p. 1–12.

[21] PEDCo, *Risk Assessement of Waste Oil Burning*, pp. 5–1 through 5–8.

[22] Used oil containing less than 4,000 ppm total chlorine could still be found to contain hazardous waste. The Agency, however, is not presuming that it is a hazardous waste in every case.

[23] Roughly 60% of used oil burned as fuel (the principle means of recycling used oil) is automotive oil, most of which is generated by automotive service and repair shops who are small quantity generators. (See Franklin Associates Ltd., *Composition of Used Oil*, p. 1–4.)

[24] The Agency notes that there are alternative approaches to classification of used oil from small quantity generators. One alternative—based on the legislative history of the 1980 Act cited above—would be to classify all automotive oil as used oil, even if it is adulterated with hazardous waste. Other used oil generated by small quantity generators would be classified as hazardous waste ineligible for regulation under Section 3014 standards. A second approach would be to classify small quantity generators used oil as a hazardous waste if it is massively adulterated with small quantity generator hazardous waste. This would be based on the principle, noted above, that massive, deliberate adulteration should result in used oil/hazardous waste mixtures being classified as hazardous waste ineligible for regualtion under Section 3014 special standards. The Agency solicits comments on these alternative approaches.

[25] Analysis of 26 samples of used oil generated by automotive service and repair shops reveals that none contained more than a total of 1000 ppm of chlorinated solvents such as trichloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, and methylene chloride and 50% contained less than a total of 5 ppm chlorinated solvents (40% did not contain any of the chlorinated solvents analyzed). See Franklin Associates, Ltd., *Composition of Used Oil*, pp. 3–33.

[26] The Agency solicits comments on the extent to which small quantity generators may, in fact, generate used oil containing more than 4000 ppm total chlorine because of mixing with chlorinated hazardous waste. Further, given that such mixtures would be regulated as used oil fuel rather than hazardous waste fuel (unless mixed with large quantity generator hazardous waste), the Agency solicits comments on whether an allowable level for chlorine (e.g., 4000 ppm) as an indicator of mixing with chlorinated wastes should be included in the used oil fuel specification to ensure that such adulterated oil—like such mixtures generated by large quantity generators—is not burned in nonindustrial boilers.

possibility is EPA toxicity for lead, arsenic, cadmium, or chromium. These metals are present in used oil almost invariably as a result of the oil's use.

EPA intends that used oil that is hazardous waste solely because it exhibits a characteristic of hazardous waste be regulated as used oil fuel (where so recycled), provided that it is not mixed with a hazardous waste.[27] The legislative history of the Used Oil Recycling Act indicates clearly that used oil that is contaminated during use is to be classified as used oil and, if recycled, be subject to regulation under section 3014. See H.R. Rep. 96-1415 at 6. The specification for used oil fuel suitable for burning in nonindustrial boilers addresses these contaminants by setting specific levels for them.

Used oil also may exhibit the characteristic of ignitability, either through contamination during use or through adulteration with ignitable wastes (such as ignitable spent solvents or discarded gasoline). We are proposing that ignitable used oil be regulated as used oil, and be prohibited from burning in nonindustrial boilers when its flashpoint is less than that of commercial fuel. We are considering whether a flashpoint this low serves as a presumptive indication of mixing with hazardous waste, and therefore, that such mixtures should be regulated as hazardous wastes ineligible for regulation under section 3014 standards.

Used oil exhibiting a hazardous waste characteristic is a hazardous waste under existing EPA regulations. We note that the proposed regulations for burning used oil fuels would provide a level of environmental protection analogous to that provided by the proposed regulations for burning hazardous waste fuels. Neither hazardous waste fuel nor off-specification used oil fuel could be burned in nonindustrial boilers. Although used oil fuel meeting the specification could be burned in nonindustrial boilers, the specification ensures that such burning would not pose significantly greater risk than burning virgin fuel oil. Use of a specification to identify used oil fuel that may be safely burned in nonindustrial boilers is possible because of the relatively small number of significant toxic contaminants typically found in used oil (i.e., used oil not mixed with hazardous waste). A specification is not practicable for hazardous waste fuel because a large number of toxic contaminants—virtually any of the hundreds of hazardous constituents listed in Appendix VIII of 40 CFR Part 261—may be found in concentrations that could pose significant hazard.

5. *Definition of Nonindustrial Boiler or Furnace.* The regulation proposed today would prohibit burning hazardous waste fuel and off-specification used oil fuel in nonindustrial boilers. The term "nonindustrial" boiler or furnace is used to refer to units such as those located at: (1) Single or multifamily residences; (2) commercial establishments such as hotels, office buildings, laundries, or service stations; and (3) institutional establishments such as colleges, hospitals, and prisons.

For convenience, the proposed regulation identifies the boilers and industrial furnaces that may burn hazardous waste fuel and off-specification used oil fuel and prohibits the burning of these fuels in other boilers or furnaces. These waste fuels may be burned for energy recovery in only the following stationary combustion devices: (1) Industrial furnaces; (2) industrial boilers; or (3) utility boilers. (Off-specification used oil fuel may also be burned by the generator in a used oil-fired space heater.) The term "industrial furnace" is defined in the proposed amendment to 40 CFR 260.10 (see 48 FR 14507 (April 4, 1983)) and means those devices that are integral components of manufacturing processes and that use flame combustion or elevated temperature to accomplish recovery of energy or materials. The Administrator would identify and list devices considered to be industrial furnaces. Devices to be listed include cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, and smelting furnaces.

The term "industrial boiler" means any boiler that produces electric power, steam, or heated or cooled air or other gases or fluids for use in a manufacturing process. The term "boiler" is defined in the proposed amendment to § 260.10 (see 48 FR 14507 (April 4, 1983)). (In response to comments, the Agency is considering modifying the proposal to use quantified levels of heat transfer to implement the integral design standard, rather than the radiant heat transfer test of the proposed rule. The Agency also is considering including process heaters and fluidized bed combustion units as boilers. Today's proposal should be read to include these changes.) The term "manufacturing process" means the mechanical or chemical transformation of substances into new products, including the component parts of products. Manufacturing processes are generally limited to those operations classified under SIC 20 through 39 of the Office of Management and Budget Standard Industrial Classification Manual. To qualify, a boiler must actually be used to provide energy to operate equipment or drive chemical or other reactions to affect the transformation of substances into products. Boilers that produce energy for use *solely* for space heating or cooling in a manufacturing plant, or for space heating or cooling or other purposes in an administrative office or auxiliary unit at a manufacturing establishment or other facility owned or occupied by a manufacturing business, are *not* used in a manufacturing process for purposes of this regulation.

Such boilers are virtually identical in operation and use as those located at commercial and institutional establishments. Thus, boilers used solely to heat or cool a building in which a manufacturing business conducts supporting services (including research, development, testing laboratories, warehouses, and garages), rather than actual manufacturing, are nonindustrial boilers for purposes of this regulation, and could not burn hazardous waste fuel or off-specification used oil fuel. Boilers used to provide energy for a manufacturing process as well as for space heating or other nonmanufacturing purposes are considered to be industrial boilers.

D. Selection of Parameters and Levels for the Specification

The Agency has developed a specification for use oil fuel that may be burned without regulation in nonindustrial boilers and other boiler or furnace. As an alternative to the specification, EPA considered banning all used oil burning in non-industrial boilers, just as the Agency is proposing to ban burning of hazardous waste. It could be argued that a ban may be more protective because: (1) A specification necessarily limited in scope to be practicable may not ensure that, in fact, hazardous waste is not mixed with used oil sold to nonindustrial boilers; [28] and

[27] Except that mixtures of small quantity generators exempt hazardous waste and used oil are subject to regulation as used oil, as discussed above.

[28] We believe, however, the specification and rebuttable presumption will detect and control hazardous wastes mixed with used oil at levels that could pose significant risk when the oil is burned. Metals would be controlled directly by specification levels. Adulteration with nonhalogenated, ignitable solvents would be controlled by the flash point specification. Adulteration with halogenated solvents would be controlled by the rebuttable presumption. The Agency also has examined whether other hazardous wastes are typically

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(2) a ban would not allow an increase in emissions of metals and organic compounds over those from burning virgin fuel oils (as discussed below, the specification could allow higher lead levels than found in virgin fuel oils, levels of arsenic, cadmium and chromium levels comparable to the 95th percentile levels found in virgin fuel oils, and low concentrations of chlorinated spent solvents and PCBs, neither of which are found in virgin fuel oils). The ban approach was rejected because we believe that the used oil fuel specification in conjunction with the rebuttable presumption of mixing with chlorinated wastes would adequately prevent the burning of used oils that the Agency believes pose significant risk when burned for energy recovery, as discussed below. Given that some used oils can either meet the specification as generated or can be economically blended to meet the specification,[29] the Agency believes that a ban on burning these oils would be an unnecessary impediment to recycling of used oil in a manner that poses no greater risk to human health and the environment than burning virgin fuel oils. The Agency specifically solicits comments on whether all used oil burning in nonindustrial boilers should be banned as an alternative to using a specification (in conjunction with the rebuttable presumption of mixing with chlorinated hazardous waste) to identify used oil fuel acceptable for burning in nonindustrial boilers.

The used oil fuel specification includes limits for certain metals, PCBs, and flash point and the rebuttable presumption on mixing chlorinated wastes limits total chlorine. EPA relied mainly on three studies in selecting the specification parameters and levels: (1) Reviews of available data on the composition of used oils being used as fuel [Franklin Associates, Ltd., *Composition and Management of Used Oil Generated in the United States,* September 1984]; (2) a review of used oil combustion testing data [Draft report by GCA Corp., *Environmental Characterization of Disposal of Waste Oil by Combustion in Small Commercial Boilers,* August 1983]; and (3) an air modeling and risk assessment study of used oil burning sources to evaluate the potential environmental impacts of certain used oil burning practices [Draft report by PEDCo Environmental, Inc., *A Risk Assessment of Used Oil Burning in Boilers and Space Heaters,* September 1983].

Used oil fuel meeting the proposed specification would be unregulated and could be burned in any boiler including residential, institutional, and commercial boilers. EPA, therefore, is proposing a specification that is intended to be protective under virtually all circumstances (provided that used oil is not illegally adulterated with hazardous waste that would not be detected and controlled by the specification or the chlorine limit of the rebuttable presumption). What follows is an explanation of how EPA selected parameters for inclusion in the specification, and then how actual levels for those parameters were determined.

1. *Selection of Parameters.* EPA has reviewed analytical data from over 1000 used oil samples, many of which were being used as, or to produce, used oil fuels. These data, along with other published sources on composition of new and used lubricants, have allowed EPA to characterize the physical and chemical properties of used oils. Used oils contain a variety of contaminants picked up through use, as well as certain constituents present in the petroleum basestocks and additive packages of the lubricants themselves. Analytical data also confirmed that other materials, in particular chlorinated degreasing solvents, are frequently added to used oil after it is generated. EPA considered the typical concentrations of these contaminants in used oil as well as the toxicity and other chemical properties of the constituents, and thereby identified several constituents that are typically present in used oil as being potentially hazardous pollutants when used oil is burned as a fuel.

EPA reviewed available used oil combustion testing data to determine the amounts of these constituents that are released during used oil combustion. In come areas, EPA found available data to be insufficient and sponsored a series of test burns in late 1982 and early 1983 to obtain additional data. EPA determined that when used oil is burned in boilers, 30–75% of the metals present in the used oil fuel are emitted to the air.[30] However, EPA also determined that organic contaminants, such as chlorinated degreasing solvents (including even hard-to-burn compounds such as carbon tetrachloride) are destroyed at 99–99.9% efficiency even when the units are not operated at peak combustion efficiency as evidenced by occasional flue gas smoke episodes. Thus, less than 1% of the organic compounds present in the used oil may be emitted to the atmosphere.[31]

EPA also conducted air modeling and risk assessment studies to estimate ambient concentrations of pollutants that may be associated with used oil burning. EPA made certain assumptions in the modeling intended to reasonably simulate certain used oil burning practices. The risk studies that have been conducted modeled emissions from used oil fuel usage in hypothetical situations to determine two types of impacts: (1) Area-wide impacts where many small, uncontrolled sources with short stacks are located in an urban area; and (2) "hot-spot" impacts in the vicinity of single sources and clusters of sources. The area-wide analysis assumed the sources were located throughout the urban area, with their locations and density approximating population and fuel use patterns. This scenario simulates a fairly common used oil burning practice, as documented by investigations conducted by EPA, New York City, and New Jersey. The modeling study provided a general indication of the ambient ground level impacts that could potentially be associated with the widespread use of used oil fuel in residential, institutional, and commercial boilers in an urban area. The "hot-spot" impacts analysis modeled emissions from boilers burning 100% used oil. Boiler sizes and stack heights were varied to represent the range of boilers located in urban areas. Emissions from clusters of 4 and 16 sources evenly spaced 50 or 100 meters apart in a square were also modeled to simulated conditions in highly urbanized and commercialized areas. Ground level impacts of burning used oil with various concentrations of pollutants were determined. (For lead, ambient levels were also modeled for elevated and close-in receptors.)

Finally, EPA considered available data on the composition of virgin, commercial fuel oil, which used oil fuel replaces. EPA made comparisons of the

added to used oil, and has not found such evidence. Preliminary screening of approximately 50 used oil samples for a wide range of hazardous constituents (other than solvents and metals already known to be found in used oil), including 6 pesticides, 2 herbicides and approximately 80 other organic compounds, did not reveal appreciable levels of compounds other than those typically found in virgin fuels. See Franklin Associates, Ltd., *Composition of Used Oil*., pp. 3–44 through 3–53.

[29] Preliminary analysis indicates that from 8 to 19% of 132 used oil samples that were burned for fuel could meet a lead specification at either end of the proposed range, 10 and 100 ppm, respectively. In addition, from 30 to 86% of the samples could meet a specification of 10 or 100 ppm, respectively, after blending with 90% virgin fuel oil with mean metals content. Source: Franklin Associates, Ltd., (unpublished data). April 27, 1984 memorandum to EPA.

[30] GCA Corp, *Environmental Characterization of Waste Oil Combustion*, p. 9, and PEDCo. *Risk Assessment of Waste Oil Burning*, p. 3–20.

[31] GCA Corp, *Environmental Characterization of Waste Oil Combustion*, pp. 14–20.

types and levels of contaminants found in used oil fuel versus other fuel oils. For some contaminants, EPA has found used oil fuel to be very similar to other fuel oils. In general, however, significant differences exist. EPA determined that used oil fuel typically contains certain contaminants, such as cholorinated degreasing solvents, not found at all in commercial fuel oils. Also, used oil fuel typically contains certain toxic metals, (such as lead) at levels higher than typically found in commercial fuel oils.

After considering information provided by all of the studies described above, EPA has determined that certain contaminants present in used oil fuel are released during combustion in amounts high enough to present potential health hazards, while other contaminants do not appear to present such hazards. In general, EPA considered establishing a specification for any toxic contaminant that is typically present in used oil fuel at concentrations higher than typical for virgin fuel oils. EPA determined that regulation of toxicants at the same or lower levels than found in virgin oil would not result in protection of human health and the environment since virgin oil would be substituted for used oil as a fuel.

EPA then evaluated the potential harm to human health that could result from burning used oil containing these contaminants. In making this determination, the Agency assessed whether burning used oil fuel under reasonably typical conditions could significantly increase the ambient concentration of the pollutant, and whether the increment that would be added to the ambient air by burning used oil fuel could be associated with adverse health impacts. What follows is a discussion of several parameters considered for inclusion in the proposed specification, and the rationale for including or not including each parameter. EPA requests comments on the rationale for selecting parameters, as well as on those actually selected.

(a) *Barium and Zinc.* EPA considered setting specification levels for barium and zinc. These metals are typically present in used oil at 50–300 and 500–1100 ppm, respectively. These levels are 10–100 times greater than would be found in virgin fuel oils. In workplace settings, exposure to high amibient levels of barium has been associated with irritability and baritosis, while zinc has caused metal fume fever. EPA has determined that in the case of zinc, emissions from the widespread burning of used oil in urban areas would significantly add to ambient levels of zinc; however, these ambient levels are still nowhere near the threshold response level that triggers metal fume fever.[32] In the case of barium EPA has determined that emissions from the widespread burning of used oil fuel in urban areas could also significantly increase ambient levels of barium. Ambient levels attributable to burning used oil under reasonable worse case conditions could be on the order of 0.35 micrograms per cubic meter.[33] However, EPA again has concluded that the health effects resulting from exposure to such concentrations and by the airborne route are not likely to be significant. Chronic exposure to low levels of airborne barrium compounds does not appear to be a serious health hazard. Dusts of barium oxide are considered potential agents of dermal and nasal irritation.[34] However, occupational exposure to barium sulfate dust and barium carbonate can result in baritosis, a benign pneumoconiosis that is not incapacitating. Although it does produce radiologic changes in the lungs, the changes are reversible with cessation of exposure.[35] Thus, EPA has proposed no specification for either barium or zinc. However, the Agency specifically solicits comments on the health risks from low ambient levels of zinc and barium and whether either should be included in the specification.

(b) *Polynuclear Aromatic Hydrocarbons.* EPA evaluated the hazards posed by benzo[a]pyrene and other polynuclear aromatic hydorcarbons (PAH's). Benzo[a]pyrene, as well as other PAH's, have been identified as carcinogens by EPA. Comparable levels of benzo[a]pyrene and other PAH's are normally present in used oil and virgin fuel oil. (Residual, or "number 6" oil often has higher levels of benzo[a]pyrene than does used oil.) EPA also reviewed data on emissions from used oil and virgin fuel oil burning. The levels of PAH's are comparable.[36] EPA has determined that the burning of any fuel oil is associated with the emissions of small amounts of PHA's. Thus, the burning of used oil fuel is not associated with significantly greater incremental amounts of PAH emissions than if virgin fuel oil were bruned, and should not lead to a significiant increase over background levels of benzo[a]pyrene or any other PAH. EPA, therefore, has not proposed a specification for any polynuclear aromatic hydrocarbon.

(c) *Lead, Arsenic, Cadmium, and Chromium.* Existing data show that used oil fuel typically contains higher concentrations of lead, arsenic, cadmium, and chromium than levels typically found in virgin fuel oils. Table 2 compares levels of these metals in used oil versus other virgin fuel oils. EPA's test burns have confirmed that a large percentage of the metals present in used oil (as much as 75%) are emitted when used oil is burned in uncontrolled boilers.

TABLE 2.—CONCENTRATIONS OF SELECTED METALS IN USED OIL AND FUEL OILS

(Values in ppm)

Contaminant	Used oil	Fuel oils
Arsenic	5–16	2–5
Cadmium	3–10	ND–2
Chromium	7–35	1–10
Lead	240–1,200	2–10

Median and 90th Percentile values are shown for used oil.
Median and 95th Percentile values are shown for fuel oil.

Source: Franklin Associates, Ltd., *Composition and Management of Used Oil Generated in the United States*, September 1984, p. 5–11.

EPA conducted a modeling study of a hypothetical urban area where used oil fuel was being burned across the city in residential, institutional, and commercial boilers.[37] The results of this study show that lead emissions from burning used oil fuel result in ambient concentrations of lead that are of potential public health concern. For example, EPA assumed that used oil being burned contained 1000 ppm of lead. Ambient concentrations of lead associated with the used oil burning were estimated to be over 0.7 micrograms per cubic meter (ug/m^3) in certain sections of the urban study area. Thus, this source would contribute nearly 50% of the National Ambient Air Quality Standard for lead (1.5 ug/m^3) established by EPA under the Clean Air Act. In combination with the background levels present in most urban areas (which are typically 0.5—1 ug/m^3 but exceed 1 ug/m^3 for several urban areas),[38] used oil emissions could cause the ambient standard to be exceeded. (However, it is not clear to what extent current background levels already include lead attributable to used oil burning.) Moreover, ambient lead levels in the vicinity of large single sources and clusters of small sources (i.e., sources spaced close enough (50 m) so

[32] PEDCo Environmental, Inc., *A Risk Assessment of Waste Oil Burning*, pp. 43–10, 4–24, 4–33, 4–51.

[33] PEDCo Environmental, Inc., *A Risk Assessment of Waste Oil Burning*, p. 5–2.

[34] American Conference of Governmental Industrial Hygienists. *Documentation of the Threshold Limit Values*, 1982.

[35] *Casarett and Doull's Toxicology, The Basic Science of Poisons*, 1980, p. 438.

[36] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning*, pp. D–5 through D–15.

[37] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning*.

[38] Office of Air Quality Planning and Standards, US EPA, 1982 (Unpublished data).

that their emission plumes overlap) can exceed the NAAQS considering only used oil burning emissions.[39]

The Agency believes that a specification for lead in used oil burned in nonindustrial boilers is needed notwithstanding the State Implementation Plan (SIP) program for implementing the lead National Ambient Air Quality Standard (NAAQS). This is because the great majority of these boilers are not major sources of lead emission (i.e., individually) and so are not ordinarily subject to review under the SIP process to ensure attainment and maintenance of the lead standard in the vicinity of the boiler. Further, urban air monitoring required under the SIPs may not control these units because the "hot spots" that they can create (i.e., areas in the vicinity of single sources or clusters of sources where ambient levels exceed the NAAQS) may not be detected under the SIP monitoring program.[40]

EPA also studied three other toxic metals. In the first instance, EPA assumed used oil contaminated with 28 ppm of chromium (the 90th percentile concentration of data available at the time of the study) was being burned across the city and that the chromium was emitted in its hexavalent state.[41] Under this scenario, used oil burning would be associated with an increased risk of cancer. The portion of the population within 5 km of the center of the urgan area would be exposed to nearly 0.01 ug.m^3 of chromium, which is associated with a cancer risk of roughly 1 in 10,000.

EPA's modeling study also shows that under certain conditions, used oil burning could be associated with significantly increased cancer risk due to the presence of candium and arsenic. The incremental cancer risk associated with increased levels of these metals when burning used oil containing 4 ppm cadmium and 16 ppm arsenic (the 90th percentile concentrations of data available at the time of the study) could be about 1 in 500,000 for cadmium and 1 in 50,000 for arsenic.[42]

The scenarios employed by EPA in its modeling study were based on conservative, but reasonable assumptions. Although modeling and risk assessment do not provide precise results, such studies do provide a general indication of the extent of hazard a practice may pose. In this case, EPA has determined that the widespread, uncontolled burning of used oil in residential, institutional, and commercial boilers can be associated with an increase in ambient levels of arsenic, cadmium, chromium, and lead. For the first three metals, these increased ambient levels may lead to an increased risk of cancer for exposed individuals to levels that are cause for concern. Given the large number of exposed persons located in urban areas, the Agency believes that emissions of these metals should be controlled. In the case of lead, ambient lead levels could exceed the National Ambient Air Quality Standard in the vicinity of large single sources and clusters of smaller sources. Therefore, specifications have been proposed for each of these metals. The setting of acceptable concentrations for these metals is discussed below.

(d) *Chlorinated Solvents.* Analyses of over 600 samples of used oil from various sources revealed that more than 60% were contaminated with chlorinated solvents listed as EPA Hazardous Waste No's. F001 and F002 (e.g., trichloroethane, trichloroethylene, and tetrachloroethylene).[43] Such used oil/solvent mixtures are hazardous waste under provisions of the "mixture rule" of 40 CFR 261.3. Thus, such mixtures would be regulated as hazardous waste fuel when burned for energy recovery, unless the spent solvent was generated by a small quantity generator and exempt from regulation as hazardous waste under provisions of 40 CFR 261.5.[44]

As discussed previously in Section VII–C–4 of this preamble, the Agency is proposing a rebuttable presumption of mixing with hazardous wastes to avoid case-by-case confusion of when mixing has occurred. Under the presumption, used oil with more than 4,000 ppm total chlorine is presumed to be mixed with hazardous wastes. The person accumulating the used oil could rebut the presumption by demonstrating to enforcement officials what the oil has not been mixed with hazaardous waste.

Chlorinated solvent levels in used oil fuel suitable for burning in nonindustrial boilers need not be restricted to levels below 4,000 ppm (e.g., by chlorine specification). As stated previously, air emissions modeling has shown that used oil containing 4,000 ppm of hazardous chlorinated solvent will not pose a significant risk when burned in nonindustrial boilers either from emissions of unburned solvent or hydrochloric acid.

(e) *Benzine, Napthalene and Toluene.* Used oil may contain higher levels of benzene, napthalene and toluene than virgin fuel oils. Benzene and napthalene are picked up from gasoline or diesel fuel through use and are typically found in used oil in concentrations of 100–200 ppm and 300–100 ppm, respectively. Toluene is a widely used nonhalogenated solvent and can also be picked up from gasoline through use. Toluene concentrations in used oil may range from 1000–5000 ppm. EPA assumed in its modeling study that only 97 percent of these compounds were destroyed during combustion. (This is a worst case assumption, since EPA has established that organic contaminants are typically destroyed at 99–99.9 percent efficiency, even in very small boilers.) EPA has concluded that emissions from burning used oil containing benzene, napthalene, and toluene at the levels typically found would not significantly increase ambient levels of these compounds, and that the small increments that would be added do not present serious health hazards.[45] Therefore, specification levels have not been proposed for these compounds.

(f) *Ignitability.* Although specifications for benzene, napthalene, and toluene have not been proposed to address the toxicity of these compounds, these compounds have a low flash point (less than 50° F) and are highly ignitable. Gasoline, which often contaminates used motor oils during or after their use, and the nonhalogenated solvent xylene, which is also frequently mixed with used oil, also have a very low flash point. Used oil fuel contaminated by these materials may have a flash point less than 100° F. This is a lower flash point than any commercial fuel oil would have.[46] A material with such a low flash point may present significant hazards during handling and storage. Most importantly, such materials may readily volatilize and ignite, or even explode, unless special precautions are taken beyond the precautions normally

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[39] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning.*

[40] The SIP urban air monitoring program focuses on lead emissions from automobiles. Thus, monitoring stations are generally located close to major traffic corridors. These stations may not detect emissions from burning used oil.

[41] The Agency believes it is reasonable to assume under conservative conditions that chromium will be emitted in its hexavalent state since burning is an oxidizing environment. However, we specifically solicit comments on this assumption and the risk posed by burning chromium-bearing fuels.

[42] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning*, p. 5–7.

[43] Franklin Associates, Ltd., *Oil Composition of Used Oil*, p. 1–12.

[44] Used oil mixed with exempted small generator hazardous waste is subject to regulation as used oil fuel. See Section VII–C–4 of this preamble for rationale.

[45] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning*, pp. 5–2, 5–6, 5–7.

[46] The American Society for Testing and Materials' Standard Specification for Fuel Oils (D 396–75) calls for a minimum flash point of 100° F

taken when handling any fuel oil. Consequently, EPA has proposed a minimum flash point, discussed below as a part of its specification for used oil fuel.[47]

(g) *Sulfur.* Used oil fuel may contain as much as 1% sulfur, through 0.1–0.5% is more typical. No specification has been proposed for sulfur because residual fuel oils (e.g., fuel oil number 6 and heavy number 4) frequently contain 1–3% sulfur. Several states and many urban areas, however, already have established sulfur limits for fuel oils; used fuel usually meets these limits and in fact is sometimes blended with residual fuel oil to allow the residual fuel to meet local sulfur limits.

(h) *PCBs.* EPA has included a specification for PCBs of 50 ppm. Used oil fuel with PCBs exceeding these level is subject to the existing waste PCB rules in 40 CFR Part 761 promulgated under authority of the Toxic Substances Control Act (TSCA). EPA is not proposing this limit for used oil, but is including the PCB limit in this rule for the reader's convenience.[48] Thus, used oil fuel that is off-specification solely because it contains more than 50 ppm PCBs remains subject to the existing rules in Part 761, and is not subject to today's proposal. Although the Part 761 rules do not provide the administrative controls included in today's proposal, Part 761 includes stringent requirements on burning waste PCBs.[49]

The Agency has indicated its intent to integrate the TSCA waste PCB rules under Part 761 with the RCRA Subtitle C rules to avoid overlap of regulatory control (e.g., for used oil fuel that is both a waste PCB and off-specification for other reasons). (See 45 FR at 33086 and 33173 (May 19, 1980).)

2. *Determination of Specification Levels.* As indicated above, EPA is proposing specification levels for the following parameters in used oil fuels: Arsenic, cadmium, chromium, lead, and flash point. This section explains how levels were selected for each parameter in the proposed specification.[50]

Under today's proposal, a used oil fuel would have to meet all of the specifications in order to be burned in a nonindustrial boiler. EPA has determined, as discussed earlier in this preamble, that these boilers are generally not suited for burning contaminated waste fuels. In general, EPA agrees with the House Committee on Energy and Commerce, which reported the finding that operators of facilities with nonindustrial boilers expect to receive and are equipped to handle only commercial grade fuel oil (See H.R. Rep. No. 98–198 at 39, 42.) However, EPA does not believe it is necessary for used oil fuel to be physically and chemically identical to virgin fuel oils in every respect.

As discussed previously, EPA has determined that certain used oil contaminants can pose a serious risk when the oil is burned in nonindustrial boilers in urban areas. EPA has determined that the concentrations of some of these contaminants should be limited to levels found in commercial fuel oils. However, the health risk from other contaminants would not be serious if used oil concentrations are limited to levels higher than found in commercial fuel oil. The basis for these determinations are discussed below.

(a) *Arsenic, Cadmium, and Chromium.* As described earlier, emissions from the widespread burning of used oil fuel in an urban area, (such as when residential, insitutional, and commercial boilers burn used oil fuel) can be associated with increases in ambient levels of arsenic, cadmium, and chromium. These metals are carcinogens, with no known threshold or "safe" level of exposure. Any increased or incremental emissions of these metals would lead to an increased risk of cancer to exposed individuals. As described above, EPA has concluded that the increased risks associated with emissions of these metals are cause for concern and can lead to an increased risk of cancer in large numbers of exposed individuals. Therefore, the Agency has proposed stringent limitations on these metals, intended to correspond to concentrations typically found in commercial fuel oils. (See Table 3.) The Agency's theory is that there is no protection to human health and the environment if recycled products are replaced by virgin products that are identical in terms of toxicant concentration, and therefore that specification levels should ordinarily be no more stringent than levels found in the commercial products that would be used in place of the recycled product. See 46 FR at 44971 (August 8, 1981) (exemption of spent pickle liquor used as a wastewater conditioner).

TABLE 3.—PROPOSED USED OIL FUEL SPECIFICATIONS FOR METALS THAT ARE NON-THRESHOLD POLLUTANTS

Contaminant	Maximum allowable level (ppm)
Arsenic	5.0
Cadmium	2.0
Chromium	10

The proposed levels for arsenic, cadmium, and chromium represent the 95th percentile concentrations based on 40–50 analyses of commercial fuel oils.[51] Thus, 95 percent of the commercial fuel oil sampled meets the specification. We are proposing to base the specification on the 95th percentile virgin fuel oil levels to ensure that most virgin oils would meet the specification but that abnormally high virgin oil levels (i.e., "outliers") would not unduly bias the specification. EPA specifically requests comments on whether the 95th percentile concentrations are appropriate for setting specification levels.

Another benefit from setting stringent limits is to prevent contamination of boiler ash with toxic metals. Although this ash may exhibit EP toxicity and, if so, should ordinarily be managed as hazardous waste, operators of nonindustrial boilers such as those in apartment and office buildings and hospitals may not be aware of their obligations and may not manage the residues as hazardous wastes.[52] The fuel specification for these metals should help assure that the ash is in fact nonhazardous.

(b) *Lead.* Lead is a pollutant associated with nervous system damage and renal damage. The Agency established the NAAQS for lead of 1.5 $\mu g/m^3$ to prevent exposure of most members of the sensitive population (young children) to ambient lead levels that can cause interference with development of red blood cells.[53]

[47] As noted above, we solicit comments on whether used oil with a flash point lower than 100° F should be subject to regulation as hazardous waste fuel rather than off-specification used oil fuel. The reasons could be that the oil was mixed with hazardous ignitable wastes (e.g., ignitable solvents), and that the flash point is an indication of massive adulteration that did not occur during use of the oil.

[48] PCB concentrations in used oil typically range from 7 to 50 ppm. Emissions modeling has shown that ambient PCB levels resulting from burning used oil with these PCB levels in nonindustrial boilers is not likely to pose a serious health hazard. Lifetime cancer risk would increase less than 1×10^{-6} (i.e., 1 in 1,000,000). See PEDCo Environmental Inc., *Risk Assessment of Waste Oil Burning*, pp. 5–6 and 5–7.

[49] Under provisions of 40 CFR Part 761, waste PCBs may be burned in a fossil fuel fired boiler provided that the unit has a capacity of at least 50 million Btu/hr and is monitored to ensure it is operating at peak combustion efficiency. In addition, prior approval is required from the Administrator to burn certain waste PCBs in a boiler.

[50] The basis for including PCBs and for the PCB limit is discussed above.

[51] Franklin Associates, Ltd., *Composition of Used Oil*, p. 5–11.

[52] GCA Corp., *Environmental Characterization of Waste Oil Combustion*, p. 14.

[53] The NAAQS is intended to prevent young children from exceeding a blood lead level of 30

Continued

EPA has estimated ambient levels under various scenarios of boiler size and location, receptor location, and used oil concentration to determine a concentration that would provide reasonable assurance that ambient lead levels would not exceed the NAAQS under realistic, worst-case conditions.[54] Lead emissions were modeled from single boilers with capacities varying from less than 1 million Btu/hr to 250 million Btu/hr. In addition, to simulate some of the realistic, worst-case conditions typical of highly urbanized and commercialized areas where most nonindustrial boilers are located, emissions from clusters of four and sixteen units equally spaced at 50 or 100 meters in a square were modeled for units with capacities up to 50 million Btu/hr. In some scenarios, receptors (i.e., exposed individuals) were assumed to be exposed to ambient air that is above ground level as occurs with windows or air intake systems in multi-story structures (i.e., "elevated receptors") and to be close to the source (25 to 50 meters) (i.e., "close receptors"). The boilers were assumed to be burning 100% used oil with lead concentrations ranging from 10 to 1000 ppm and to be operating at 50% capacity to simulate worst-case conditions during the winter heating season. Wind conditions modeled were historical conditions for January at a point in a major urban area.

Modeling results indicate that burning used oil with a lead concentration of 1000 ppm (the 90th percentile concentration of data available at the time of the study) in nonindustrial boilers in urban areas can cause "hot spots" (areas where ambient levels exceed the NAAQS) under a number of typical scenarios: (1) Single large boilers (250 million Btu/hr) with short stacks; (2) small clusters of medium size boilers (50 million Btu/hr) in situations where persons are exposed to ambient air above ground level through windows or air intake systems of multistory buildings (i.e., elevated receptors); (3) single small boilers (10 million Btu/hr), again considering elevated receptors; and (4) large clusters of very small boilers (1 million Btu/hr), again considering elevated receptors. At a lead concentration of 250 ppm (roughly the 50th percentile value), several scenarios that are not typical but probably not infrequent can still create "hot spots": (1) Small clusters of medium size boilers considering both elevated and close receptors (i.e., persons are exposed to ambient air above ground level *and* at a distance of 25 to 50 meters from the stack); (2) small clusters of small boilers considering both elevated and close receptors; and (3) large clusters of small boilers considering only elevated receptors. A lead concentration of 100 ppm would prevent "hot spots" in all but a few conceivable but exceptional scenarios where small or medium boilers are clustered together and where receptors are down wind, elevated (at the height of the stack) *and* extremely close to the source (within 25 meters). A lead concentration of 10 ppm (the 95th percentile virgin fuel oil lead concentration) results in ambient levels well below the NAAQS in virtually all situations.

EPA believes that a lead specification of 100 ppm ensure that ambient lead levels in the vicinity of both large and small single and clustered sources would be well below the NAAQS, on the order of 50% of the standard. Only in unique and truly extreme scenarios would ambient levels be expected to exceed the standard.[55]

Although background ambient lead levels in urban areas are considered to range from 0.5 to 1.0 $\mu g/m^3$ and are above 1 $\mu g/m^3$ for several urban areas, only those used oil burning scenarios that are likely to cause ambient levels to approach or exceed the standard were considered for a number of reasons: (1) It is not clear to what extent the ambient air monitoring stations typically located next to traffic corridors are measuring lead levels from used oil burning as well as from automobiles; (2) urban air lead levels are thought to be decreasing as more automobiles burn unleaded fuel; and (3) many of the high lead levels resulting from modeling used oil burning were found at elevated locations where background levels from automotive exhausts should be minimal.

Although limiting lead levels to 100 ppm should ensure that nonindustrial boilers would not cause ambient lead levels to exceed the NAAQS, the Agency is, nonetheless, concerned that such a 100 ppm lead specification for used oil fuel would not be a protective as is reasonable. The document the Agency used to develop the NAAQS, *Air Quality Criteria for Lead*, and the NAAQS itself are currently under review as required by Sections 108 and 109 of the Clean Air Act (42 U.S.C. 7408 and 7409). Any amendments to the NAAQS are scheduled to be proposed in 1986.

The existing NAAQS is based on findings by EPA and the Centers for Disease Control (CDC) that 30 $\mu g/dl$ blood lead levels should be prevented in children. At this time, EPA and other federal agencies, including CDC, are reviewing new data that report IQ effects in children exposed to lead levels below 30 $\mu g/dl$. In addition, there are other effects below 30 $\mu g/dl$, including changes in heme synthesis, changes in brain wave patterns, reduced nerve conductive velocity, and reduced Vitamin D levels in children. Should the peer review process find that these data are persuasive, the ambient standard may be revised accordingly.

In addition, the Agency is requiring the phase-down of lead in gasoline—the primary source of ambient lead in urban areas. Because sources of lead are additive, and exposure to lead among the general population is widespread, constituting a national health problem, the Agency believes that it is reasonable that efforts be made to reduce preventable sources of lead exposure.[56]

In light of these concerns, the Agency has considered proposing a used oil fuel specification for lead at the level found in virgin fuel oil, 10 ppm (i.e., 95% or 50 samples of virgin fuel oil contained less than 10 ppm lead). This would address our health concerns and would ensure that there would not be a significant increase in lead emissions when used oil fuels displace commercial fuel oil. However, we are concerned that a lead specification as low as 10 ppm would effectively preclude most burning of used oil as fuel because: (1) Only about 30% of used oil could meet the specification, either as generated or after blending with 90% virgin fuel oil containing mean metal concentrations (blending with more than 90% virgin fuel oil is not considered to be generally economical); (2) most used oil would, thus, be precluded from burning in

$\mu g/dl$. Blood levels above 30 $\mu g/dl$ are associated with impairment of heme synthesis in cells indicated by elevated erythrocyte protoporphyrin. In addition, there are other adverse effects associated with blood levels above 30 $\mu g/dl$ which can result from exposure to concentrations well above the NAAQS, including encephalopathy and renal damage. (See 43 FR 46246–261 (October 5, 1978)).

[54] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning.*

[55] For example, the standard could be exceeded in a situation where several 50 million Btu/hr, medium sized boilers serving very large high-rise structures with about 800,000 ft^2 of floor space are spaced about 100 meters apart, where all of the boilers burn used oil with 100 ppm lead concentration, and where an individual is exposed to air through a window or air intake system that is located close to the stack (about 50 meters), and at a height equal to the boiler stack height, and directly down wind from at least two of the stacks.

[56] See 47 FR 38070–38078 (August 27, 1982) where the Agency discusses the bases for the gasoline lead phasedown regulation and the lead NAAQS, the relationship between gasoline lead phasedown and ambient air levels, and studies of the effects of low level lead exposure on intelligence or behavior of children.

nonindustrial boilers; and (3) industrial boilers and furnaces may also be largely precluded from burning used oil fuel under the Phase II technical controls on boilers and industrial furnaces. (Under the Phase II rules for boilers and industrial furnaces, the Agency is considering applying the used oil fuel metals specification proposed today—as one regulatory option—to boilers and industrial furnaces that do not have air pollution control equipment because the units can pose risks similar to nonindustrial boilers. Boilers and industrial furnaces with air pollution control equipment may be allowed to burn used oil fuel that contains higher levels of metals provided that the control equipment has a collection efficiency such that controlled emissions are not greater than if specification used oil fuel were burned.) In comparision, the amount of used oil that could meet a specification with other allowable lead levels is as follows:

	Lead specification			
	10 ppm	50 ppm	100 ppm	200 ppm
Percent of used oil that can meet specification	30	50	86	87

At allowable lead levels greater than 100 ppm, the amount the used oil that can meet the specification does not increase substantially.

At a lead specification level of 10 ppm, 70% of used oil, about 350 million gallons per year, could be diverted from burning. Even if the amount of used oil that is rerefined is doubled, only about 100 million gallons of used oil million gallons per year of used oil burned as fuel could be diverted to that use. Thus, large quantities of used oil heretofore recycled could be diverted to disposal. Not only would this waste a valuable resource, but it could result in health risks if generators or collectors disposed of their used oil improperly rather than incur the cost of proper management under existing and pending rules.[57] See H.R. Rep. No. 98-198 at 65. Given the huge number of generators and collectors, enforcement efforts may be limited and illicit activities may go undetected until serious problems are caused.

The Agency had decided to propose a lead specification range of 10 to 100 ppm to encourage public comment on the issues presented here and to allow final promulgation of a lead level that represents: (1) A level of 100 ppm based on ensuring that nonindustrial boilers do not cause ambient lead levels to exceed the NAAQS; (2) a level of 10 ppm based on commercial fuel oil levels that would limit lead emissions as much as possible; or (3) an intermediate level that balances the concerns of whether the NAAQS-based level is as protective of public health as is reasonable and whether a level lower than 100 ppm would severely disrupt used oil recyling and result in dumping.

The Agency also specifically requests comments on the following issues: (1) Whether other factors or scenarios should be considered that might suggest that another limit would be required to ensure ambient lead levels do not exceed the NAAQS; (2) whether a two-tiered specification would be more appropriate where a very low limit (e.g., 10 ppm) is required (or used oil burning is banned) for boilers within highly urbanized and commercialized areas (which could, perhaps, be identified by using the Bureau of Census list of cities with more than 25,000 population) and a higher limit (e.g. 100 ppm) is allowed for other areas where sources and receptors are more widely spaced and, thus, where individuals are likely to be exposed to lower ambient levels attributable to the source.

The Agency also considered whether specifications for arsenic, cadmium, and chromium would be needed if a lead level at the low end of the range were selected for promulgation. At a very low lead limit, used oil would be much more likely to fail the specification (even after 90% blending with virgin fuel oil) because of lead rather than arsenic, cadmium, and chromium as follows:

Lead specification	Percent [1]
10 ppm	95
50 ppm	80
100 ppm	50

[1] Percent of used oil failing specification (after 90% blending with virgin fuel oil) because of lead content.

Source: Based on data in Franklin Associates, Ltd., *Composition of Used Oil*, Appendix.

The Agency believes that specifications for arsenic, cadmium, and chromium are needed even if a lead limit as low as 10 ppm were promulgated for a number of reasons. Used oil lead levels are expected to decrease over the next several years as a result of the Agency's leaded gasoline phasedown program. (Lead in used oil is largely attributable to contamination of crankcase oil with lead from leaded gasoline "blow-by".) Thus, although less and less used oil would fail the specification for lead over time, that oil could have high arsenic, cadmium, or chromium levels. In addition, as discussed above, the Agency is considering in the Phase II technical controls for boilers and industrial furnaces applying the used oil fuel specification proposed today to used oil burned in those units as well. However, under one regulatory option being considered, burning of off-specification used oil fuel would be allowed in units with air pollution control equipment that controls emissions to levels that would occur if specification used oil were burned. Thus, controls are needed for all constituents in used oil that can pose a health hazard when the oil is burned—arsenic, cadmium, and chromium as well as lead. The Agency specifically requests comments on whether arsenic, cadmium, and chromium specifications are needed if a low lead specification level is selected for promulgation.

(d) *Flash Point.* EPA is proposing that used oil fuel with a flash point over 100 °F be exempt from regulation, provided that it meets the specification levels for metals and PCBs. Such fuel could, therefore, be burned in residential, institutional, and commercial boilers. The basis for this is that fuels with flash points as low as 100 °F—the ASTM specification for Number 2 distillate fuel—are routinely handled by fuel transporters and users, including residential, institutional, and commercial boiler owners. EPA believes that used oil fuel that otherwise meets the proposed specification is essentially equivalent to commercial fuel oil with respect to hazards posed during handling (and risks posed by burning) and that it will be handled with the same care as commercial fuel oil.

Used oil with a flash point of less that 100 °F would be subject to regulation as off-specivication used oil fuel. Fuels with a flash point below 100 °F are not routinely handled by fuel transporters or users and are inherently very hazardous. (According to ASTM specifications, no commercial grade fuel oil should have a flash point below 100 °F.) Thus, such fuels would be regulated as off-specification used oil fuel and would be subject to the notification, invoice and certification requirements and could be burned only in industrial boilers and furnaces.[58] As discussed previously in

[57] Used oil that exhibits a characteristic of hazardous waste or that is mixed with hazardous waste is subject to regulation as hazardous waste when disposed under existing rules. In addition, the Agency is developing controls for recycled used oil under authority of the Used Oil Recycling Act amendments to RCRA, and is considering whether used oil should be listed as hazardous waste. These rules are scheduled to be proposed in 1985.

[58] At first glance, setting the specification at 100 °F may appear inconsistent with the current definition for the characteristic of ignitability found in 40 CFR 261.21, which states that a liquid having a flash point below 140 °F is an ignitable hazardous waste. However, the Agency has determined that

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footnote 47, we are also soliciting comments on whether used oil with a flash point lower than 100 °F should be regulated as hazardous waste. If the final rule for used oil fuel is promulgated with such low flash point oils regulated as off-specification oil rather than hazardous waste fuel, the Agency will propose to control the handling hazards such oil poses during storage and transportation in the used oil listing/management rules scheduled to be proposed in late 1985.

E. Basis for Deferring Regulation of Used Oil Space Heaters

The prohibition on burning off-specification used oil fuel in nonindustrial boilers does not apply at this time to used oil-fired space heaters. We are deferring regulation of these units until we better understand the hazards they may pose and evaluate options to address any such hazards. In the interim, EPA is proposing a conditional exemption for these units.

The Agency believes that roughly 35,000 used oil space heaters have been sold nationwide to automotive service shops and other generators of crankcase oil.[59] These units are designed to burn 100% crankcase oil and are very small. They burn 0.1 to 4 gallons per hour of used oil and the largest units have a maximum heat input capacity of 0.5 million BTU per hour. Approximately 90% of used oil space heaters are the vaporization type where volatile organics in the oil are vaporized and ignited, while metals, sediment and heavy organic compounds remain in a pan at the base of the unit. Vaporization units appear to have low metals emissions rates—5 to 15% of the metals in the used oil are emitted from the stack.[60] Other used oil space heaters are the atomization type where the oil is "sprayed" into the combustion zone. Atomization units appear to have relatively high metals emission rates—75 to 95%.

Preliminary assessments indicate that vaporization units may not pose a significant health hazard. However, it is not clear whether atomization units pose a significant health risk with respect to metals emissions. In a situation where four atomization units may be spaced in a square 50 meters apart (as around an intersection) and emission plumes overlap, it appears that ambient lead levels would increase by about 10 percent of the National Ambient Air Quality Standard. In addition, emissions of arsenic, cadmium, and chromium from atomization units may pose a cancer risk to the most exposed individual on the order of 1 in 100,000.[61]

The Agency is considering whether these risk levels are significant and, if so, what approaches could be used to reduce the risk. If the atomization units alone are considered to pose a significant risk, the burning of off-specification used oil in those uits could be banned. Under this approach, EPA must determine how to handle the atomization units currently in operation and how to clearly differentiate between atomization and vaporization units. Alternatively, EPA could prohibit burning of off-specification used oil in space heaters that cannot meet an emissions performance standard (e.g., requirement that heaters emit less than 10% of the metals in the fuel). Finally, the Agency could determine that the risk posed by these units is not significant or only marginally significant and thus not worth the Agency and state resources that would be required to implement and enforce a regulatory system to effectively reduce the risk.

The Agency will address the regulation of used oil space heaters beyond the requirement for outside venting proposed today in the used oil listing/management rule scheduled to be proposed in 1985. In the interim, the Agency encourages comments on whether the risks of burning used oil in space heaters are significant, and, if so, on approaches to reduce risks.

To be excluded (at this time) from the prohibition on burning off-specification used oil, owners and operators of used oil-fired space heaters would have to meet three conditions: (1) the heater must have a maximum heat capacity of less than 0.5 million BTU/hr; (2) the heater must burn only used oil that the owner or operator generates on-site or receives used oil from individuals who change the oil in their automobiles or other equipment (i.e., "household waste" generated by "do-it-yourself" oil changers); and (3) the heater must be vented to the outside atmosphere. The capacity restriction is imposed to limit the exemption to legitimate used oil-fired space heaters used by automotive service shops. An upper size limit of 0.5 million BTU/hr heat input encompasses all used oil space heaters in use today and prevents operators of larger boilers from claiming they are operating used oil-fired space heaters. The second condition is imposed to ensure that only facilities that generate used oil, such as automotive service shops, and that might normally purchase such heaters are eligible for the exemption. This will preclude the possibility, albeit remote, that persons who are not used oil generator might purchase these units and purchase off-specification used oil from processors or blenders. Finally, we are requiring that the heaters be vented outside to avoid high indoor concentrations of lead and other toxic compounds.[62]

F. Prohibition on Cement Kilns in Urban Areas Burning Hazardous Waste Fuel

The Hazardous and Solid Waste Amendments of 1984 prohibit cement kilns located in cities with populations greater than 500,000 from burning hazardous waste fuels unless they comply with the standards applicable to hazardous waste incinerators. See RCRA amended Section 3004(1). This requirement takes effect by operation of law, and so applies although EPA is not presently proposing to restrict burning of hazardous waste fuels in other types of industrial furnaces. (EPA is in the process of adopting regulatory language adding the bill's requirements for such cement kilns to the Subtitle C regulations.) Since this prohibition takes effect by operation of law, it is not part of today's proposal.

G. Request for Comments on Issues Pertaining to the Prohibition

EPA specifically requests comments on the two issues discussed below.

1. *Request for Comments on Prohibiting the Burning of Waste Fuels*

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regulation of used oil fuels having a flash point between 100–140 °F is not necessary (provided they meet the specification) for the reasons discussed in the text. In addition, the "ignitability" characteristic for hazardous waste was intended mainly to identify "wastes capable of causing fires during routine transportation, storage, and disposal and wastes capable of severely exacerbating a fire once started." (See 45 *FR* 33108 (May 19, 1980).) The 140 °F limit was selected because such an ambient temperature is regularly encountered during landfill disposal, and in such environments, liquid wastes with flash points lower than 140 °F will readily volatilize and can easily be ignited by the numerous ignition sources to which wastes are exposed during management.

[59] Development Planning and Research Associates, Inc., *Selected Characteristics of the Waste Oil Space Heater Industry*, July 1983.

[60] GCA Corporation, *The Fate of Hazardous and Nonhazardous Wastes in Used Oil Recycling*, April 1983, p. VI-16, Draft Report.

[61] Metals emissions, ambient levels, and risks are about an order of magnitude lower for vaporization units. In addition, the cancer risk from emissions of unburned chlorinated solvents does not appear to exceed 1 in 1,000,000 for either vaporization or atomization units. See PEDCo. Environmental Inc., *Risk Assessment of Waste Oil Burning*, pp. 4–22 through 4–24 and 5–5 through 5–8.

[62] EPA also plans to issue an advisory under authority of the Toxic Substances Control Act (TSCA) to alert automotive service and repair shops of the hazards posed by indoor venting and the requirements of this proposed rule.

in Small Industrial Boilers. There are some common characteristics shared by many very small industrial and nonindustrial boilers that can tend to make their hazard potential similar. Many industrial boilers are similar in size, operation, and location to most of the nonindustrial boilers.[63] Nearly 90% of the approximately 125,000 industrial oil fired boilers, like more than 98% of the approximately 265,000 commercial and institutional oil fired boilers (and virtually all residential boilers), are very small units with a heat input capacity of less than 5–10 million BTU/hr.[64] These small industrial boilers are identical in type and operation to most nonindustrial boilers. They are mostly firetube or cast iron boilers with unsophisticated combustion controls. In addition, from 50 to 75 percent of industrial boilers are located in urban areas like nearly all nonindustrial boilers.[65] Further, the smaller industrial boilers are likely to be disproportionately located in urban areas given that "heavy" industries can be expected to use the larger units and to have a disproportionately large percentage of establishments located in nonurban areas.

Given these factors, the Agency is requesting comments on whether the prohibitions included in the regulations proposed today should be extended to include very small industrial boilers. A size cut-off in the range of 5 to 10 million BTU/hr heat capacity seems reasonable because boilers smaller than that range typically have relatively crude combustion controls (e.g., on-off controls and fixed linkage between fuel firing rate and combustion air flow rate) and may not be able to maintain peak combustion efficiency (and, thus, destruction efficiency) when burning hazardous waste.[66] Although nearly 90 percent of all industrial boilers that burn fuel oil are smaller than that size and would be restricted, the approximately 15,000 unrestricted boilers represent 80.90% of the industrial boiler oil burning capacity.[67] These unrestricted industrial boilers would have more than enough capacity to burn all of the used oil and hazardous waste currently used as fuel (even assuming no used oil meets, or is blended to meet, the specification and thus, no used oil is burned in nonindustrial or restricted industrial boilers). Only approximately 10% of the unrestricted industrial boiler capacity (i.e., boilers larger than 5–10 million BTU/hr) would be required to burn all used oil fuel and hazardous waste fuel assuming boiler load factors averaged 25 to 50% (i.e., on a yearly average, the boiler operates at 25 to 50% of its capacity).

The Agency is currently conducting tests of industrial boilers burning hazardous wastes and intends to propose technical controls on burning hazardous waste and used oil in these boilers (as well as industrial furnaces) in late 1985 (i.e., the Phase II controls discussed previously). Nonetheless, we are requesting comments on whether small industrial boilers should be included in the prohibition proposed in today's rule, or whether regulation should be deferred until a more definitive determination of their impacts, and appropriate regulatory controls, is completed.

2. *Request for Comments on Exempting Ignitable Wastes from the Prohibition on Burning in Nonindustrial Boilers.* The Agency is considering and exemption from the prohibition on burning in nonindustrial boilers for hazardous waste that is hazardous solely because it ignitable. Such wastes would pose no greater fire or explosion hazard during handling than commercial fuel oils if the minimum flash point allowed for the exemption was 100° F, the minimum flash point for commercial fuel oils. In addition, stack emissions should not pose a hazard if the waste is hazardous solely because it exhibits the characteristic of ignitability in Subpart D of 40 CFR Part 261. However, given that the Agency has not completed its efforts to list waste that are hazardous because they contain toxic compounds, wastes that are *currently* hazardous solely because they exhibit the characteristic of ignitability may, in fact, contain toxic compounds. See 46 FR at 7673 (January 23, 1981). If so, these wastes can pose a hazard during handling (e.g., from spills, fires), and emissions from the combustion of these wastes could expose the public to toxic compounds. To ensure that "ignitable-only" wastes do not contain significant concentrations of toxic compounds, those toxic compounds of concern must be identified, acceptable concentrations must be determined, analysis procedures must be prescribed, and recordkeeping procedures must be required. Further, to make the exemption cost-effective to the burner, it probably should be self-implementing.

The toxic compounds of concern are the hazardous constituents the Agency has listed for toxicity in Appendix VIII of 40 CFR Part 261. A maximum concentration of 100 ppm appears to be protective for most organic constituents given that, at that concentration, stack gas concentrations of the constituent are likely to be just at the detectable limits given destruction efficiencies of 99 to 99.99 percent typically found in nonindustrial boilers. However, lower allowable concentrations may be needed for highly toxic compounds. In addition, the fuel should meet the used oil fuel specification for metals to ensure that it poses no greater hazard than exempted used oil fuel (i.e., on-specification used oil).

It is not clear what levels would be appropriate for other metals and inorganic constituents. In addition, it is not clear whether a self-implementing exemption would be enforced adequately. Yet requirements for interaction by regulatory officials would amount to a permitting or approval system and probably would not be cost-effective for burners.

The Agency is specifically requesting comments on the need for an exemption for "ignitable-only" fuels and how a self-implementing, yet effective, exemption can be structured.

Finally, the Agency has considered whether such "ignitable-only" wastes with a flash point not less than 100 °F should be exempted from all of the requirements proposed today or just the prohibition on burning in nonindustrial boilers. Such wastes could require different types of handling and burning than commercial fuel oils even though they are ignitable with a flash point similar to No. 2 and No. 4 commercial fuel oil. Thus, boiler operators may need to be put on notice that the fuel is not commercial fuel oil but rather a hazardous waste fuel that may not handle and burn like a commercial fuel.

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[63] As discussed in Section VI–B–1 of this preamble, nonindustrial boilers can pose significant health risks because: (1) They are typically very small and may not achieve complete combustion of toxic organics (e.g., 99.99% destruction) because of inadequate controls to maintain optimum combustion conditions when firing hazardous waste and because of short residence time of toxic organics in the combustion zone; and (2) the risk from incomplete combustion is compounded because non-industrial boilers are typically located in urban areas where sources are frequently clustered together which causes emissions plumes to overlap and increases ambient concentrations of toxic compounds, and where individuals can be exposed to high ambient levels of emitted toxicants because they can be located close to the source and exposed to above-ground level ambient air (e.g., through windows or building air intact systems).

[64] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning*, pp. A–6, A–18.

[65] PEDCo Environmental, Inc., *Risk Assessment of Waste Oil Burning*, pp. A–2 through A–17.

[66] The New York State Department of Environmental Conservation has developed regulations for the composition and use of waste fuels (Subpart 225–2). Those regulations essentially ban burning of hazardous waste and used oil in a boiler with a capacity less than 20 million BTU/hr.

[67] Estimates based on data in PEDCo Environmental Inc., *Risk Assessment of Waste Oil Burning*, pp. A–6 and A–7.

To provide this notice to boiler operators, we might subject the waste to the manifest and other administrative controls applicable to hazardous waste fuels.

VIII. Proposed Administrative Controls

A. An Overview of the Proposed Administrative Controls

In addition to the substantive controls on burning discussed above and the controls on storage discussed in Section IX of this preamble, EPA today is proposing that hazardous waste fuel and off-specification used oil fuel be subject to certain administrative requirements. These requirements include one-time notification to identify waste-as-fuel activities and to obtain an EPA identification number (notification of waste-as-fuel activites is required even if a person has previously notified the Agency and obtained an EPA identification number), compliance with a manifest system (a new requirement for blended hazardous waste fuels), or an invoice system (for off-specification used oil fuel), and recordkeeping. In addition, persons receiving a shipment of hazardous waste fuel or off-specification used oil fuel would have to certify to the person initiating the shipment that they have notified EPA of their activities and that they may lawfully burn the waste fuel.

In general, these proposed controls serve two purposes. They make it possible to administer and enforce the prohibitions against burning in nonindustrial boilers and provide for proper tracking of the materials.

These administrative requirements would apply to hazardous waste fuel and off-specification used oil fuel marketers and burners. Hazardous waste and used oil generators who send their wastes directly to a person who burns them for energy recovery act as marketers and would be subject to the proposed controls.[68] Generators who send their hazardous waste or used oil to a person who does not burn them for energy recovery would not be subject to the proposed controls for marketers even though the wastes may subsequently be burned for energy recovery by another person. The hazardous waste generator, however, would be subject to the 40 CFR Part 262 regulations ordinarily applicable to generators.[69]

Hazardous waste fuel transporters would be subject to the full set of Part 263 requirements. This proposal would regulate for the first time transporters of hazardous waste fuel that is neither listed waste nor a sludge. These hazardous wastes are currently exempt from regulation under provision of 40 CFR 261.6(a), a provision that would be superseded by the new Part 266 standards proposed today.

Used oil fuel transportation would be exempt from these proposed controls to avoid piecemeal regulation of used oil transporters.[70] If used oil fuel transporters were regulated while other used oil transporters were not, transporters could avoid complying by claiming that the used oil is intended for other purposes. The Agency plans to propose comprehensive controls for used oil management in 1985, and will address regulation of transporters at that time.

The following table (Table 4) summarizes the controls that would be required under today's proposal:

TABLE 4.—PROPOSED CONTROLS FOR WASTE FUELS

	Hazardous waste fuel[1]	Off-specification used oil fuel
Generators[2]	Part 262[3]	Exempt.
Marketers[2]	N,RN,P,M,C,R,S	N,RN,P,I,C,R
Transporters	Part 263[4]	Exempt.
Burners	N,RN,P,M,C,R,S	N,RN,P,I,C,R

[1] Hazardous wastes that are listed wastes or sludge are subject to storage and transportation requirements under existing rules (40 CFR 261.6) prior to use as fuel or used to produce a fuel. Today's rules would extend storage and transportation requirements as well as the waste fuel requirements indicated here to all hazardous wastes used as fuel or used to produce a fuel and to all hazardous waste-derived fuels produced from hazardous waste by processing, blending or other treatment.

[2] Hazardous waste and used oil generators would not be regulated as marketers unless they market directly to a burner.

[3] Generators who send their hazardous waste to waste fuel marketers would be subject to Part 262 standards as ordinary generators. See proposed § 266.32(a). Generators who market their hazardous waste (i.e., hazardous waste fuel) to burners would be subject to the Part 262 generator standards as well as to the waste fuel marketer requirements indicated here. See proposed § 266.32(b).

[4] Hazardous waste fuel transporters would be subject to regulation as ordinary transporters. Thus, they would not be required to notify or renotify for waste-as-fuel activities. However, they would notify for their hazardous waste transportation activities if they have not notified already.

Key:
N—Notification and identification number.
RN—Renotify for waste-as-fuel activities.
P—Prohibitions on marketing to, or burning in, nonindustrial boiler.
M,I—Compliance with manifest (M) or invoice, (I).
C—Provide or receive certification of compliance with standards for burning.
R—Recordkeeping.
S—Storage standards.

B. Discussion of the Proposed Notification Requirements

1. *Purpose of the Notification Requirement.* To ensure that waste fuels are managed properly and not routed to nonindustrial markets, EPA must be able to identify those persons who engage in waste-as-fuel activities. The notification requirement proposed here serves this purpose. This type of notification is mandated under the recently-enacted RCRA reauthorization legislation and is authorized under the provisions of Sections 3010 and 3014.[71]

The notification process will identify the people subject to regulation. It also will serve to inform these persons that these fuels are no longer exempt from RCRA requirements. In addition, for persons and facilities that are not now part of the RCRA system, notification will result in the assignment of an EPA identification number. An identification number is needed for compliance with various requirements of this package.

2. *Who Must Notify.* Under this proposal, the following persons must notify the Agency of their waste-as-fuel activities: (1) Marketers of hazardous waste fuel or off-specification used oil fuel (e.g. third-party processors, blenders, and distributors, and those generators who market directly to burners); (2) burners of hazardous waste fuel or off-specification used oil fuel [72];

[68] Many used oil processors burn used oil as fuel to provide heat for purposes of treatment (e.g., enhance settling or separation of water, evaporation of volatiles). Such burning is incidental to the primary function of the facility: processing and market of used oil. Thus, such processors are not considered "ultimate burners" and generators and transporters who sell oil to such processors are not subject to regulation as marketers. These processors are considered to be manufacturers and their boilers are considered to be industrial boilers eligible to burn off-specification used oil see Section VII-C-1 above.

[69] Hazardous wastes that are listed wastes or sludges are currently subject to storage and transportation controls prior to use to produce a fuel and prior to marketing as a fuel. (See 40 CFR 261.6(a)). Today's proposal would extend regulation to all hazardous wastes and so would include unlisted by-products and spent materials as well as any fuel containing any of these wastes as an ingredient. See Section VII-C-1 above.

[70] Many used transporters (collectors) pick up used oil from several small generators and aggregate the oil at satellite storage facilities prior to shipment in larger tankers to used oil processors or rerefiners. Such transporters are not considered marketers for purposes of today's proposed rules unless: (1) They ship used oil directly to a person who burns the oil for energy recovery; or (2) they process used oil at the storage facility. Any blending of used oils resulting from accumulation in the transporters's storge tanks is indicental to the primary function of accumlation and is not considered blending or processing for purposes of producing used oil fuel.

[71] EPA interprets notifications to be required under Section 3010 whenever the Agency amends a Part 261 regulation to bring additional persons into the hazardous waste management system, not just when additional characteristics or listings are promulgated. See 48 FR at 14496 n.51 (April 4, 1983). Since EPA is proposing to increase the coverage of the system by amending Part 261 requirements, authority lies under Section 3010 to require notifications for hazardous waste fuels. The Agency also believes the plenary authority over recycled used oil contained in Section 3014 provides authority to obtain notifications. EPA's information collection authority in Section 3007, requiring persons handling wastes that may be hazardous to "furnish information relating to such wastes" to EPA, and general rule-making authority in Section 2002(a)(1) likewise justify obtaining notifications pertaining to used oil.

[72] Except generator who burn their oil in space heaters under provisions of proposed § 261.41(b)(4)

(3) marketers of used oil fuel that meets the specification but who receive off-specification used oil fuel and treat it to produce used oil fuel that meets the specification; and (4) marketers of used oil fuel that meets the specification and who receive used oil from a generator (or from a transporter who receives used oil from generators) irrespective of whether the used oil they receive meets the specification.[73] If any of these persons has previously notified the Agency of any hazardous waste management activities and obtained an EPA identification number, they must nonetheless renotify and may use the amended notification form (see discussion below) to identify their waste-as-fuel activities. Notification must be provided concurrently to all States whose hazardous waste programs have received final authorization. See Section 204(a)(1) of the Hazardous and Solid Waste Amendments of 1984 (RCRA amended Section 3010).

Certain persons are not affected by the proposed special notification requirement for waste-as-fuel activities: (1) Hazardous waste generators who neither burn nor market their waste fuels directly to a burner are not required to notify regarding their waste-as-fuel activities because these generators need not and may not know the end use of the hazardous waste; however, they must notify regarding their generation activities if they have not notified already); (2) hazardous waste fuel transporters (transporters must notify only regarding their transportation activities (assuming they have not notified already) but not regarding waste-as-fuel activities for the same reason given above for generators); and (3) used oil generators and transporters (unless they also market directly to a burner).

The notification requirement also does not apply to owners and operators of nonindustrial boilers (e.g., residential, institutional, and commercial boilers) who burn used oil that meets the specification. Since EPA is today proposing to restrict the composition of fuels being burned in these types of combustion units to fuels that pose no greater risk than virgin fuel oil, there is no need to receive notifications from these entities.

3. *Use of the Amended Hazardous Waste Notification Form.* Persons who must file notifications with EPA (or renotify) because of their waste-as-fuel activities may use revised EPA form 8700–12: "Notification to EPA of RCRA Subtitle C Activity" (see the Appendix to the proposed rule). This form, a revised version of the existing hazardous waste notification form, has been amended to accommodate the requirements for a waste-as-fuel notification as well as notification of hazardous waste activity. The Agency intends to use this revised form for all future notifications.

Use of this form offers a standardized approach for persons required to file notifications and assists EPA in the orderly input of data into its data management system. While use of the form is encouraged, it is not mandatory. Notifiers who do not use the form must include all required information, including the certification in Item XI of the form, signed by the person notifying or by his authorized representative.

The amended notification form will provide the Agency with two types of additional information: (1) The number and location of facilities engaged in the marketing of hazardous waste fuel and used oil fuel, including the processing, blending and distribution of these fuels; and (2) the number, type, and location of facilities that burn hazardous waste fuel and off-specification used oil fuel. This information will be used to develop a general profile of the nature and scope of the waste fuel industry and to identify those persons who must comply with the other requirements proposed today or in the future.

Such information cannot be derived from data already submitted to the Agency because many persons that would be required to notify because of their waste-as-fuel activities were not previously subject to the notification requirements. In addition, the information available on those persons required to notify previously is inadequate because neither the original notification form, nor the Part A Permit Application, include questions that are specifically relevant to waste-as-fuel activities.

4. *Notification Procedures and Implementation.* EPA estimates that there are, at most, 20,000–30,000 persons that may be required to file notifications. While EPA does not intend to carry out a mass mailing to potentially affected parties, the Agency will widely announce the notification requirements of these rules through the press and trade journals.

EPA is today soliciting public comments on the waste-as-fuel notification process and revised form concurrently with the proposed waste-as-fuel rules. After the Agency has reviewed public comments on the proposed rules and notification form we will issue a final notice in the **Federal Register** requiring persons subject to the waste-as-fuel notification to submit a notification to EPA. Due to possible statutory time requirements, this final notice requiring notification may be issued before promulgation of final waste-as-fuel regulations.[74]

The Agency plans to distribute the notification forms through the RCRA/SUPERFUND Industry Assistance Hotline. Each requestor will receive a complete notification package, including a form and accompanying instructions, to assist him in filing his notification.

EPA will return to each notifier an acknowledgement of receipt of the notification, and will issue an EPA identification number if one was not previously assigned. This acknowledgement in no way constitutes an endorsement by EPA of the adequacy of the notification or of the notifier's business practices; rather it serves as a confirmation that EPA received the notification.

5. *Legal Significance of Notification.* EPA is promulgating the notification requirement for hazardous waste fuels and used oil fuels under the authority of Sections 3010 and 3014 of RCRA, respectively. The notification is a prerequisite for RCRA interim status (see RCRA Section 3005(e)(2)) for owners and operators of hazardous waste fuel storage facilities. (See H.R. Rep. No. 98–198 *supra* at 41, likewise specifying that notification of management of hazardous waste fuels serves as a prerequisite for interim status.)

C. Proposed Transportation Controls

EPA is proposing today to adopt a system to track movement of hazardous waste fuel and off-specification used oil fuels from the initial marketer (e.g., generators who market to burners; processors; blenders) through intermediaries (e.g., transporters, distributors) to the industrial users who burn the fuel for energy recovery.[75] This

[73] Although the used oil fuel marketed by such persons meets the specification and is exempt from regulation either because the used oil, as generated, meets the specification or because of processing or blending, such marketers must nonetheless notify EPA of their waste-as-fuel activities. These marketers would be required to analyze their used oil fuel to document that it meets the specification. See proposed § 266.43(a)(2) and (b)(1). Such notification, analysis, and retention of analysis records is required in an effort to ensure that EPA can monitor persons who first claim that used oil fuel meets the specification.

[74] As noted above, the Hazardous and Solid Waste Amendments of 1984 amend RCRA to require waste-as-fuel notifications within 15 months. Conceivably, notification could be required before the final waste-as-fuel regulations are promulgated.

[75] The system is already in place for certain hazardous waste fuels—namely listed wastes and

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tracking system would create a paper trail allowing regulatory officials to track a hazardous waste fuel or off-specification used oil fuel from point of processing, blending, or other treatment to point of burning, thus making the prohibition on burning in nonindustrial boilers enforceable. Equally important, the tracking document (either a manifest or an invoice) would put persons who handle these materials on notice that they are receiving a hazardous waste or off-specification used oil fuel.

Consequently, EPA today is proposing that all shipments of hazardous waste fuel be accompanied by a manifest. Hazardous waste fuel marketers would be subject to the transportation (and pre-transport) requirements of 40 CFR Part 262 and transporters would be subject to the requirements of 40 CFR Part 263.

We are proposing a slightly different system for off-specification used oil, whereby marketers (e.g., processors, blenders, distributors) offering off-specification used oil fuel for sale would have to prepare and send an invoice to the fuel buyer, but would not have to have the invoice physically accompany each shipment. This distinction (i.e., invoice in lieu of a manifest) is needed to avoid piecemeal regulation of used oil transporters.[76]

Information to be included on invoices includes the shipment date, the shipment initiator's name, address and identification number, the receiving facility's name, address, and identification number and the quantity of used oil fuel shipped. All of this information is currently required to be included in the standard EPA hazardous waste manifest.

In a situation where an off-specification used oil fuel goes from a processor or blender to an intermediate distributor, the Agency intends that the distributor must reinstitute a new invoice to accompany any fuel it sells that is produced from or otherwise contains the used oil (unless the used oil fuel now meets the specification). This requirement is consistent with those found in other parts of the RCRA regulations whereby intermediate storage facilities must reinitiate a manifest. See, e.g., 40 CFR 264.71(c) and 262.10(f).

The Hazardous and Solid Waste Amendments of 1984 amended RCRA to require producers, distributors, and marketers of hazardous waste fuels to include a warning label on the invoice or bill of sale for the fuel. See RCRA amended Section 3004(r). The requirement takes effect within 90 days of enactment, and remains in effect until EPA promulgates superseding regulations. *Id.* The Agency believes that the proposed requirement of a manifest achieves the same purpose as the warning label—to put the user or distributor on notice that he is receiving hazardous waste fuel. Receipt of a fuel accompanied by a hazardous waste manifest achieves this result. Further, the manifest would also put the transporter on notice that he is handling hazardous waste because the manifest must accompany the shipment. The invoice or bill of sale with the warning label may not accompany the shipment. Consequently, the Agency views the proposed requirement of a manifest as superseding the warning label requirement. Should this proposal be adopted, therefore, warning labels will no longer be required for hazardous waste fuels.

D. Proposed Notice and Certification Requirement

To enforce the prohibition on burning hazardous waste fuel and off-specification used oil fuel in nonindustrial boilers, the prohibition applies not only to the boiler owner and operator, but also to the waste fuel marketer. Thus, a marketer such as a processor, blender, or distributor (or a generator marketing directly to a burner) may not sell hazardous waste fuels or off-specification used oil fuel to a person who burns it in a nonindustrial boiler. Marketers must also ensure that they market these fuels only to persons in (and, thus, aware of) the regulatory system: persons who have notified EPA of their waste-as-fuel activities. In addition, marketers are responsible for determining whether their waste fuel is subject to regulation (i.e., whether their product fuel contains hazardous waste or is off-specification used oil).

To comply with these requirements, marketers need to know whether the person receiving a shipment of hazardous waste fuel or off-specification used oil fuel has notified EPA of his waste-as-fuel activities and whether he intends to burn the fuel only in a utility boiler or industrial boiler or furnace. Thus, the proposed rules include a provision requiring that a marketer of hazardous waste fuel or off-specification used oil fuel receive a certification from the fuel purchaser stating that the purchaser has notified EPA of his waste-as-fuel activities and will burn the fuel only in unrestricted boilers or furnaces. This certification is a one-time notice and would be required before sending the initial shipment (after the effective date of this rule). Similarly, the purchaser would be required to send the certification before receiving the first shipment from a marketer. This will ensure that the recipient is aware of the regulations applicable to waste fuels and of his responsibilities as a burner (or intermediary).[77]

Hazardous waste and used oil generators (and transporters receiving waste from generators) who market their waste to a person who is not a burner would not be subject to this (or any other) requirement for marketers. Consequently, such a recipient of the generator's hazardous waste or used oil would not be required to provide the generator with a certification notice.

E. Proposed Recordkeeping Requirements

The recordkeeping requirements that the Agency is proposing are limited requirements that are designed primarily to keep track of the movement of hazardous waste fuels and off-specification used oil fuels. The substantive prohibitions proposed today, as well as the various administrative requirements would not be enforceable without these recordkeeping requirements. These requirements would require each person who would be subject to these proposed rules as a marketer (i.e., producers, distributors and certain generators) or burner to keep a copy of the manifest or invoice (for used oil) that accompanies or that applies to each fuel shipment.[78] In addition, marketers and burners would be required to retain copies of certification notices that they initiate or receive.

Finally, marketers of used oil fuel who first claim the oil meets the specification are required to obtain analysis of their used oil fuel product to document that it

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sludges when sent directly from the generator to a burner. See 40 CFR 261.6(a). Today's proposal would expand the system to *all* hazardous waste fuels managed by *all* marketers and burners (i.e., to all hazardous wastes burned directly and to all fuels produced from hazardous waste by processors/blenders).

[76] Regulation of used oil fuel transporters at this time probably would not be enforceable as a practical matter, even if considered desirable, given that only one group of used oil transporters would be subject to the requirements—those that transport oil destined not only for recyling rather than disposal, but only for one particular type of recycling (i.e., used as fuel for energy recovery).

[77] Incidentally, simply requiring a recipient only to have an EPA identification number is not adequate to ensure that he has notified the Agency of his waste-as-fuel activities, and is, therefore, aware of applicable regulatory controls. This is because EPA identification numbers are assigned for reasons other than waste-as fuel activities.

[78] Transporters of hazardous waste fuel must keep copies of manifests under provisions of 40 CFR Part 263. Transporters of off-specification used oil fuel are not subject to regulation.

meets the specification. Copies of the analyses must be retained for three years. Marketers required to obtain analyses of their used oil fuel product include: (1) Processors and blenders who treat off-specification used oil to produce specification used oil fuel; and (2) generators and collectors (i.e., transporters who receive used oil directly from generators) who market specification used oil fuel directly to burners. Such analyses and recordkeeping are required to enable the Agency to enforce the prohibitions on those persons who first claim that used oil fuel meets the specification. Marketers must obtain analyses of representative samples of the fuel to ensure that the fuel meets the specification. (Guidance on sampling and analysis is provided in: EPA, *Test Methods for Evaluating Solid Waste*, July 1982, SW-846.)[79]

All records must be retained at the facility for three years, except that certification notices that a person is required to send or receive must be kept for three years from the date a person last engages in a waste fuel marketing transaction with the person who sent or received the certification notice. These records must be available for inspection by any officer, employee, or representative of EPA (see RCRA Section 3007).

IX. Storage Requirements for Hazardous Waste Fuel

Today's proposal would expand existing requirements for storage so that all storage of all hazardous waste fuels is subject to regulation.[80] Under existing provisions of 40 CFR 261.6, hazardous wastes that are listed wastes or sludges are subject to the storage standards of Parts 262, 264, and 265, when stored prior to use as a fuel and prior to use to produce a fuel. Hazardous waste fuel produced by a marketer by processing, blending, or other treatment of hazardous waste presently is exempt from regulation. (Such hazardous waste fuel is termed "hazardous waste-derived fuel" for purposes of this discussion.)

We are proposing to require that all hazardous waste used to produce fuel and all hazardous waste fuel (including hazardous waste-derived fuel) be subject to storage requirements for the reasons given below.

A. Which Hazardous Wastes Should Be Subject to Storage Requirements

The Agency is proposing today to regulate the storage (and transportation) of *any* hazardous waste used to produce a fuel and of any hazardous waste fuel (both hazardous waste used directly as fuel and hazardous waste-derived fuel). We, thus, are proposing to eliminate the current distinction between listed wastes and sludges on the one hand and unlisted spent materials and unlisted by-products on the other. These distinctions are not environmentally justifiable, and exist only because of the Agency's initial uncertainty (in 1980) about an appropriate regulatory regime for recycled wastes. See 48 FR at 14475 (April 4, 1983). It is now our view that a hazardous waste classification as sludge, by-product, or spent material, or listed vs unlisted (characteristic) hazardous waste has no relation to the type of hazard the waste poses when stored, and therefore, that storage of all of these wastes should be regulated uniformly. (*Id.*)

The Agency in fact has already proposed that all hazardous wastes going from a generator to a fuel processor be subject to regulation. See proposed § 261.6(b)(v), 48 FR at 14510 (April 4, 1983). We did not propose a parallel change for unlisted, nonsludge hazardous wastes going from a generator directly to a burner. See 48 FR at 14485. However, we have now decided to expand applicability of the storage standards uniformly, and so are proposing in today's rules to eliminate the distinctions between listed wastes and sludges and other hazardous wastes.

B. Eliminating the Exemption for Storage of Hazardous Waste-Derived Fuels

The rules proposed today would subject hazardous waste-derived fuels to storage (and other) controls. This includes storage by the initial marketer (e.g., processors, blenders), storage by subsequent marketers (e.g., distributors), and storage by burners.

The present regulatory regime provided by 40 CFR 261.6 whereby hazardous waste-derived fuel is exempt from regulation exists for historical reasons and is not environmentally justifiable. (See 448 FR at 14475.) The argument that hazardous waste fuels function as valuable inventory in a burner's hands and so will be stored safely does not appear tenable. Hazardous waste fuels in many cases do not command substantial economic value; in some situations, burners are even paid to accept these materials. In addition, the fact that a hazardous waste fuel is being stored as a commodity is sufficient to prevent substantial risk. There have been many damage incidents from product and raw material storage, examples being spills from underground and above-ground product storage tanks, including fuel storage tanks. See 49 FR 29418 (July 20, 1984). See also Section 601 of the Hazardous and Solid Waste Amendments of 1984 requiring EPA to regulate underground storage tanks storing products. The Agency also has been told by State regulatory officials and used oil fuel dealers that hazardous waste fuels are suspected of causing a number of fires in the New York City and New Jersey areas. The agency, thus, does not see any reason to regulate this type of hazardous waste storage differently from other hazardous waste storage.

Today's proposed rule would subject all storage of all hazardous waste fuels to the standards provided by 40 CFR Parts 262 (for short-term accumulation of fuels by a generator who burns his waste on site or who markets directly to a burner), 264, and 265, with one exception. We are not proposing to subject hazardous waste fuel storage by an existing burner to the final permitting standards of 40 CFR Part 264 at this time for several reasons.[81] Given that we intend to regulate burning of hazardous waste fuels in a manner that would require some form of permitting, we do not want to issue a permit to a burner for storage and then have to issue a second permit in the near future for burning. We thus plan to delay adopting final permitting storage standards for existing burners until a single permit proceeding can address both burning and storage.

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[79] The Agency is revising digestion procedures for organic liquids prior to analysis for metals. Revised procedures will be available before these rules are promulgated.

[80] No permit presently is required to store used oil. EPA is not proposing storage requirements for used oil fuel at this time because the Agency wishes to avoid the piecemeal regulation of used oil storage which would result were we to regulate used oil fuel storage in advance of other types of used oil storage. Storage requirements may be proposed when the Agency proposes comprehensive regulations for used oil in 1985. Storage of mixtures of hazardous waste and used oil, however, would be subject to regulation as hazardous waste under today's proposed rule unless the hazardous waste is generated by a small quantity generator.

[81] On-site storage by burners of any hazardous waste fuel would be subject only to the interim status standards of 40 CFR Parts 265 and 270 (Part A permit application). This applies to hazardous waste fuels newly regulated by today's proposal as well as to listed wastes and sludges marketed by a generator to a burner which are currently subject to interim status as well as final permitting (i.e., Part 264) standards under provisions of 40 CFR 261.6. Thus, this proposal would temporarily reduce storage controls for those burner storage facilities (storing listed waste or sludges) currently subject to final permitting standards (i.e., Part 264). Such storage facilities would become subject to final permit standards along with other burner storage facilities when controls on burning are promulgated.

We note that hazardous waste fuels stored by a marketer would be subject to regulation under the proposal. Thus, storage of both incoming hazardous waste and outgoing hazardous waste fuels would be regulated. Many marketers are already subject to regulation as storage facilities because they store listed wastes and sluges (used as feedstock to produce hazardous waste fuel), and may be operating under interim status standards. These marketers would need to seek an authorization to expand their interim status operations to include the waste fuel storage area.

X. Examples of How These Regulations Would Operate

The following hypothetical examples illustrate how the proposed rules would operate:

1. Generator G generates a hazardous waste and sends it to burner B who stores it in a tank prior to burning in an industrial boiler for energy recovery.

G is a hazardous waste fuel marketer because he markets directly to a burner. Assuming that G is a large quantity generator (and EPA is unaware of situations where small quantity generators sends hazardous wastes directly to burners), he must comply with the requirements for marketers, including the manifest and storage requirements of Part 262, and notification as a hazardous waste fuel marketer. Prior to sending the first shipment (after the effective date of this rule), he must also obtain a certification from B that B has notified EPA of his waste-as-fuel activities and that he will burn the fuel only in unrestricted units (i.e., industrial boilers, industrial furnaces and utility boilers). B is a hazardous waste fuel burner and a RCRA storage facility. He must comply with interim status standards for storage (including submitting a Part A permit application). He must also notify EPA of his waste-as-fuel activities and provide G with the certification discussed above prior to receiving the first shipment. B will have one identification number for storage and burning.

2.A. Generator G, a large quantity generator, generates a hazardous waste but sends it to an intermediate processor P, who mixes it with other wastes and sells the mixture to a burner B who stores it in a tank prior to burning in an industrial boiler for energy recovery.

G is subject to regulation under Part 262 as a generator and must comply with the manifest system and applicable storage requirements. He is not subject to the requirements for marketers. P is a marketer. He must obtain a storage permit to store the hazardous wastes received from the generator. The blended mixture is hazardous waste fuel and is subject to the storage controls under Parts 264 and 265. P and B must notify EPA of their waste-as-fuel activities, and must comply with the certification requirements. B is a hazardous waste fuel burner who has a RCRA storage facility subject to the interim status controls of Part 265.

2.B. G, a large quantity generator, generates a hazardous waste and mixes it with used oil. The mixture is sent to P, who does further blending with used oil, and then sends the mixture to B where it is burned as in the previous example.

The controls would operate in this situation just as in the previous example. A mixture of hazardous waste and used oil is subject to regulation as hazardous waste (unless the hazardous waste is generated by a small quantity generator).

2.C. G is a small quantity generator who generates a hazardous waste and mixes it with used oil, as in example 2.B. G sends the mixture to processor P, who processes the material further and sells the processed oil as fuel. The fuel meets the specification for used oil fuel. It then is sold to retail fuel dealers and to industrial and nonindustrial users.

In this situation (i.e., where a small quantity generator mixes hazardous waste with used oil), the mixture is exempt from regulation as hazardous waste under the provisions of 40 CFR 261.5 but is subject to regulation as used oil when obtained by a used fuel marketer. P. Thus, G (who incidentally is not a marketer) may send the used oil to P without a manifest) or an invoice). P is a marketer of used oil fuel. He must notify EPA of his waste-as-fuel activities and obtain an EPA identification number. He also must document with analyses that the used oil fuel he markets meets the specification since he receives used oil from a generator (or from a transporter who receives oil from a generator) and markets used oil fuel as specification used oil fuel. The used oil fuel is exempt from regulation and may be sent to burners or retail fuel dealers (i.e., distributors) who do not have EPA identification numbers, and who may sell the fuel on an unrestricted basis.

If, as is more likely, P determines that the used oil fuel does not meet the specification, P could only send it to persons who have certified to him that they have notified EPA of their waste-as-fuel activities and will burn the fuel only in industrial boilers, utility boilers, or industrial furnaces. P would have to prepare and send invoices for the used oil fuel. The retail fuel dealers (i.e., distributors) who receive the off-specification used oil fuel are marketers and could not send the fuel to nonindustrial users unless it was processed further to meet the fuel specification (and they documented with analyses that the fuel meets the specification). Marketers and burners must keep records of invoices and certifications sent and received and fuel analyses documenting compliance with the fuel specification (where required).

3.A. P is a used oil processor who receives used oil from a variety of sources and blends them to make fuels. The blended fuel that P produces is off-specification for lead. P sends this fuel to R, a retail fuel dealer. R blends the fuel further so that it meets the lead specification. R then sells the fuel to industrial and nonindustrial users.

P is a marketer of used oil fuel. Because the used oil fuel is off-specification, it can be sent only to a person (e.g., R) who has certified to P that he has notified EPA of his waste-as-fuel activities (and obtained an EPA identification number), and P must send an invoice to that person. R is also a marketer because he receives off-specification used oil fuel. Since R markets the used oil fuel as specification fuel (by marketing to nonindustrial boilers, or by marketing to industrial boilers without complying with the invoice, notification, and other requirements), he must document with analyses that the fuel meets the specification. Marketers and burners must keep records as discussed previously.

3.B. Processor P receives used oil from different generators, and also receives spent halogenated solvents that are listed as hazardous waste. P blends the hazardous solvents with the used oil. Some of the spent halogenated solvents were generated by large quantity generators. The blended used oil fuel contains less than 4000 ppm chlorine and meets the specification. P sells this blended fuel to R, as in example 3A.

P is a marketer of hazardous waste fuel because he has mixed hazardous waste (generated by a large quantity generator) with used oil. There is no need to invoke the presumption of mixing with hazardous waste (based on total chlorine levels) because it is known on these facts that hazardous waste has been mixed. (As explained in Section VII–C–4, it is not always certain when used oil is mixed with hazardous waste. In those situations, EPA is employing a rebuttable presumption of mixing with chlorinated hazardous waste when chlorine levels exceed 4000 ppm because this level is a very strong indication of mixing.) The used oil fuel

specification does not apply to the mixture.

XI. State Authority

A. Applicability of Rules in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within their States. (See 40 CFR Part 271 for the standards and requirements for authorization.) Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, and transportation of hazardous wastes and the operation of facilities that treat, store, or dispose of hazardous waste. Interim authorization is granted to States with programs that are "substantially equivalent" to the Federal program (Section 3006(c)). Final authorization is granted to States with programs that are equivalent to the Federal program, consistent with the Federal program and other State programs, and that provide for adequate enforcement (Section 3006(b)).

Under RCRA, prior to the Hazardous and Solid Waste Amendments of 1984, once EPA authorizes a State program, EPA suspends administration and enforcement within the State of those parts of the Federal program for which the State is authorized. In authorized States, EPA does retain enforcement authority under Sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility. However, under Section 3006(g) of the Hazardous and Solid Waste Amendments of 1984, any requirement pertaining to hazardous wastes promulgated pursuant to the Amendments is effective in authorized States at the same time it is effective in other States. EPA will administer and enforce the requirements in each State until the State is authorized with respect to such requirement.

When ultimately promulgated, the hazardous waste fuel standards proposed today would be applicable in all States since the requirements are imposed pursuant to the Amendments. Thus EPA will implement the hazardous waste fuel standards until authorized States revise their programs to adopt these rules.

The used oil fuel standards proposed today would also be applicable in all States when promulgated. Section 3014 provides for the regulations on used oil fuel to take effect in all States. Section 3006 does not bear on the used oil fuel standards since used oil fuel, by itself, is not currently a hazardous waste covered by the Subtitle C program. However, as discussed previously, the Agency plans to propose to list used oil as a hazardous waste in 1985. If used oil were, in fact, listed as hazardous waste in a subsequent promulgation, the used oil fuel rules—amended as necessary to conform with the listing—would be applicable in all States, by virtue of Section 3006(g) as well as Section 3014. At the point, authorized States would be required to revise their programs to adopt these rules.

B. Effect on State Authorizations

The hazardous waste fuel rules ultimately promulgated under this rulemaking will apply in authorized States under Federal law until the State receives interim or final authorization under Section 3006(g)(2) of 3006(b), respectively, on the basis of providing controls for hazardous waste fuels that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State adoption of these regulations is described in 40 CFR 271.21. See 49 FR at 21678 (May 22, 1984).

Applying § 271.21(e)(2), States that have final authorization must revise their programs within a year of promulgation of EPA's hazardous waste fuel regulations if only regulatory changes are necessary, or within two years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases. See 40 CFR 271.21(e)(3).

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations for hazardous waste fuels may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revise its program to include hazardous waste fuel standards substantially equivalent or equivalent to EPA's within the time period discussed above.

XII. Regulatory Impacts

A. EPA Regulatory Impacts Studies

As a result of the impacts analysis conducted to accompany today's proposed rules, EPA has reached four key conclusions. First, today's proposal is not a "major rule" within the meaning of Executive Order 12291, and, therefore, no Regulatory Impacts Analysis is required. EPA reached this conclusion in part after determining that the rules proposed today will not have an annual impact on the national economy in excess of $100 million. The estimated maximum costs of today's proposal are an initial (one-time) cost of $6 million and annual costs of $20.9 million. Maximum estimated annualized costs are $21.3 million per year. In addition, the proposal will not lead to major increases in costs; no facility affected by today's proposal should incur more than $7000 per year in annualized costs to comply with the proposed rules. In fact, the great majority of facilities affected by the proposal would incur less than $1000 per year in additional costs. Finally, today's rules do not affect competition, employment, productivity, or innovation to any significant extent. These proposed rules have been submitted to the Office of Management and Budget (OMB) for review per Section 6 of Executive Order 12291. Any comments from OMB to EPA and any response to those comments are available for viewing at the Office of Solid Waste Docket, Room S–212, U.S. E.P.A., 401 M St., SW, Washington, D.C. 20460.

Second, today's proposed rules will not have a significant impact on a substantial number of small entities. Therefore, no Regulatory Flexibility Analysis (RFA) is required under the Regulatory Flexibility Act. EPA has determined that although a substantial number of small entities would be affected by some parts of today's proposed rules, even the maximum costs that could be imposed would not amount to 5% of product price or cause a closure rate of 5% (the criteria used by the Act to define when an RFA is needed.)

Third, today's proposed rules, to the extent they affect the used oil industry, do not discourage the recycling or recovery of used oil. EPA has concluded that today's proposed rules will not discourage recycling because the rules only restrict used oil entering one market, the nonindustrial fuel market, and the Agency has determined that any used oil not sold to this market can be sold as industrial fuel or rerefining feedstock. Therefore, used oil affected by today's proposal will still be recycled, not disposed of.

Fourth, EPA has considered the requirements of the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.* in developing these proposed rules. The reporting and recordkeeping requirements are the minimum EPA believes necessary to implement and enforce the controls. Pursuant to provisions of the PRA, the information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Submit comments on these requirements to the office of Information and Regulatory Affairs; OMB; 726 Jackson Place, N.W.;

Washington, D.C. 20503 marked "Attention: Desk Officer for EPA". The final rule will respond to any OMB or public comments on the information collection requirements.

What follows are more detailed discussions explaining the data used by EPA to make the determinations summarized above. First, cost data are presented for each control proposed today. Second, the expected impacts of the proposed rules on used oil recycling are described. EPA requests comments on the regulatory impacts studies performed for this proposal, both in terms of the extent of analysis performed, and the conclusions reached through the studies.

B. Cost Data

The cost impacts of these regulations derive primarily from four new requirements. These are: (1) Notification requirements for marketers and burners to identify waste-as-fuel activities; (2) manifest requirements (for hazardous waste fuel) or invoice requirements (for off-specification used oil fuel) for all shipments; (3) certification requirements for marketers and burners that require a recipient to certify to the supplier before he receives the first shipment that he has notified EPA of his waste-as-fuel activities and will burn the waste fuel only in an unrestricted boiler or furnace; and (4) storage requirements for hazardous waste fuel. In addition, marketers who first claim used oil fuel meets the specification and is exempt from regulation (e.g., marketers who process or blend off-specification used oil to produce used oil fuel that meets the specification, and marketers who receive oil from generators or from collectors and who manage the oil as specification used oil fuel) must obtain analyses documenting that the used oil meets the specification. It should be noted that EPA has not attempted to determine the costs of two important impacts of today's proposal: (1) The cost to marketers of treating used oil to meet the used oil fuel specification; and (2) the costs to nonindustrial boiler owners of having to buy specification used oil fuel or commercial fuel oil instead of hazardous waste fuel or off-specification used oil fuel.

EPA has not attempted to determine the cost to marketers of treating used oil to meet the used oil fuel specification because we do not know how much used oil currently meets the specification either as-generated or after processing/blending.[84] However, it is clear that processors and blenders who sell to the nonindustrial market will experience increased costs at a minimum for sampling and analysis of their product and to some extent, their used oil feedstock (until assured of its composition). Any blending over current practice that is required to meet the specification would also involve additional costs. However, these costs are discretionary. Processors and blenders have the choice of incurring the additional cost of analyses (and perhaps blending) and continuing to sell to the nonindustrial market or to avoid those costs by selling to the industrial market.[85]

EPA has not determined the cost impacts on nonindustrial fuel users of having to stop using hazardous waste fuel and off-specification used oil fuel for the following reasons. First, EPA is not sure that many of these users are actually receiving price discounts for their purchase of these waste fuels. Investigations by New York City, New Jersey and EPA indicate that, often, nonindustrial buyers are not informed they are buying waste fuel. Without such knowledge, it seems unlikely that fuel buyers would be able to obtain discounts. Second, although some nonindustrial users may be receiving price discounts for waste fuel and, therefore, will bear the cost of buying higher priced fuel due to today's proposal, EPA believes that the fuel displaced from the nonindustrial markets will be channelled to industrial users who can be expected to receive similar price discounts. Therefore, there should be no net increase in costs to society due to these fuel shifts.

1. *Unit Costs.* The unit costs for these proposed regulatory requirements are estimated to be as shown in Table 5.

TABLE 5.— UNIT COST ESTIMATES

Notification to EPA	$50 (a one-time cost).
Manifest system for hazardous waste fuel:	
Start-up	$100 (a one-time cost).
Supervision	$800/year for marketers. $530/year for burners.
Recordkeeping	$170/year.
Fuel shipments/deliveries	$6/manifest for marketers. $2/manifest for burners.
Invoice system for off-specification used oil fuel:	
Start-up	$100 (a one-time cost).
Supervision	$360/year.
Recordkeeping	$170/year.
Fuel shipments	$2/invoice for marketers.
Certification to waste fuel supplier of compliance with waste-as-fuel rules:	
Prepare notice	$30 (a one-time cost).
Recordkeeping by initiator and recipient	$10/yr.
Testing for used oil fuel specifications (including total chlorine test):	
Analysis	$150/test.
Supervision	$530/year.
Recordkeeping	$170/year.
Storage tank interim status standards for industrial boilers and furnaces burning hazardous waste fuel: [86]	
General facility standards	$4,200 one-time and $900/year.
Preparedness and prevention	$2,800 one-time and $200/year.
Contingency and emergency procedures	$300 one-time and $100/year.
Manifest, recordkeeping	(See manifest system costs above.)
Closure plan	$200 one-time.
Financial requirements	$2,000 one-time and $2,000/year.
Tank inspection	$2,500 one-time and $2,000/year.
Part A permit application	$400 one-time.

[86] Based on data in Pope-Reid Assoc., Inc., *Unit Cost Analysis of Part 264 and Part B Tank and Container Storage Standards*, April 1983.

2. *Costs for Typical Facilities.*

(a) *Marketers of Hazardous Waste Fuel.* Generators who market their waste directly to a burner are subject to most of the proposed requirements under existing rules. (We assume that nearly all hazardous waste fuels contain listed wastes or sludges, and, thus, are subject to storage and transportation controls under existing rules.) The only additional cost to these generator/marketers would be for the waste-as-fuel notification and recordkeeping of burner certifications.

Third-party marketers (i.e., marketers who did not generate the waste) usually market hazardous waste fuel to a single large burner customer (e.g., cement

[84] We have estimated, however, that based on about 130 used oil samples which were analyzed for all four metals included in the specification, from 8 to 19% of used oil may meet the specification, depending on where the lead specification level will be set within the range of 10–100 ppm. If these samples were blended with 90% virgin fuel oil with a median metals content, from 30 to 86% of the samples would meet the specification, again depending on promulgation of a lead specification within the range of 10–100 ppm. Source: Franklin Associates, Ltd., (Unpublished data), April 27, 1984 memorandum to EPA.

[85] Although the cost of analyzing for chlorine to determine if used oil will be presumed to be hazardous waste under the rebuttable presumption is not considered a discretionary cost, chlorine analysis costs should not be substantial. We are verifying the accuracy of a simple field test where a copper wire is dipped into the sample and observed for color when passed over a flame (Beilstein's test). In addition, analytical kits for field testing of oil to determine chlorine content at various detection limits are commercially available and cost only about $3.00 per analysis. Even when a very small tank truck is sampled (e.g., 2000 gallon capacity), this test would cost only about 0.1 cent per gallon. When a more rigorous analytical test is needed, costs could approach 2.5 cents per gallon for a 2000 gallon tanker. However, we believe that after generator and collector credibility has been established, processors/blenders would use the inexpensive tests coupled with spot analytical checks to ensure the 4000 ppm chlorine level is not exceeded. These costs are not considered substantial given that generators are typically paid 15 cents per gallon for their oil.

kiln or blast furnace) after processing or blending. These marketers usually receive hazardous waste feedstock directly from generators. Given that virtually all of these marketers most likely accept wastes already subject to storage controls (i.e., listed wastes and sludges), their feedstock storage areas are already subject to regulation. However, these proposed rules would subject hazardous waste fuel product (i.e., hazardous waste-derived fuel) storage areas to regulation for the first time. Thus, the costs of these controls to a third-party marketer of hazardous waste fuel would consist of the costs for renotification, compliance with the manifest system for the fuel marketed, keeping a record of the certifications received from burners, and compliance with storage requirements for product hazardous waste fuel. Each facility would incur a one-time cost of $50 for notification. Even though these marketers must already comply with the manifest system for hazardous waste they receive from generators (because the wastes are likely to contain listed wastes or sludges), to estimate maximum cost of compliance with the proposed rule we have estimated their manifest system costs as if they are not now in compliance. Thus, manifest system expenses would consist of the costs for start-up (a one-time expense of $100), and manifest handling, supervision, and record-keeping ($970 per year). It is assumed that a typical facility originates 24 shipments of hazardous waste fuel per year. Thus, recurring cost for preparing manifests would total $144 per year ($6 x 24 manifests). In addition, the facility would incur a recurring cost of $10 per year to keep a record of the certifications received from burners. The cost of complying with the storage requirements for the hazardous waste fuel produced depends on whether the marketer's hazardous waste feedstock storage facility is still in interim status or has been fully permitted. If it is still in interim status, the cost of including the hazardous waste fuel storage area in the interim status permit should be minimal (e.g., about $2000 to amend the contingency and closure plans and the Part A application). If the feedstock storage facility has already been fully permitted (under a Part B application), a worst case cost scenario would be where the permit must be amended to such an extent that much of the permitting process must be repeated. Given that the cost of complying with the Part B permit procedures is estimated to be a one-time cost of $10,000 for a storage tank facility, the cost to a marketer of complying with the new storage requirements could range from about $2,000 (where the storage facility is still in interim status) to a one-time cost of $10,000 (where the storage facility has received a permit and the permit process must be essentially repeated).

The typical facility in this category would incur $2,150 to $10,150 in initial costs as well as annual costs of $1110. (Most marketers would incur the lower initial cost given that only about one-third of storage facilities have been permitted and that only one-third might incur one-time costs on the order of $10,150.) If one-time costs are annualized over 20 years, total annual costs to these marketers would range from $1200 to $1800. If a marketer initiates 24—4,000 gallon shipments per year of hazardous waste fuel, the cost of these regulations would range from about one cent to less than two cents per gallon of fuel.

(b) *Burners of Hazardous Waste Fuel.* All burners of hazardous waste fuel would incur the cost of notification or renotification. For the estimated 1600 generators that burn hazardous waste fuel on site, the only expense to them as burners of such fuel would be a one-time cost of $50 to renotify the Agency to identify their waste-as-fuel activities (i.e., burning).

For the estimated 200 facilities that burn hazardous waste fuel already subject to storage and transportation controls (virtually all unprocessed, unblended fuels), the cost of these regulations would consist of the cost of the certification to the supplier in addition to the cost of renotifying EPA as a hazardous waste fuel burner. No new manifest or storage costs are incurred because it is assumed that burners invariably receive hazardous waste fuel subject to manifest and storage requirements under existing rules (i.e., listed wastes and sludges). Thus, the costs of these regulations would be a one-time initial cost of $80 for renotification to EPA and the certification to the supplier and a recurring cost of $10 per year for keeping a copy of the notice.

For the estimated 200 facilities that burn hazardous waste-derived fuel (i.e., hazardous waste fuel produced by processing, blending, or other treatment of hazardous waste), the costs of these regulations would consist of the expenses of the manifest system, certification to the marketer, notification to EPA, and compliance with storage requirements. Manifest system costs would be those for manifest handling ($2 per fuel delivery) and for supervision and recordkeeping ($700 per year). If it is assumed that a typical burner receives 24 deliveries of hazardous waste fuel annually, manifest handling costs would be $50 per year. The cost of notifying the fuel marketer would be a one-time cost of $30, and the cost of keeping a copy of the notice would be a recurring cost of $10 per year. Storage requirement costs would be a one-time cost of $12,400 and a recurring cost of $5,200. Therefore, the typical facility in this category could incur $12,500 in initial (i.e., one-time) costs as well as annual expenses of $6,000. Thus, the annualized cost for these facilities could total approximately $7,000, which represents a cost of 7 cents per gallon of hazardous waste fuel burned.

(c) *Marketers of Used Oil Fuel That Meets the Specification.* This is a summary of the costs of these requirements to a person who markets used oil fuel that meets the specification (and that does not contain more than 4000 ppm total chlorine), and who is: (1) A generator marketing to a burner; (2) a marketer who receives any used oil from a generator or from a collector (who receives used oil from a generator); or (3) a marketer who receives off-specification used oil from another marketer and who produces specification used oil fuel by processing, blending, or other treatment. The costs to these marketers would consist of the costs for notification and testing (including supervision and recordkeeping). Notification entails a one-time expense of $50. The costs for testing for lead, arsenic, chromium, cadmium, PCBs, total chlorine content, and flash point are at most $150 per sample.[87] The costs for supervision of testing and recordkeeping are $700 per year. It is assumed that the typical facility of this kind handles 400,000 gallons of used oil annually and originates 100 shipments of used oil fuel per year, and that the operator would test large batches (e.g., a 30,000 gallon tank) of used fuel oil rather than each shipment, amounting to approximately 12–14 analyses pr year ($2000/yr). In addition, it is assumed that the marketer would test each truck load of used oil he receives to ensure that it contains less than 4000 ppm chlorine and thus would not be considered (automatically) to be hazardous waste under the rebuttable presumption of mixing. To estimate

[87] This assumes the sample is analyzed by a contract laboratory. In-house testing would be less costly. Costs for testing for PCBs is not included because existing rules (See 40 CFR Part 761) limit PCBs to 50 ppm (i.e., wastes with more than 50 ppm PCBs are already subject to regulation when burned for energy recovery).

chlorine testing costs, it is assumed that: (1) Individual 2000 tank trucks of incoming used oil are sampled and analyzed; (2) 10% of the oil is analyzed by ASTM analytical methods at $50 per analysis (or 2.5 cents/gallon of oil); and (3) 90% of the oil is analysed using field kits of prepared indicator solutions at $3 per analysis (or 0.15 cents/gallon of oil). Under these assumptions, testing of incoming used oil for total chlorine would cost $1540 annually. Therefore, the typical facility in this category would incur $50 in initial one-time costs as well as up to $4240 in annual costs, which would add about 1 cent per gallon to the cost of used oil fuel.[88]

(d) *Marketers of Off-Specification Used Oil Fuel.* The costs of these regulations to a marketer of off-specification used oil fuel would consist of the costs for notification to EPA, the invoice system, keeping copies of certifications from product purchasers (i.e., burners or other marketers), and analyses for total chlorine to ensure the oil is not presumed to be hazardous waste under the rebuttable presumption of mixing. Each facility would thus incur a one-time cost of $50 for notification. In addition, there would only be an incremental cost for the invoice system required by these regulations because, under current, common practice, invoices are already prepared for shipments of fuel. The incremental costs would consist of costs for start-up (a one-time expense of $100), invoice preparation ($2 per fuel shipment or $200 annually if a typical facility handles 400,000 gallons of used oil annually and originates 100 shipments of used oil fuel annually), and supervision and recordkeeping ($530 per year). The facility would also incur the $10 per year cost of keeping a record of the certification from the product purchaser.

Finally, the facility owner/operator may choose to test the used oil he receives and his used oil fuel product to ensure that it contains less than 4000 ppm chlorine and, thus, would not be considered (automatically) to be hazardous waste under the rebuttable presumption of mixing. Although some marketers may choose to test only the oil they receive, others may sample and analyze the used oil fuel product as well to assure purchasers that it does not contain chlorinated hazardous waste. To provide a worst-case cost estimate, it is assumed that: (1) All incoming used oil and product used oil fuel is tested for chlorine; (2) individual 2000 gallon tank trucks of incoming used oil are sampled and analyzed; (3) 10% of incoming used oil is analyzed by ASTM analytical methods at $50 per analysis (or 2.5 cents/gallon of oil); (4) 90% of incoming used oil is analyzed using field kits of prepared indicator solutions at $3 per analysis (or 0.15 cents/gallon of oil); (5) used oil fuel product is sampled from 30,000 gallon tanks and is analyzed by ASTM analytical methods at $50 per analysis (or 0.17 cents/gallon of fuel); and (6) supervision of testing costs $530 annually and recordkeeping of analyses costs $170 annually. Chlorine testing could cost $2900 annually under these assumptions ($2200 for analyses plus $700 for supervision and recordkeeping).

Therefore, a marketer of off-specification used oil fuel could incur $150 in one-time initial costs plus $3640 in annual costs, which would add about 0.9 cents to a gallon of used oil fuel.

The costs of these proposed rules to marketers (e.g., distributors) who receive off-specification used oil fuel from other marketers would be the same as presented above, except these marketers would incur the additional one-time expense of $30 to prepare certifications to suppliers. Thus, the total costs to these marketers could be an initial cost of $180 plus $3640 in annual costs. (Given that 80% of the annual cost estimate is for testing for chlorine content, the annual cost estimate may be grossly overstated for distributors because they receive used oil from other marketers who have already tested for chlorine under the assumptions of the previous scenario).

(e) *Burners of Used Oil Fuel that Meets the Specification.* Burners of used oil fuel that meets the specification would not be subject to any new requirements under these regulations. Therefore, they would not incur any new costs.

(f) *Burners of Off-Specification Used Oil Fuel.* All burners of off-specification used oil fuel would incur the one-time cost of notification. For facilities that burn off-specification used oil fuel which is generated on site, the only expense to them as burners of such fuel would be a one-time cost of $50 for notification to EPA.

For facilities that burn off-specification used oil fuel that is delivered to them, the expenses that would be incurred because of these regulations are the costs of notification, compliance with the invoice system, and providing the certification to the supplier. The incremental costs of the invoice system would be for supervision and recordkeeping ($530 per year), and the cost of invoice handling ($50 per year at $2/invoice and assuming 24 deliveries per year). The one-time cost of the notice (certification) to the supplier would be $30, and the recordkeeping cost for the notice would be $10 annually. Therefore, the typical facility in this category would incur an initial one-time cost of $80 as well as annual expenses of $590.

3. *Estimated National Costs.* In the absence of complete data on the universe of facilities that market and burn hazardous waste and used oil fuels, it is impossible to estimate with a high degree of precision the national cost impacts of these regulations. The notification process will enable EPA to identify the affected facilities and to estimate more accurately the costs of compliance with the rules proposed today as well as the costs of the technical regulations on burning in industrial boilers and furnaces that will be proposed in 1986.

These cost estimates are based on assumptions that reflect worst-case conditions with respect to number of marketers and burners subject to regulation. For example, we believe that the estimate of the number of off-specification used oil fuel burners is high. The figure estimated (30,000) may approximate the number of burners of used oil fuel but some of that used oil is likely to meet the specification and be exempt from regulation. Thus, the number of burners subject to these rules is probably overstated. *As a result, these estimates are conservative and more closely approximate maximum rather than actual costs.* These costs are summarized in Table 6.

TABLE 6.—Summary of National Cost Estimates

(Dollars in thousands)

Requirement	One-time cost	Recurring cost (yearly)	Annualized cost (1983 dollars)
Notification	$1,658		$111
Manifest system	20	$372	373
Invoice system	76	16,875	16,880
Certification to suppliers	882	301	360
Used oil analysis:			
Specification oil		322	322
Off-specification oil		1,984	1,984
Storage	3,408	1,040	1,269
Total	6,044	20,894	21,299

(a) *Notification Costs.* Hazardous waste fuel and off-specification used oil fuel marketers and burners would be required to notify (or renotify) to identify their waste-as-fuel activities.

The universe of marketers probably includes persons in the following categories: Hazardous waste processors and blenders, hazardous waste generators who market hazardous waste

[88] This assumes that the marketer does not incur additional processing and blending costs to bring off-specification oil into specification.

fuel to burners, used oil collectors who sell directly to burners, used oil processors and rerefiners, and wholesale and retail dealers of virgin fuel oil who continue to handle off-specification used oil fuel. The universe of marketers is estimated to number about 1200.[89] (See Table 7.)

TABLE 7.—ESTIMATED NUMBER OF MARKETERS AND BURNERS THAT WOULD BE REGULATED

	Number
Hazardous waste	
Marketers	400
Generators marketing to burners	200
Other marketers (third-party processors, blenders, distributors)	200
Burners	2,000
On site	1,600
Off site:	
Receive fuel from generators	200
Receive fuel from third-party marketers (processors, blenders, distributors)	200
	2,400
Off-Specification Used Oil Fuel	
Marketers	760
Generators marketing to burners	0
Other marketers:	
Third-party processors, blenders, distributors	500
Collectors marketing to burners	250
Rerefiners	10
Burners	30,000
On site	1,500
Off site	28,500
	30,760
Total: Approximately	33,000

The universe of burners that would be subject to the notification requirement consists of all facilities in the utility and industrial sectors that burn hazardous waste or off-specification used oil fuel. (Under these regulations, burning of these fuels would be allowed in utility and industrial boilers and industrial furnaces, but would be prohibited in boilers at residential, institutional, and commercial locations.) To estimate maximum impact, we assume that used oil fuel is burned in a maximum of 30,000 boilers and that all of the boilers burn off-specification used oil fuel.[90] Finally, we estimate that hazardous waste is burned in 2000 industrial boilers and furnaces. Although many facilities burn waste in more than one burner, only one notification would be required for each facility. Therefore, we estimate the maximum size of the burner universe is about 32,000. The maximum total number of notifiers (i.e., marketers and burners) is estimated at 33,000. Therefore, the maximum cost of notification, at $50 per facility, would be $1.658 million.[91] (This is a one-time cost.)

(b) *Manifest System Costs.* The Agency made a number of assumptions to estimate the cost of complying with the manifest system: (1) 200 facilities burn hazardous waste-derived fuel (i.e., hazardous waste fuel produced by processing, blending, or other treatment of hazardous waste) that is currently exempt from regulation; (2) each burner of hazardous waste-derived fuel receives 24 deliveries fo fuel annually; (3) each of the 200 marketers of hazardous waste-derived fuel originates 24 shipments of fuel per year; and (4) there are 4,800 shipments of hazardous waste-derived fuel annually.

Based on these assumptions, the manifest system requirement for shipments of hazardous waste-derived fuel would entail the following costs: (1) Initial one-time start-up costs ($100 × 200 marketers); and (2) annual costs for manifest handling ($8 × 4,800 manifests), and for system supervision and recordkeeping by marketers ($970 × 200 marketers) and by fuel burners ($700 × 200 burners). Therefore, the estimated (incremental) national costs of the manifest system requirement would be an initial one-time cost of $20,000 plus annual costs of $372,000.

(c) *Invoice System Costs.* The Agency made the following assumptions to estimate the incremental costs of complying with the invoice system for off-specification used oil shipments (costs in addition to those already incurred as a result of typical business practice): (1) The number of *facilities* that burn used oil fuel is the same as the number of *boilers* that burn used oil (30,000) even though a facility may have several boilers that burn used oil; (2) all 30,000 burners burn off-specification used oil; (3) 95% of the burners (i.e., 28,500) accept off-specification used oil fuel generated off site (i.e., they are off-site burners); and (4) each burner receives 24 deliveries of used oil annually so that annual shipments total 684,000 nationally.

Based on these assumptions, compliance with the invoice system for shipments of off-specification used oil would entail the following costs: (1) Initial start-up costs ($100 × 760 marketers); and (2) annual costs for invoice preparation ($2 × 684,000 shipments of off-specification used oil fuel), and for system supervision and recordkeeping by intermediaries ($530 × 760 marketers) and burners ($530 × 28,500 burners). Therefore, the estimated maximum costs of the invoice requirement would be an initial (i.e., one-time) cost of $76,000 plus annual costs of $16,875 million

(d) *Cost of Certification to Suppliers.* The Agency made the following assumptions to estimate the cost of providing a certification to suppliers (and for recordkeeping by both parties) indicating that a recipient has notified EPA of his waste-as-fuel activities: (1) 400 burners receive hazardous waste fuel from off site and must comply; (2) 400 hazardous waste fuel marketers sell to off-site burners and must comply; (3) 28,500 burners receive off-specification fuel from off site and must comply; (4) all used oil fuel marketers (except collectors who market to burners) receive off-specification used oil from other marketers at some time during their operations and, therefore, must comply; (5) used oil fuel marketers, except collectors who market to burners, number 510 facilities (see Table 7); and (6) used oil collectors who sell directly to burners number 250 (and must obtain notices from those burners).

Based on these assumptions, the cost of providing certifications and recordkeeping would be an initial (one-time) cost of $882,000 and a recurring cost of $301,000 per year. (See Table 8.)

TABLE 8.—COST OF CERTIFICATION REQUIREMENTS

Person	Number of persons	One-time cost/fac. (dollars)	National one-time costs (dollars in thousands)	Annual cost/fac. (dollars)	National annual costs (dollars in thousands)
Burners (offsite)	28,900	30	867	10	289
Hazardous waste fuel marketers	400			10	4
Used oil marketers other than collectors	510	30	15	10	5
Used oil collector/marketers	250			10	3
Total			882		301

[89] Estimates of used oil marketers (760) are from Franklin Associates, Ltd., *Composition of Used Oil*, pp. 4–4 through 4–20.

[90] The number of hazardous waste fuel and used oil fuel burners was estimated from preliminary results of the mail questionnaire survey.

[91] This does not include the notification cost that would be incurred by hazardous waste fuel transporters not already subject to regulation—those that transport hazardous waste-derived fuel. We believe that there are fewer than 200 of these transporters and the cost of complying with the 40 CFR Part 263 requirements is relatively insignificant: national one-time cost of $10,000 for notification and $2,000 annual cost for manifest recordkeeping.

(e) *Used Oil Analyses.* The Agency made the following assumptions to develop a worst-case cost estimate for analyzing used oil to determine if it meets the specification and if it contains more than 4000 ppm total chlorine (and would be considered hazardous waste under the rebuttable presumption of mixing): (1) 10% of the estimated 760 used oil fuel marketers market specification used oil fuel and would be required to test for the specification parameters; (2) 90% of the used oil fuel marketers market off-specification used oil fuel and would not be required to test for the specification parameters; and (3) even though analysis of used oil for total chlorine is not required, all used oil fuel marketers test all incoming used oil and all outgoing used oil fuel product for total chlorine because of the consequences of being in possession of used oil with more than 4000 ppm chlorine (i.e., under the rebuttable presumption, such oil is hazardous waste). As discussed above, a marketer of specification used oil fuel could incur the following costs under these assumptions: (1) $700 annual cost for supervision of testing and recordkeeping; (2) $2000 annual cost for testing of used oil fuel product for specification parameters as well as for chlorine (assuming facility markets 400,000 gallons of used oil fuel annually, operators sample and analyze 30,000 gallon tank "batches" of fuel, and analytical tests cost $150/test); and (3) $1540 annual cost for testing used oil received from others (assuming 2000 gallon tank truck loads are sampled and analyzed, 10% of incoming used oil is analyzed by ASTM analytical procedures at $50/test, and 90% of incoming used oil is analyzed using field kits of prepared indicator solutions at $3/test). Thus, marketers of specification used oil fuel could incur a national cost for analyses of $322,000 annually (76 facilities × $4240).

Marketers of off-specification used oil fuel could incur the following costs under these assumptions: (1) $700 annually for testing supervision and recordkeeping; (2) $667 annually for testing used oil fuel product for chlorine (assuming facility markets 400,000 gallons of used oil fuel annually, operators sample and analyze 30,000 gallon tank "batches" of fuel, and analytical tests cost $50/test); and (3) $1540 annually for testing used oil received from others (assuming 2000 gallon tank truck loads are sampled and analyzed, 10% of incoming used oil is analyzed by ASTM analytical procedures at $50/test, and 90% of incoming used oil is analyzed using field kits of prepared indicator solutions at $3/test). Thus, marketers of off-specification used oil fuel could incur a national cost for analyses of $1,984 million annually (684 facilities × $2900).

(f) *Storage Costs for Burners.* The Agency made the following assumptions to estimate the cost for hazardous waste fuel burners to comply with the interim status storage standards: (1) Of the estimated 400 burners of hazardous waste fuel received from off site, 200 are assumed to be receiving processed or blended fuels (such fuel is exempt from storage (and transportation) standards under existing rules); and (2) none of these 200 burners is currently subject to RCRA storage, treatment or disposal standards for other hazardous waste (and, thus, the facility has not already complied with some of the hazardous waste management facility standards).

Based on these assumptions and the unit costs presented above, the cost of compliance with interim status storage standards for hazardous waste fuel burners (not already subject to storage standards under existing rules) would be an initial (one-time) cost of $2.48 million ($12,400 x 200 burners) and a recurring cost of $1.04 million per year ($5,200 x 200).

The one-time cost can be annualized over 20 years at a real interest rate (i.e., without considering inflation) of 3% to spread out the cost burden. Thus, the resulting annual cost could be $1.2 million for storage in 1983 dollars (annualized one-time cost of $167,000 plus annual costs of $1,040 million.

(g) *Storage Costs for Marketers.* The proposed rule would regulate for the first time the storage of a marketer's hazardous waste fuel produced by processing, blending, or other treatment of hazardous waste. As explained elsewhere, since we believe virtually all marketers use hazardous waste feedstock that contains listed waste or sludges that are subject to storage and transportation controls under existing rules, their feedstock storage areas are already subject to RCRA storage standards. However, these proposed rules would for the first time subject their hazardous waste fuel product storage area to regulation.

The Agency made the following assumptions to estimate the cost of the new storage controls for these marketers: (1) Hazardous waste feedstock storage areas for one-third of the 200 such marketers have already been fully permitted (under Part B application procedures) and would incur a cost of $10,000 to repeat the permitting process to include waste fuel product storage areas; and (2) the remaining marketers whose feedstock facilities are still in interim status would incur a cost of $2000 to amend the Part A application and plans for closure, emergency procedures, financial assurance, training, and inspections to include the waste fuel product storage area. Thus, the national cost of compliance with the proposed storage controls for these marketers would be a one-time cost of $928,000 (200 x .33 x $10,000 for permitted facilities plus (200 x .67 x $2000 for facilities in interim status). This is equivalent to an annualized national cost (over 20 years) of $62,380.

C. Impacts on the Used Oil Recycling Industry

EPA is required by Section 3014 of RCRA to: (1) Establish regulations necessary to protect the public health and the environment from hazards associated with recycled oil; and (2) determine the effect of the regulations on environmentally acceptable types of recovery or reuse of used oil. What follows is a summary of EPA's determinations concerning impacts of the rules proposed today on used oil recycling and the oil recycling industry.

1. *Description of the regulated universe.* The rules proposed today pertain to only one market for recycled oil: Use as fuel. Although much used oil is used as fuel (about 520 million of the 1.2 billion gallons generated each year), significant quantities are also used for dust suppression and rerefining to produce lubricants. EPA estimates that approximately 750 marketers have as their primary business the collection, processing, or blending of off-specification used oil that is ultimately burned as fuel. Some data also suggest that a significant (but undetermined) number of establishments whose primary business is the distribution of virgin commercial fuel oil are also buying used oil, blending it with fuel oil, and subsequently reselling the blended fuel. EPA estimates that as much as 200 million gallons of used oil fuel passed

through commercial fuel oil establishments in 1982. EPA does not know how much of this used oil fuel was then sold to industrial versus nonindustrial boiler owners. However, investigations by New Jersey, New York City, Philadelphia, Pennsylvania, and the U.S. Environmental Protection Agency have produced data that confirm the allegation made by several parties that used oil fuel has been sold to residential, institutional, and commercial boiler owners in the northeastern United States. EPA believes that in some cases boiler owners are offered discount prices for the used oil fuel (10% is reportedly the common discount) but that in other cases, the used oil fuel is sold as "fuel oil" at the full market price, often without the knowledge of the buyer.

The previous discussion pertained to the types of marketers and burners that would be affected by today's proposed used oil rules. With respect to the types of used oils that would be affected by the proposed rule, EPA has found that all used oils would be affected to some extent. Both automotive and industrial used oils may contain metals at or above the specification levels, chlorine at or above the level for the presumption of mixing,[92] and flash point below the specification level. However, used crankcase oil from cars burning leaded gasoline would be affected to a greater extent than other used oils. This is because the lead levels in these oils can exceed the specification level by one or two orders of magnitude (depending on where the lead specification is selected within the range of 10 to 100 ppm for final promulgation), while metals concentrations in other used oils would not generally exceed any of the specification levels by more than half an order of magnitude. Thus, used crankcase oil from leaded gasoline engines would require more blending or treatment to meet the specification.

2. *Impacts at the facility level.*

(a) *General impacts.* A large percentage of the facilities in the used oil recycling industry would be affected to some degree by today's proposed rules because most of these facilities, at one time or another, handle used oil that is ultimately used as fuel. Nearly all of the estimated 250 used oil processors produce used oil fuel products. Some used oil collectors market used oil fuel directly to burners; rerefiners also produce fuel by-products. An estimated 30,000 facilities are currently burning oil fuel. However, the impacts of today's proposed rules on most of these facilities would be minor. As was described earlier, the costs for notification, the invoice system, certifications, and chlorine testing under today's proposal could amount to about $3650 per year for fuel sellers and $600 per year for fuel buyers. EPA does not expect these costs to have significant impacts on the used oil fuel market. Used oil fuel would still be an attractive substitute for commercial fuel oil, and in general, sale of used oil fuel would remain a profitable enterprise. However, those establishments that have been selling used oil fuel to residential, commercial, or institutional boiler owners could be affected to a significant extent by portions of today's proposed rules as discussed below. Likewise, facilities that have been supplying used oil to distributors for resale could also be affected by restrictions on sales to nonindustrial fuel users.

(b) *Impacts of restrictions on sale to nonindustrial boilers.* EPA is proposing several restrictions on the sale of used oil fuel to residential, institutional, and commercial boiler owners. First, used oil mixed with hazardous waste (other than exempt hazardous waste generated by small quantity generators) cannot be sold to this market. Second, used oil fuel with a flashpoint of less than 100° F cannot be sold to the restricted market. And third, used oil fuel sold to the restricted market must have less than specified concentrations of arsenic, cadmium, chromium, lead, and PCBs, as defined by the used oil fuel specification. In addition, total chlorine would be limited by the presumption of mixing chlorinated wastes.

The facilities currently selling used oil fuel directly to the restricted market would, under today's proposal, have to undertake special procedures in order to continue these sales. Before selling to the restricted market, the distributor would have to ensure that the used oil fuel met all of the criteria described above. In general, the facilities currently selling to the restricted market have only limited treatment capabilities. These facilities have been blending used oil and virgin fuel oil; this treatment method does not remove contaminants and it is not clear how many operators can economically produce used oil fuel that meets the specification. EPA expects that under today's proposal most of the facilities currently selling used oil/virgin fuel oil blends to the restricted market would follow one of two possible courses: (1) They would continue to accept off-specification used oil fuel but would resell it only to the industrial boiler market; or (2) they would accept only used oil fuel that already met the specification (or that they could blend down to meet the specification) and would continue sales of blended oils to the restricted market.

Used oil processors would either have to segregate used oils low in metals, or process or blend the used oil to reduce the concentration of these contaminants in order to supply distributors selling to the nonindustrial market. It is not clear how much "clean" (specification) used oil fuel would be produced by these practices. Current used oil collection practice is to pick up used oil from many diverse sources without segregation. Processors with their own vehicles could segregate clean oils to some extent, depending on their fleet and tank capacity. The common treatment methods employed in the used oil recycling industry do not remove the contaminants included in the proposed specification to any significant degree. An exception is that dehydration (the stripping of water and low oiling hydrocarbons through heating), which is practiced by some processors and rerefiners, does produce a light fuel stream which is low in metals. (However, if chlorinated solvents are present in incoming used oil, this fuel stream will be high in chlorine.)[93] EPA expects that it may not be economically feasible to blend some used oils to meet the specification for arsenic, cadmium, chromium and, particularly, lead. The only process that removes metals to the degree necessary to meet the proposed specification is distillation. Distillation is currently employed by only a handful of facilities; and these facilities use distillation to produce lubricants, not fuels.

If used oil fuel, either segregated or treated, is to be sold as specification oil, processors will also have to make arrangements for analysis. Neither processors nor distributors typically have laboratory capabilities on site that could show compliance with today's proposed specification; however, contract laboratories do offer services for the parameters in the specification.

[92] Although crankcase oils generated by typical automotive service and repair shops do not exceed the 4000 ppm chlorine level for the rebuttable presumption of mixing, crankcase oil is often mixed with spent chlorinated solvents by collectors or used oil processors/blenders.

[93] The used oil fuel produced would be subject to regulation as hazardous waste fuel if it is known that the used oil feedstock contained hazardous waste (other than exempt small quantity generator hazardous waste), or if the used oil fuel itself contained more than 4000 ppm total chlorine and the processor could not demonstrate that the used oil feedstock did not contain hazardous waste (other than exempt small quantity generator hazardous waste).

As indicated in the "Cost Data" section of this preamble, EPA estimates that a facility could incur a cost of about $4240 per year due to today's proposed rules, which could add about 1 cent per gallon to the cost of used oil fuel (exclusive of costs that may be incurred for additional processing or blending to meet the specification).

Despite the difficulties described above in producing a specification fuel product from some used oils, it can be expected that some processors would produce a specification fuel product and they would still be able to enter into long-term agreements with distributors selling to the nonindustrial markets. Processors who cannot produce such a fuel would either have to market their fuel directly to industrial users, or enter into agreements with distributors servicing the industrial market.

3. *National Scale Impacts.* Based on the discussions above, EPA has concluded that under today's proposed specification a significant portion of the used oil fuel currently being sold to the residential, institutional, and commercial market would no longer be sold to this market. EPA estimates that as much as 100 million gallons of used oil is sold to this market annually. Even if all of this total is no longer sold to the restricted market, EPA believes that alternative uses exist and that no used oil would be disposed of due to today's proposed rules. One alternative use is the industrial fuel market. EPA estimates that about 500 of the 600 million gallons of used oil fuel burned each year is burned in industrial boilers. In 1975, the industrial fuel market consumed over 5 billion gallons of residual fuel oil. The 100 million gallons of used oil fuel potentially displaced by today's proposal could easily be absorbed by the industrial fuel market. The other alternative use for used oil is as a feedstock for rerefining. Used automotive oil, which would be significantly affected by today's proposed lead specification, is a very desirable feedstock for rerefiners. To the extent the used oil fuel market is restricted by today's proposal, rerefiners should be able to obtain more used oil as feedstock. (Rerefiners are currently not operating at full capacity. A major reason for this is that due to the great demand for used oil as fuel, they are unable to obtain sufficient feedstock at prices low enough to produce competitively-priced lubricants.)

In summary, EPA has determined that today's proposed rules would not discourage the recycling or reuse of used oil. Less used oil would be sold to nonindustrial fuel users, but that oil should be sold to industrial fuel users or to rerefiners.

XIII. Solicitation of Public Comment and Announcement of Public Hearings

The Agency invites comment on any and all aspects of this proposed regulation. EPA specifically requests comment on issues including the following: The used oil fuel specification parameters and allowable levels, including in particular, the lead specification; the total chlorine level selected for the rebuttable presumption of mixing chlorinated hazardous waste with used oil; risks posed by used oil space heaters and the practicality of control options; prohibiting the burning of hazardous waste and off-specification used oil in very small industrial boilers; and, exemption from the prohibition on burning in nonindustrial boilers of "ignitable-only" hazardous waste fuel with a flash point greater than 100° F.

In addition, the Agency requests comments on the following effective dates for the final rule. Given that the final rulemaking is scheduled to be published in the **Federal Register** in late 1985, the Agency intends to expedite implementation of the rule to make the requirements effective for as much of the 1985–86 heating season as possible. Winter is the prime burning season for waste fuels and risks are highest at that time. The following effective dates will expedite implementation while allowing time for the regulated community to comply with the requirements and the Agency and the States to administer the rule.

1. *Prohibitions.* The following prohibitions would be effective 10 days after publication of the final rule in the **Federal Register**: (a) Prohibition on marketing hazardous waste fuel and off-specification used oil fuel to owners and operators of nonindustrial boilers (see §§ 266.31(a)(2) and 266.41(a)(2)); and (b) prohibition on burning hazardous waste fuel and off-specification used oil fuel in nonindustrial boilers (see §§ 266.31(b) and 266.41(b)).

2. *Notification.* Hazardous waste fuel and off-specification used oil fuel marketers and burners would have 30 days after publication of the final rule in the **Federal Register** to notify regarding their waste-as-fuel activities (see §§ 266.34(b), 266.35(b), 26.42(b)(2), 266.43(b)(3) and 266.44(b)).

3. *Storage Controls.* The storage controls for hazardous waste fuels (see §§ 266.34(c) and 266.35(c)) would be effective 180 days after publication of the final rule in the **Federal Register**. We believe it is not practical to shorten this effective date given that owners and operators may be required to prepare permit applications, develop plans and procedures for training, emergency response, etc, and, in some cases, complete physical changes to facilities (e.g., fencing, signs).

4. *Other Provisions.* All other provisions (e.g., manifest and invoice requirements, used oil analyses, recordkeeping) would be effective 90 days after publication of the final rule in the **Federal Register**.

The Agency will hold the following public hearings:

February 15, 1985

U.S. EPA, 26 Federal Plaza, Conference Room 305, New York, New York 10278

February 21, 1985

Ramada Inn Hobby Airport West,* 7777 Airport Boulevard, Houston, Texas 777061 (713) 644–1261

February 25, 1985

Torrance Marriott,* 3635 Fashion Way, Torrance, California 90503 (213) 316–3636

The hearings will begin at 9:30 a.m. (registration at 9:00 a.m.) and will end at 4:30 p.m., unless concluded earlier. EPA encourages all interested persons to attend the public hearings. If you would like to present an oral statement at one of the hearings, please notify in writing, Ms. Geraldine Wyer, Office of Solid Waste (WH–562), U.S. EPA Washington, D.C. 20460.

Oral and written statements may be submitted at the public hearings. Persons who wish to make oral presentations must restrict their presentations to 10 minutes and are encouraged to have written copies of their complete comments for inclusion in the official record.

XIV. List of subjects in 40 CFR Part 266

Hazardous materials.

Dated: January 2, 1985.

William D. Ruckelshaus,

Administrator.

It is proposed to amend 40 CFR Part 266 by adding Subparts D and E to read as follows. Conforming revisions to 40 CFR 261.6 would also be required but are not presented here given that the Agency is in the process of promulgating extensive revisions to that section. (See proposal to revise § 261.6 in 48 FR 14472 (April 4, 1983).)

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*Hotel rooms have been blocked for the convenience of attendees requiring overnight accommodations. When making reservations, please indicate you are attending the U.S. EPA public hearing.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

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Subpart D—Hazardous Waste Burned for Energy Recovery

Sec.
266.30 Applicability.
266.31 Prohibitions.
266.32 Standards applicable to generators who burn or market hazardous waste fuel.
266.33 Standards applicable to transporters of hazardous waste fuel.
266.34 Standards applicable to marketers of hazardous waste fuel.
266.35 Standards applicable to burners of hazardous waste fuel.
Appendix to Subpart D—Form—Notification to EPA of RCRA Subtitle C Activity (EPA Form 8700–12 (Revised))

Subpart E—Used Oil Burned for Energy Recovery

Sec.
266.40 Applicability.
266.41 Prohibitions.
266.42 Standards applicable to generators who burn or market used oil fuel.
266.43 Standards applicable to marketers of used oil fuel.
266.44 Standards applicable to burners of off-specification used oil fuel.
Appendix to Subpart E—Form—Notification to EPA of RCRA Subtitle C Activity (EPA Form 8700–12 (Revised))

Authority: Sections 1006, 2002(a), 3001, 3002, 3003, 3004, 3005, 3007, 3010, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA); the Quiet Communities Act of 1978; the Solid Waste Disposal Act Amendments of 1980; the Used Oil Recycling Act of 1980; and the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6905, 6912(a), 6921, 6922, 6923, 6924, 6925, 6927, 6930, and 6932).

Subpart D—Hazardous Waste Burned for Energy Recovery

§ 266.30 Applicability.

(a) The regulations of this subpart apply to persons who manage hazardous waste that is burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of Part 264 or 265 of this chapter, except as provided by paragraph (b) of this section. Such hazardous waste is termed "hazardous waste fuel". Hazardous waste fuel includes any fuel produced from hazardous waste by processing, blending, or other treatment.

(b) The following hazardous waste is not subject to regulation under this subpart:

(1) Used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter, provided it is not mixed with a hazardous waste. Such used oil is subject to regulation under Subpart E of Part 266 rather than this subpart;

(2) Hazardous waste that is exempt from regulation under § 261.4 of this chapter and hazardous waste that is subject to the special requirements for small quantity generators under § 261.5 of this chapter.

§ 266.31 Prohibitions.

(a) A person may market hazardous waste fuel only:

(1) To persons who have notified EPA of their hazardous waste fuel activities under Section 3010 of RCRA and have an EPA identification number; and

(2) If the fuel is burned, to persons who burn the fuel in boilers or furnaces identified in paragraph (b) of this section.

(b) Hazardous waste fuel may be burned for energy recovery in only the following boilers or furnaces:

(1) Industrial furnaces;

(2) Industrial boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for use in a manufacturing process; or

(3) Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale.

§ 266.32 Standards applicable to generators who burn or market hazardous waste fuel.

(a) Generators who send hazardous waste to a marketer are subject to Part 262 of this chapter.

(b) Generators who market hazardous waste fuel to a burner are subject to Part 262 of this chapter and the requirements for marketers under § 266.34.

(c) Generators who burn hazardous waste fuel on site are subject to Part 262 of this chapter and to the requirements for burners under § 266.35.

§ 266.33 Standards applicable to transporters of hazardous waste fuel.

Transporters of hazardous waste fuel are subject to regulation under Part 263 of this chapter.

§ 266.34 Standards applicable to marketers of hazardous waste fuel.

Persons who market hazardous waste fuel are termed "marketers", and are subject to the following requirements:

(a) *Prohibitions.* The prohibitions under § 266.31(a);

(b) *Notification.* Notification requirements under Section 3010 of RCRA for hazardous waste fuel activities. Upon notification, an EPA identification number will be issued. EPA form 8700–12, as revised, may be used to notify EPA of waste-as-fuel activities (See the Appendix to this subpart). Even if a marketer has previously notified EPA of his hazardous waste management activities and obtained an EPA identification number, he must renotify to identify his hazardous waste fuel activities;

(c) *Storage.* The applicable provisions of § 262.34, and Subparts A thorough L of Part 264, Subparts A through L of Part 265, and Part 270 of this chapter;

(d) *Off-site shipment.* The standards for generators in Part 262 of this chapter when a marketer initiates a shipment of hazardous waste fuel;

(e) *Required notices.* (1) Before a marketer initiates the first shipment of hazardous waste fuel to a burner or another marketer, he must obtain a one-time written and signed notice from the burner or marketer certifying that:

(i) The burner or marketer has notified EPA under Section 3010 of RCRA and identified his waste-as-fuel activities; and

(ii) If the recipient is a burner, the burner will burn the hazardous waste fuel only in a boiler or industrial furnace identified in § 266.31(b).

(2) Before a marketer accepts the first shipment of hazardous waste fuel from another marketer, he must provide the other marketer with a one-time written and signed certification that he has notified EPA under Section 3010 of RCRA and identified his hazardous waste fuel activities; and

(f) *Recordkeeping.* In addition to the applicable recordkeeping requirements of Parts 262, 264, and 265 of this chapter, a marketer must keep a copy of each certification notice he receives or sends for three years from the date he last engages in a hazardous waste fuel marketing transaction with the person who sends or receives the certification notice.

§ 266.35 Standards applicable to burners of hazardous waste fuel.

Owners and operators of furnaces and boilers identified in § 266.31(b) that burn hazardous waste fuel are "burners" and are subject to the following requirements:

(a) *Prohibitions.* The prohibitions under § 266.31(b);

(b) *Notification.* Notification requirements under Section 3010 of RCRA for hazardous waste fuel activities. Upon notification, an EPA identification number will be issued. EPA form 8700–12, as revised, may be used to notify EPA of waste-as-fuel activities (see the Appendix to this subpart). Even if a burner has previously notified EPA of his hazardous waste

management activities and obtained an EPA identification number, he must renotify to identify his hazardous waste fuel activities;

(c) *Storage.* (i) For short term accumulation by generators who burn their hazardous waste fuel on site, the applicable provisions of § 262.34 of this chapter;

(ii) For existing storage facilities, the applicable provisions Subparts A through L of Part 265, and Part 270 of this chapter; and

(iii) For new storage facilities, the applicable provisions of Subparts A through L of Part 264, and Part 270 of this chapter;

(d) *Required notices.* Before a burner accepts the first shipment of hazardous waste fuel from a marketer, he must provide the marketer a one-time written and signed notice certifying that:

(i) He has notified EPA under Section 3010 of RCRA and identified his waste-as-fuel activities; and

(ii) He will burn the fuel only in a boiler or furnace identified in § 266.31(b); and

(e) *Recordkeeping.* In addition to the applicable recordkeeping requirements of Parts 264 and 265 of this chapter, a burner must keep a copy of each certification notice that he sends to a marketer for three years from the date he last receives hazardous waste fuel from that marketer.

Appendix to Subpart D—Form—Notification to EPA of RCRA Subtitle C Activity (EPA Form 8700–12 (Revised))

Subpart E—Used Oil Burned for Energy Recovery

§ 266.40 Applicability.

(a) The regulations of this subpart apply to persons who manage used oil that is burned for energy recovery in any boiler or industrial furnace that is not regulated under Subpart O of Part 264 or Part 265 of this chapter, except as provided by paragraphs (c) and (e) of this section. Such used oil is termed "used oil fuel". Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment.

(b) "Used oil" means any oil that has been refined from crude oil, used, and, as a result of such use, is contaminated by physical or chemical impurities.

(c) Except as provided by paragraph (d) of this section, used oil fuel that is mixed with a hazardous waste is subject to regulation as hazardous waste fuel under Subpart D of Part 266. Used oil containing more than 4000 ppm total chlorine is presumed to be a hazardous waste because it is mixed with chlorinated hazardous waste listed in Subpart D of Part 261 of this chapter. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous chlorinated spent solvents (EPA Hazardous Wastes F001 and F002) or any other chlorinated hazardous waste.

(d) Used oil fuel is subject to regulation under this subpart rather than as hazardous waste fuel under Subpart D of Part 266 if it is a hazardous waste solely because it:

(1) Exhibits a characteristic of hazardous waste identified in Subpart C of Part 261 of this chapter, provided that it is not mixed with a hazardous waste; or

(2) Contains only hazardous waste generated by a person subject to the special requirements for small quantity generators under § 261.5 of this chapter.

(e) Used oil fuel is subject to regulation under this subpart only if it exceeds any of the allowable levels of the constituents and properties in the specification shown in the following table, and provided that it is not mixed with hazardous waste other than small quantity generator hazardous waste, as provided by paragraph (d)(2) of this section. Used oil fuel that does not meet the specification is termed "off-specification". Used oil fuel that meets the specification is not subject to regulation under this subpart.

USED OIL FUEL SPECIFICATION [1]

Constituent/property	Allowable level
Arsenic	5 ppm maximum.
Cadmium	2 ppm maximum.
Chromium	10 ppm maximum.
Lead	10–100 ppm maximum.[2]
PCBs	50 ppm maximum.[3]
Flash Point	100° F minimum.

[1] The specification applies only to used oil that is not mixed with a hazardous waste other than small quantity generator hazardous waste exempt from full regulation under § 261.5. Used oil containing more than 4000 ppm total chlorine is considered a hazardous waste. (See § 266.40(c).)

[2] Level to be selected from range of 10 to 100 ppm for promulgation.

[3] Used oil containing 50 ppm or more PCBs is subject to regulation as a waste PCB under Part 761 of this chapter. Used oil containing less than 50 ppm of PCBs because of dilution is also subject to regulation as a waste PCB. (See § 761.1(b).)

§ 266.41 Prohibitions.

(a) A person may market off-specification used oil fuel for energy recovery only:

(1) To persons who have notified EPA of their used oil fuel activities stating the location and general description of such activities, and who have an EPA identification number; and

(2) If the used oil fuel is burned, to persons who burn the used oil in a boiler or furnace identified in paragraph (b) of this section.

(b) Off-specification used oil fuel may be burned for energy recovery in only the following boilers or furnaces:

(1) Industrial furnaces;

(2) Utility boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for sale;

(3) Industrial boilers used to produce electric power, steam, or heated or cooled air or other gases or fluids for use in a manufacturing process; or

(4) Used oil-fired space heaters provided that:

(i) The heater burns only used oil that the owner or operator generates on site;

(ii) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour; and

(iii) The combustion gases from the heater are vented to the ambient air.

§ 266.42 Standards applicable to generators who burn or market used oil fuel.

(a) Generators of used oil are not subject to regulation under this subpart unless they burn the used oil fuel for energy recovery or market the used oil fuel directly to a person who burns the fuel for energy recovery.

(b) Generators who burn off-specification used oil fuel are subject to the following requirements:

(1) *Prohibitions.* The prohibitions under § 266.41(b); and

(2) *Notification.* Notification to EPA stating the location and general description of used oil fuel activities, except that generators who burn their used oil in used oil-fired space heaters under the provisions of § 266.41(b)(4) are exempt from these notification requirements. Upon notification, an EPA identification number will be issued. EPA form 8700–12, as revised, may be used to notify EPA of waste-as-fuel activities (see the Appendix to this subpart). Even if a burner has previously notified EPA of his hazardous waste management activities under Section 3010 of RCRA and obtained an EPA identification number, he must renotify to identify his used oil fuel activities.

(c) Generators who market off-specification used oil fuel directly to the person who burns it are subject to the requirements of § 266.43 for marketers, unless the burner is a used oil fuel marketer who burns some of the used oil for purposes of processing or other treatment to produce used oil fuel, and who markets such used oil fuel.

§ 266.43 Standards applicable to marketers of used oil fuel.

(a) Persons who market used oil fuel are termed "marketers." A marketer is subject to the requirements of this section if:

(1) He is a used oil generator or transporter who markets used oil fuel

directly to a burner, unless the burner is a used oil fuel marketer who burns some of the used oil for purposes of processing or other treatment to produce used oil fuel, and who markets such used oil fuel;

(2) He is the owner or operator of a facility that stores or treats used oil received directly from a generator, or received directly from a transporter who received used oil directly from a generator; or

(3) He receives off-specification used oil fuel from another marketer.

(b) Marketers identified in paragraph (a) of this section are subject to the following requirements:

(1) *Analysis of fuel.* Used oil fuel must be managed as off-specification used oil fuel unless the marketer obtains analyses documenting that the used oil fuel meetsthe specification provided by § 266.40(e);

(2) *Prohibitions.* The prohibitions under § 266.41(a);

(3) *Notification.* Notification to EPA stating the location and general description of used oil fuel activities. Upon notification, an EPA identification number will be issued. EPA form 8700–12, as revised, may be used to notify EPA of waste-as-fuel activities (see the Appendix to this subpart). Even if a marketer has previously notified EPA of his hazardous waste management activities under Section 3010 of RCRA and obtained an EPA identification number, he must renotify to identify his used oil fuel activities;

(4) *Invoice system.* When a marketer initiates a shipment of off-specification used oil fuel, he must prepare and send the buyer an invoice containing the following information:

(i) An invoice number;

(ii) His own EPA identification number and the EPA identification number of the facility to receive the used oil fuel;

(iii) The names and addresses of the shipping and receiving facilities;

(iv) The quantity of used oil fuel to be delivered;

(v) The date(s) of shipment or delivery; and

(vi) The following statement: "This used oil does not meet the EPA used oil fuel specification provided in 40 CFR Part 266";

Note to paragraphs (b)(4) (i) through (vi) of this section: Used oil that meets the definition of combustible liquid (flash point below 200°F but at or greater than 100°F) or flammable liquid (flash point below 100°F) is subject to Department of Transportation Hazardous Materials Regulations at 49 CFR Parts 100–177.

(5) *Required notices.* (i) Before a marketer initiates the first shipment of off-specification used oil fuel to a burner or other marketer, he must obtain a one-time written and signed notice from the burner or marketer certifying that:

(A) The burner or marketer has notified EPA stating the location and general description of his used oil fuel activities; and

(B) if the recipient is a burner, the burner will burn the used oil fuel only in a boiler or furnace identified in § 266.41(b); and

(ii) Before a marketer accepts the first shipment of off-specification used oil from another marketer subject to the requirements of this section, he must provide the marketer with a one-time written and signed notice certifying that he has notified EPA of his used oil fuel activities; and

(6) *Recordkeeping.* A marketer who receives or initiates an invoice under the requirements of this section must keep a copy of each invoice for three years from the date the invoice is received or prepared. Marketers must also keep for three years copies of analyses of fuel required under paragraph (b)(1) of this section. In addition, a marketer must keep a copy of each certification notice that he receives or sends for three years from the date he last engages in a used oil fuel marketing transaction with the person who sends or receives the certification notice.

§ 266.44 Standards applicable to burners of off-specification used oil fuel.

Owners and operators of facilities that burn off-specification used oil fuel are "burners" and are subject to the following requirements:

(a) *Prohibition.* The prohibition under § 266.41(b);

(b) *Notification.* Notification to EPA stating the locating and general description of used oil fuel activities, except that owners and operators of used oil-fired space heaters that burn off-specification used oil under the provisions of § 266.41(b)(4) are exempt from these notification requirements. EPA form 8700–12, as revised, may be used to notify EPA of waste-as-fuel activities (see the Appendix to this subpart). Upon notification, the burner will be issued an EPA identification number. Even if a burner has previously notified EPA of his hazardous waste management activities under Section 3010 of RCRA and obtained an EPA identification number, he must renotify to identify his used oil fuel activities;

(c) *Required notices.* Before a burner accepts the first shipment of used oil fuel from a marketer, he must provide the marketer a one-time written and signed notice certifying that:

(1) He has notified EPA stating the location and general description of his used oil fuel activities; and

(2) He will burn the used oil fuel only in a boiler or furnace identifed in § 266.41(b); and

(d) *Recordkeeping.* A burner who receives an invoice under the requirements of this section must keep a copy of each invoice for three years from the date the invoice is received. In addition, he must keep a copy of each certification notice that he sends to a marketer for three years from the date he last receives used oil fuel from that marketer.

Appendix to Subpart E—Form—Notification To EPA or RCRA Subtitle C Activity (EPA Form 8700–12 (Revised))

BILLING CODE 6560-50-M

Please print or type with ELITE type *(12 characters/inch)* in the unshaded areas only.

U.S. ENVIRONMENTAL PROTECTION AGENCY

NOTIFICATION OF HAZARDOUS WASTE ACTIVITY

INSTRUCTIONS: Please refer to the INSTRUCTIONS FOR FILING NOTIFICATION before completing this form. The information requested here is required by law. (Section 3010 of the Resource Conservation and Recovery Act).

FOR OFFICIAL USE ONLY

COMMENTS

INSTALLATION'S EPA I.D. NUMBER | APPROVED | DATE RECEIVED (yr., mo., & day)

I. NAME OF INSTALLATION

II. INSTALLATION MAILING ADDRESS

STREET OR P.O. BOX

CITY OR TOWN | ST. | ZIP CODE

III. LOCATION OF INSTALLATION

STREET OR ROUTE NUMBER

CITY OR TOWN | ST. | ZIP CODE

IV. INSTALLATION CONTACT

JOB TITLE | PHONE NO. *(area code & no.)*

V. OWNERSHIP

A. NAME OF INSTALLATION'S LEGAL OWNER

B. TYPE OF OWNERSHIP *(enter the appropriate letter into box)*

F = FEDERAL
M = NON-FEDERAL

VI. TYPE OF WASTE ACTIVITY (enter "X" in the appropriate box(es))

☐ A. HAZARDOUS WASTE ACTIVITY

- ☐ 1. GENERATION
- ☐ 2. TRANSPORTATION
- ☐ 3. TREAT/STORE/DISPOSE
- ☐ 4. UNDERGROUND INJECTION
- ☐ 5. MARKET OR BURN HAZARDOUS WASTE FUELS (see Part B)

☐ B. WASTE-AS-FUEL ACTIVITIES

- ☐ 6. GENERATOR MARKETING TO BURNER
  - ☐ Hazardous Waste Fuel
  - ☐ Used Oil Fuel
- 7. OTHER MARKETER
  - ☐ Hazardous Waste Fuel
  - ☐ Used Oil Fuel
- 8. BURNER (see ITEM VII)
  - ☐ Hazardous Waste Fuel
  - ☐ Used Oil Fuel

VII. WASTE FUEL BURNING: TYPE OF COMBUSTION DEVICE (Enter "X" in all appropriate boxes to indicate types of combustion device(s) in which hazardous waste fuel or used oil fuel is burned. See instructions for definitions of waste fuels and combustion devices.)

☐ UTILITY BOILER ☐ INDUSTRIAL BOILER ☐ INDUSTRIAL FURNACE

CONTINUE ON REVERSE

I.D. – FOR OFFICIAL USE ONLY

W | T/A | C | 1

VII. MODE OF TRANSPORTATION *(transporters only – enter "X" in the appropriate box(es))*

☐ A. AIR ☐ B. RAIL ☐ C. HIGHWAY ☐ D. WATER ☐ E. OTHER *(specify)*:

IX. FIRST OR SUBSEQUENT NOTIFICATION

Mark "X" in the appropriate box to indicate whether this is your installation's first notification of hazardous waste activity or a subsequent notification. If this is not your first notification, enter your installation's EPA I.D. Number in the space provided below.

C. INSTALLATION'S EPA I.D. NO.

☐ A. FIRST NOTIFICATION ☐ B. SUBSEQUENT NOTIFICATION *(complete item C)*

X. DESCRIPTION OF HAZARDOUS WASTES *(continued from front)*

A. HAZARDOUS WASTES FROM NON–SPECIFIC SOURCES. Enter the four–digit number from 40 CFR Part 261.31 for each listed hazardous waste from non–specific sources your installation handles. Use additional sheets if necessary.

1	2	3	4	5	6
7	8	9	10	11	12

B. HAZARDOUS WASTES FROM SPECIFIC SOURCES. Enter the four–digit number from 40 CFR Part 261.32 for each listed hazardous waste from specific industrial sources your installation handles. Use additional sheets if necessary.

13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30

C. COMMERCIAL CHEMICAL PRODUCT HAZARDOUS WASTES. Enter the four–digit number from 40 CFR Part 261.33 for each chemical substance your installation handles which may be a hazardous waste. Use additional sheets if necessary.

31	32	33	34	35	36
37	38	39	40	41	42
43	44	45	46	47	48

D. LISTED INFECTIOUS WASTES. Enter the four–digit number from 40 CFR Part 261.34 for each listed hazardous waste from hospitals, veterinary hospitals, medical and research laboratories your installation handles. Use additional sheets if necessary.

49	50	51	52	53	54

E. CHARACTERISTICS OF NON–LISTED HAZARDOUS WASTES. Mark "X" in the boxes corresponding to the characteristics of non–listed hazardous wastes your installation handles. *(See 40 CFR Parts 261.21 – 261.24.)*

☐ 1. IGNITABLE (D001) ☐ 2. CORROSIVE (D002) ☐ 3. REACTIVE (D003) ☐ 4. TOXIC (D004 – D017)

XI. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

SIGNATURE	NAME & OFFICIAL TITLE *(type or print)*	DATE SIGNED

EPA Form 8700-12 (6-80) REVERSE

BILLING CODE 6560-50-C

PREVIOUS EDITIONS OBSOLETE

Instructions for Filing "Notification to EPA of RCRA Subtitle C Activity" (EPA Form 8700–12)

I. Who Must File

The Resource Conservation and Recovery Act (RCRA) and regulations implementing the Act as promulgated at 40 CFR Parts 260–266 require persons engaging in the following activities to notify EPA of their activity:

A. Persons who generate, transport, or own or operate facilities that treat, store, or dispose of hazardous waste destined for incineration or disposal;

B. Persons who generate, transport, or store certain hazardous wastes that are destined for use, reuse, or reclamation;

C. Persons who market or burn hazardous waste for use as a fuel for energy recovery; and

D. Persons who market or burn used oil for use as a fuel for energy recovery.

This includes individuals, trusts, firms, joint stock companies, corporations (including government corporations), partnerships, associations, states, municipalities, commissions, interstate bodies and Federal agencies. If you engage in a waste management activity outlined above without filing a notification, you may be subject to civil and criminal penalties.

Persons who own or operate underground injection wells that dispose of hazardous waste and who must notify under RCRA are not required to submit a separate notification under the Safe Drinking Water Act. However, you are still required to fill out inventory and other forms required under the Safe Drinking Water Act. For further information, affected persons should consult the Chief, Water Supply Branch at the nearest EPA Regional Office.

II. How to Determine if You Handle a Subtitle C Regulated Material Subject to the Notification Requirement

Persons who generate, transport, treat, store, dispose of, use, re-use, or reclaim discarded material must determine if the material is solid waste subject to the Subtitle C hazardous waste regulations. In addition, persons who burn used oil or hazardous waste for energy recovery and who market used oil or hazardous waste for use as a fuel for energy recovery must determine if they are subject to the Subtitle C notification requirements for hazardous waste fuel and used oil fuel. These determinations can be made as follows:

A. *Determine If You Handle a Hazardous Waste Subject to the Notification Requirements of 40 CFR Parts 260–266.*

1. First, *determine if you handle a solid waste.* A solid waste is defined at 40 CFR 261.2 as any garbage, refuse, sludge or any other waste material (including materials that are used, re-used or reclaimed) which is not excluded under § 261.4(a).

2. *Determine if the solid waste is a hazardous waste.* A solid waste is hazardous if it is not excluded by § 261.4(b) and it meets the criteria of § 261.3(a)(2).

3. *Determine if the hazardous waste is excluded from the notification requirement.* The following hazardous wastes are exempt from the notification requirements:

a. *Small quantity generator hazardous wastes.* Hazardous waste generated by small quantity generators may be exempt from notification (and other) requirements under provisions of § 261.5.

b. *Hazardous wastes that are used, re-used, or reclaimed.* Certain hazardous wastes that are used, re-used, or reclaimed are exempt from notification (and other) requirements under provisions of § 261.6.

c. *Other exemptions.* Waste generated within a manufacturing system is exempt from the notification requirements under provisions of § 261.4(c). As explained in § 261.4(d), a sample of solid waste which is collected for the sole purpose of testing to determine its characteristics or composition is exempt from the notification (and other) requirements.

B. *Determine If You Must Notify Of Your Waste Fuel Activities Because You Market Or Burn Hazardous Waste Fuel Or Used Oil Fuel For Energy Recovery.*

Section 261.6 does *not* exempt from notification (and other) requirements persons who recycle hazardous waste by marketing or burning hazardous waste fuel for energy recovery. Hazardous waste fuel marketers and burners are required to notify EPA of their waste-as-fuel activities under provisions of Section 3010 of RCRA and rules promulgated under 40 CFR Part 266, Subpart D. In addition, marketers and burners of used oil fuel are required to notify EPA of their waste-as-fuel activities under authority of Section 3014 of RCRA and rules promulgated at 40 CFR Part 266, Subpart E. For notification purposes, hazardous waste fuel and used oil fuel are considered to be burned for energy recovery if they are burned in a boiler or industrial furnace that is not regulated as a hazardous waste incinerator under Subpart O of 40 CFR Parts 264 and 265.

Even if a person has previously notified EPA of his hazardous waste management activity and obtained an EPA identification number, he must re-notify to identify his waste-as-fuel activities. Any person who markets or burns these materials must notify EPA within 30 days of promulgation of final notice requiring notification, unless they are specifically exempted below. (EPA has determined that these exemptions are consistent with the purpose and intent of the Act.)

Persons exempted from the waste-as-fuel notification:

1. *Persons who burn used oil fuel in nonindustrial boilers.* These persons need not notify because rules promulgated at 40 CFR Part 266, Subpart E permit burning of used oil fuel in nonindustrial boilers (with one exception) only if it meets a specification (and is not mixed with hazardous waste other than small quantity generator hazardous waste). Used oil fuel that meets the specification is exempt from regulation. However, off-specification used oil fuel may be burned in used oil-fired space heaters that are vented to the ambient air. Persons who burn used oil fuel in such units are exempt from the notification requirements of Subpart E (provided the used oil is not mixed with hazardous waste).

Subpart D of 40 CFR Part 266 *prohibits* burning of hazardous waste fuel in nonindustrial boilers.

2. *Persons who generate hazardous waste or used oil and send the material off site to a person who does not burn it for energy recovery.* These generators are exempt from the waste-as-fuel notification requirements because they are not marketing a fuel. (However, all hazardous waste generators are subject to the standard notification requirements for generators.) In such situations, it is the recipient who makes the decision to market the materials as a fuel, typically after processing or blending. (Used oil generators who send their oil to a person who processes or blends it to produce used oil fuel and who incidentally burns used oil to provide energy for the processing or blending are also exempt from the notification requirement. This is because such recipients are considered to be primarily fuel producers and marketers, and only incidental burners).

III. What Information Must Be Filed

When filing a notification, you must identify the type of regulated wastes that you handle and give a general description of your activity, including its location. You may submit all this information by completing the enclosed EPA Form 8700–12, "Notification to EPA of RCRA Subtitle C Activity".

IV. How Many Forms Should Be Filed

You need submit only one Notification Form per site or location, provided that you describe all the activities at that site or location. If you conduct a waste activity (see Section I) at more than one site or location, you must submit a *separate* form for each site or location.

If you transport waste as discussed in Section I, and do not generate, treat, store or dispose of these wastes, you may submit one form which covers all transportation activities your company conducts. This form should be submitted to the EPA Regional Office that serves the area where your company has its headquarters or principal place of business. However, if you are a transporter who also generates, treats, stores or disposes of these regulated wastes, you must complete and submit separate Notification Forms to cover each installation.

V. When To File

1. *Within 90 days of Regulating a Waste You Manage:* From time to time EPA may subject additional hazardous wastes to the notification requirement by expanding the list or characteristics of hazardous waste, or by deleting an existing exemption from the notification requirement. These changes will be codified in 40 CFR Part 261. If as a generator or transporter you were not required to notify previously, but you handle wastes that are newly subject to the notification requirement, you must file a notification covering those wastes within 90 days after the amendment is published. Ordinarily, facility owners/operators may submit Part A of the RCRA Permit obligations. However, hazardous waste fuel and used oil fuel marketers and burners must notify of their waste-as-fuel activities within 90 days of promulgation of final notice requiring notification of waste-as-fuel activities.

2. *New Generators and Transporters:* As discussed in 40 CFR Part 262, a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA Identification Number from the Administrator. Similarly, if you desire to transport hazardous waste and have not previously filed a notification as a transporter, you must comply with the regulations published under 40 CFR Part 263 before you move any hazardous waste. Transporters need not complete the reverse side of the Notification Form as they may not know which wastes they will be handling.

3. *New Treatment, Storage or Disposal Facilities:* If you are an owner or operator of a hazardous waste treatment, storage, or disposal facility (subject to the permit requirements of Parts 264, 265, or 266) that was not in existence on November 19, 1980, you will not be allowed to begin hazardous waste activity until you obtain a RCRA Permit. (To obtain a permit you must file Parts A and B of the RCRA Permit Application).

VI. Confidential Business Information

All information you submit in a notification can be disclosed to the public, according to the Freedom of Information Act and EPA Freedom of Information Regulations. Because notification information is very general, EPA believes it is unlikely that any information in your notification could qualify to be protected confidentiality by printing the word "confidential" on both sides of the Notification Form and on any attachments. In addition, *at the time of notification,* you must submit written answers to each of the following questions:

1. Which portions of the information do you claim are entitled to confidential treatment?

2. How long do you want this information treated as confidential?

3. What measures have you taken to guard against undesired disclosure of the information to others?

4. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?

5. Has EPA or any other Federal Agency made a pertinent confidentiality determination? (If so, include a copy of this determination or reference to it, if available).

6. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between disclosure and the harm?

VII. Where To File

Notifications should be mailed to the EPA Regional Office that serves the area where your regulated waste activity is located. The mailing addresses for the EPA Regional Offices are listed below:

EPA region	Area served	Mailing address
I	CT, ME, MA, RI, VT, NH.	EPA Region I, State Programs Branch, P.O. Box 8748, Boston, MA 02203.
II	NJ, NY, VI, PR	EPA Region II, Permits Administration Branch, 26 Federal Plaza, New York, NY 10278.
III	DE, DC, MD, PA, VA, WV.	EPA Region III, Permits Branch, 6th and Walnut Streets, Philadelphia, PA 19106.
IV	AL, FL, GA, KY, MI, NC, SC, TN.	EPA Region IV, Waste Management Branch, 345 Courtland, N.E., Atlanta, GA 30365.
V	IL, IN, MI, MN, OH, WI.	EPA Region V, Waste Management Branch, 230 S. Dearborn St. NE., Chicago, IL 60604.
VI	AR, LA, NM, OK, TX	EPA Region VI, Waste Programs Branch, 1203 Elm Street, First International Bldg., Dallas, TX 75270.
VII	IA, KS, MO, NE	EPA Region VII, Waste Management Branch, 324 E. 11th St., Kansas City, MO 64106.
VIII	CO, MT, ND, SD, UT, WY.	EPA Region VIII, Waste Management Branch, 1860 Lincoln Street, Denver, CO 80295.
IX	AZ, CA, HI, NV, GU, American Samoa, Commonwealth of the Northern Marianas.	EPA Region IX (T-2-2), Waste Management Branch, 215 Fremont Street, San Francisco, CA 94105.
X	AL, ID, OR, WA	EPA Region X (M.S. 533), Waste Management Branch, 1200 6th Avenue, Seattle, WA 98101.

Line-By-Line Instructions For EPA Forms 8700–12

How To Complete This Form

Type using ELITE type or print in ink all terms except X(A), "Signature", leaving a blank box between words. When typing (with elite type), hit the space bar once between characters and three times between words. If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

Example:

I. NAME OF INSTALLATION			
SMITH MANUFACTURING COMPANY			
II. INSTALLATION MAILING ADDRESS			
STREET OR P.O. BOX			
PO BOX 8719			
CITY OR TOWN	ST.	ZIP CODE	
Urbana	IL	61801	
III. LOCATION OF INSTALLATION			
STREET OR ROUTE NUMBER			
1201 6th Street			
CITY OR TOWN	ST.	ZIP CODE	
Urbana	IL	61801	

Items I Through III

NAME, MAILING ADDRESS, AND LOCATION OF INSTALLATION: Complete each line following directions above. If the mailing address and location of the installation are the same, print "SAME" in the "Street or Route No." boxes of item III.

Item IV

INSTALLATION CONTACT: Enter the title and business telephone number of the person who should be contacted regarding information submitted on this form.

Item V

OWNERSHIP: (A) Enter the name of the legal owner of the installation. Use additional sheets if necessary to list more than one owner. (B) Enter an "F" in the box if the installation is owned by a Federal Agency. Enter an "M" if the installation is not owned by a Federal Agency. An installation is Federally owned if the owner is the Federal Government, even if it is operated by a private contactor.

Item VI

TYPE OF WASTE ACTIVITY: HAZARDOUS WASTE ACTIVITY

Mark "X" in the appropriate box(es) to indicate the hazardous waste activity or activities at the installation. Hazardous waste generators and owners and operators of facilities for treating, storing or disposing of hazardous waste must mark item D if an injection well is located at their installation. An injection well is defined as any hole in the ground that is deeper than it is wide and that is used for the subsurface placement of fluids, INCLUDING SEPTIC TANKS. Persons who market or burn hazardous waste fuel *must* mark box #5 in this section, and the appropriate boxes in the Waste-As-Fuel section.

TYPE OF WASTE ACTIVITY: WASTE-AS-FUEL ACTIVITY

Mark an "X" in the appropriate box(es) to indicate whether you are (1) a generator who markets waste fuel directly to a burner; (2) a marketer other than a generator marekting directly to a burner; or (3) a burner of waste fuels. A person may be both a marketer and a burner. If you market or burn waste fuels, mark "X" in the appropriate box(es) to indicate the type of waste fuel handled.

Item VII

TYPE OF WASTE FUEL BURNING DEVICE: If you burn waste fuel for energy recovery in a device that is not regulated as a RCRA permitted hazardous waste incinerator (i.e., under Subpart O of 40 CFR Parts 264 or 265), mark "X" in the appropriate box(es) to identify the device(s).

Item VIII

MODE OF TRANSPORTATION: Complete this item only if you are a transporter of hazardous waste to indicate the mode(s) of transportation you use.

Item IX

FIRST OR SUBSEQUENT NOTIFICATION: A person is required to notify for each regulated waste management activity. Place an "X" in the appropriate box to indicate whether this is your first or a subsequent notification. If you have filed a previous notification, enter your EPA Identification Number in the boxes provided.

Item X

DESCRIPTION OF HAZARDOUS WASTE: You must read Title 40 CFR Part 261 in order to complete this item (see Appendix I). Part 261 identifies those solid wastes that EPA defines to be hazardous wastes. Part 261 identifies hazardous wastes in two ways:

(1) A number of hazardous wastes are listed by name in various tables and appendices. EPA has assigned a four-digit number to each waste that is listed to make it easier to identify the wastes.

(2) Part 261 also lists the general characteristics of hazardous wastes. EPA has also assigned a four-digit number to these characteristics.

As you will note, Item X on the form is divided into five sections. You should use Sections A through D to identify any listed hazardous wastes which you handle; use Section 3 to identify those characteristics of the nonlisted hazardous wastes which you handle. Hazardous waste fuel is a generic type of Hazardous waste. Thus, if you manage hazardous waste fuel, you must complete this section to identify the individual hazardous wastes that the fuel contains.

You should include in Sections A through E all hazardous wastes you handled during the three month period preceding the date of notification. If you occasionally handle a hazardous waste, but did not handle that waste during the three month period preceding the date of notification, you may also include that waste (or wastes) in Sections A through E.

If you are a new generator applying for an EPA Identification Number under the provisions of 40 CFR Part 262, you should describe the wastes which you believe you will be generating.

If you are a new transporter applying for an EPA Identification Number under the provisions of 40 CFR Part 263, you are not required to complete Item X.

The specific instructions for Sections A through E are:

SECTION A: If you handle hazardous wastes from the non-specific sources listed in

Part 261.31, enter the appropriate four-digit numbers in the boxes provided.

SECTION B: If you handle hazardous wastes from the specific industrial sources listed in Part 261.32, enter the appropriate four-digit numbers in the boxes provided.

SECTION C: If you handle any of the commercial chemical products or manufacturing intermediate or material listed in Part 261.33 as wastes, enter the appropriate four-digit numbers in the boxes provided.

Manufacturers may include the products or raw materials that can be reasonably anticipated to require treatment, storage or disposal as wastes from time to time even though you may not have handled them in the past three months.

SECTION D: If you handle any of the hazardous wastes from hospitals, veterinary hospitals, or medical and research laboratories listed in Part 261.34, enter the appropriate four-digit numbers in the boxes provided.

SECTION E: If you handle hazardous wastes which are not listed in Subpart D of Part 261, you should describe these wastes by the characteristics in Subpart C of Part 261. For purposes of notification, it is not necessary to use the four-digit numbers for each characteristic. Rather, you should place an "X" in the box next to the characteristic of those non-listed wastes which you handle.

Item XI

CERTIFICATION: This certification must be signed by the owner or operator or an authorized representative of your installation. An "authorized representative" is a person responsible for the overall operation of the facility—for example—a plant manager or superintendent, or a person of equivalent responsibility.

Definitions

The following definitions are provided to help clarify the notification requirements and to assist you in completing the Notification Form. If you need a more detailed discussion of the definitions you should obtain a copy of 40 CFR Part 260 from the EPA Regional Office serving your area.

ACT or RCRA means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. Section 6901 et seq.

AUTHORIZED REPRESENTATIVE means the person responsible for the overall operation of the facility or an operational unit (i.e. part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

BOILER means an enclosed device using controlled flame combustion and having the following characteristics: (1) the unit has physical provisions for recovering and exporting energy in the form of steam, heated fluids, or heated gases; (2) the unit's combustion chamber and primary energy recovery section(s) are of integral design (i.e., they are physically formed into one manufactured or assembled unit); (3) the unit continuously maintains an energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and (4) the unit exports and utilizes at least 75 percent of the recovered energy, calculated on an annaul basis (excluding recovered heat used internally in the same unit to, for example, preheat fuel or combustion air or drive fans or feedwater pumps).

BURNER means the owner or operator of a utility boiler, industrial boiler or industrial furnace that burns waste fuel for energy recovery and that is not regulated as an RCRA hazardous waste incinerator.

DISPOSAL means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

DISPOSAL FACILITY means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

EPA IDENTIFICATION (I.D.) NUMBER means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

EXISTING HAZARDOUS WASTE MANAGEMENT FACILITY or EXISTING FACILITY means a facility which was in operation or for which construction had commenced, as of November 19, 1980. Construction had commenced if:

(1) The owner or operator had obtained all necessary Federal, State, and local preconstruction approvals or permits; and

(2)(i) A continuous physical, on-site construction program had begun; or

(ii) The owner or operator had entered into contractual obligations which cannot be cancelled or modified without substantial loss for construction of the facility to be completed within a reasonable time.

FACILITY Means all contiguous land, and structures, other appurtanences, and improvements on the land, used for treating, storing, or disposing or hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).

GENERATOR means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

HAZARDOUS WASTE means a hazardous waste as defined in 40 CFR Part 261.

HAZARDOUS WASTE FUEL means hazardous waste, and any fuel produced by processing, blending, or other treatment of hazardous waste, that is burned for energy recovery in a boiler or industrial furnace that is not subject to regulation as a RCRA hazardous waste incinerator. However, the following hazardous waste fuels are subject to regulation as used oil fuels and should be considered used oil fuels for purposes of notification:

(1) Used oil fuel that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in Subpart C of 40 CFR Part 261, provided it is not mixed with hazardous waste; and

(2) Used oil fuel mixed with hazardous wastes generated by a small quantity generator subject to the exemption provided by 40 CFR 261.5.

INDUSTRIAL BOILER means a boiler used to produce electric power, steam or heated or cooled air (or other fluids or gases) for use to operate equipment or drive chemical or other reactions in a manufacturing process where substances are transformed into products. A boiler used to provide space heating as well as energy for a manufacturing process is considered to be an industrial boiler.

INDUSTRIAL FURNANCE means any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame combustion to accomplish recovery of materials or energy: cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnances, smelting furnaces, refining furnances, titanium dioxide chloride process oxdation reactors, and methane reforming furnances (and other devices as the Administrator may add to this list).

MARKETER means a person who markets hazardous waste fuel or used oil fuel. However, generators and initial transporters (i.e., transporters who receive hazardous waste or used oil directly from generators) are considered marketers only if they market directly to a burner. Off-site waste fuel processors, blenders and distributors are also marketers.

NEW HAZARDOUS WASTE MANAGEMENT FACILITY means a facility which began operation, or for which construction commenced after October 21, 1976.

OPERATOR means the person responsible for the overall operation of a facility.

OWNER means a person who owns a facility or part of a facility.

STORAGE means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

TRANSPORTATION means the movement of hazardous waste by air, rail, highway, or water.

TRANSPORTER means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

TREATMENT means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

USED OIL means any oil that has been refined from crude oil, used, and as a result of such use, is contaminated by physical or chemical impurities. Wastes that contain oils that have not been used (e.g., virgin fuel oil storage tank bottom clean-out wastes) are not used oil unless they are mixed with used oil.

USED OIL FUEL means any used oil burned for energy recovery, including any fuel produced from used oil by processing, blending or other treatment, and that does not contain hazardous waste other than that generated by a small quantity generator and

exempt from regulation as hazardous waste under provisions of 40 CFR 261.5. Used oil fuel may itself exhibit a characteristic of hazardous waste and remain subject to regulation as used oil fuel provided it is not mixed with hazardous waste (other than exempt small quantity generator hazardous waste).

UTILITY BOILER means a boiler that is used to produce electricity, steam or heated or cooled air or other gases or fluids for sale.

WASTE FUEL means hazardous waste fuel or used oil fuel.

[FR Doc. 85-590 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
January 11, 1985

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Ch. 1

Federal Acquisition Regulation; Interim Rule and Request for Comments

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

[Federal Acquisition Circular 84-5]

Federal Acquisition Regulation

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule and request for comment.

SUMMARY: Federal Acquisition Circular (FAC) 84-5 amends the Federal Acquisition Regulation (FAR) with respect to the changes required to implement the Competition in Contracting Act of 1984 (CICA).

EFFECTIVE DATE: April 1, 1985.

DATE: Comments must be received on or before March 12, 1985. Please cite FAR Case 84-52 in all correspondence related to this issue.

ADDRESS: Interested parties should submit comments to: General Services Administration, ATTN: FAR Secretariat (VR), 18th and F Streets, NW., Room 4041, Washington, D.C. 20405.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 84-5 (FAC 84-5) contains changes to the FAR to conform the regulation to CICA. The FAR revisions are effective for solicitations to be issued on or after April 1, 1985.

Under the new coverage, agencies will be required to provide for full and open competition by soliciting sealed bids or requesting competitive proposals, or using other competitive procedures; unless a statutory exception permits other than full and open competition. There are new justification, approval, and notice requirements for contracts employing other than full and open competition. The coverage also requires appointment of competition advocates and enumerates their responsibilities.

A determination has been made under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration that FAC 84-5 must be issued as a temporary regulation. In order to comply with the changes made by CICA, all solicitations for bids or proposals that are issued on or after April 1, 1985, must be in compliance with FAC 84-5. Because of the varying lead times necessary for the preparation and approval of solicitations, it will be necessary for agencies to promptly begin implementing the coverage. In addition, agencies will have to issue required internal operating procedures and ensure that procurement personnel are provided appropriate training and education in these new procedures. These regulations were previously published for a brief comment period and comments received were considered.

FAC 84-5 does not address CICA's new requirements relating to bid protests. The CICA requirements relating to bid protests become effective for protests filed on or after January 15, 1985, and will be implemented in a separate FAC issued prior to that date.

List of Subjects in 48 CFR Ch. 1

Government procurement.

Roger M. Schwartz,

Director, FAR Secretariat.

December 20, 1984.

Federal Acquisition Circular

[Number 84-5]

December 20, 1984

Federal Acquisition Circular (FAC) 84-5 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

The material contained in FAC 84-5 is effective for solicitations to be issued on or after April 1, 1985.

Ray Kline,

Acting Administrator, General Services Administration.

Mary Ann Gilleece,

Deputy Under Secretary (Acquisition Management), Department of Defense.

Stuart J. Evans,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

Federal Acquisition Circular 84-5 amends the Federal Acquisition Regulation as specified below. The following is a summary of the amendments and procedures:

Item I—Competition in Contracting Act of 1984.

The Competition in Contracting Act of 1984 (CICA), Title VII of Pub. L. 98-369, substantially changes the basic statutes underlying the Federal procurement system. Any solicitation for bids or proposals issued on or after April 1, 1985, must comply with CICA's new requirements.

Therefore, 48 CFR is amended as set forth below.

1. The Authority for 48 CFR Chapter 1 is:

Authority: 40 U.S.C. 486(c) 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1 is amended by adding a new Subpart 1.7 to read as follows:

Subpart 1.7—Determinations and Findings

1.700 Scope of subpart.

This subpart prescribes general policies and procedures for the use of determinations and findings (D&F's). Requirements for specific types of D&F's can be found with the appropriate subject matter.

1.701 Definition.

"Determination and Findings" (D&F) means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

1.702 General.

(a) A D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&F's may be executed for classes of contract action (see 1.703). The approval granted by a D&F is restricted to the proposed contract action(s) reasonably described in that D&F. D&F's may provided for a reasonable degree of flexibility. Furthermore, in their application, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.

(b) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

1.703 Class determinations and findings.

(a) A class D&F provides authority for a class of contracting actions. A class may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.

(b) The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each

action. A class D&F shall be for a specified period, with the expiration date stated in the document.

(c) The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

1.704 Content.

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

(a) Identification of the agency and of the contracting activity and specific identifications of the document as a "Determination and Findings".

(b) Nature and/or description of the action being approved.

(c) Citation of the appropriate statute and/or regulation upon which the D&F is based.

(d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

(e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

(f) Expiration date of the D&F, if required (see 1.706(b)).

(g) The signature of the official authorized to sign the D&F (see 1.706) and the date signed.

1.705 Supersession and modification.

(a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the orginal D&F prior to the date of its supersession.

(b) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports the contracting action.

1.706 Expiration.

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under an individual D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. Authority to act under a class D&F expires on the expiration date specified in the document. When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from that solicitation.

1.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&F's is as shown in the applicable FAR part.

PART 2—DEFINITIONS OF WORDS AND TERMS

Subpart 2.1—[Amended]

3. Subpart 2.1 is amended by designating the existing text as 2.100 and by removing in the definition of "Offer" the words "(formal advertising)" and inserting in their place the words "(sealed bidding)" and adding the words "or sealed bids" following the word "bids" and before the word "; responses" in the second sentence; and by alphabetically adding the definition of "Senior procurement executive" to read as follows:

2.100 Definitions.

* * * * *

"Senior procurement executive" means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3.103-1 [Amended]

4. Section 3.103-1 is amended by removing in paragraph (c) the words "formal advertising" and inserting in their place the words "sealed bidding".

3.301 [Amended]

5. Section 3.301 is amended by removing the second sentence in paragraph (b) and removing in the third sentence the word "also" and the words "either advertised or competitively negotiated".

6. Section 3.303 is amended by revising paragraph (a) to read as follows:

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by 41 U.S.C. 253(B)(e) and 10 U.S.C. 2305(b)(5) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by Subpart 9.4.

* * * * *

3.403 [Amended]

7. Section 3.403 is amended by removing the words "formally advertised" and inserting in their place the words "sealed bid".

3.404 [Amended]

8. Section 3.404 is amended by removing in paragraph (b)(1) the words "formal advertising" and inserting in their place the words "sealed bidding".

3.406 [Amended]

9. Section 3.406 is amended by removing the words "formally advertised" and inserting in their place the words "sealed bid".

PART 4—ADMINISTRATIVE MATTERS

4.702 [Amended]

10. Section 4.702 is amended by removing in paragraph (a)(2) the words "Formal Advertising" and inserting in their place the words "Sealed Bidding".

11. Section 4.803 is amended by revising paragraphs (a)(2) and (a)(5) to read as follows:

4.803 Contents of contract files.

* * * * *

(a) * * *

(2) Justifications and approvals, determinations and findings, and associated documents.

* * * * *

(5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

* * * * *

12. Section 4.805 is amended by removing and reserving paragraph (c) and revising (d) of the table to read as follows:

4.805 Disposal of contract files.

* * * * *

Document	Retention Period
* * * * *	
(c) [Reserved]	
(d) Signed originals of justifications and approvals and determinations and findings required by Part 6, and copies of supporting documents and data.	6 years and 3 months after final payment.
* * * * *	

13. Section 5.001 is redesignated as section 5.002 and new section 5.001 is added to read as follows:

5.001 Definition.

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

14. Section 5.101 is amended by revising the introductory text of paragraph (a) to read as follows:

5.101 Methods of disseminating information.

(a) Except as provided in 5.202, contracting officers shall disseminate information on proposed contract actions in amounts of $10,000 and above by—

* * * * *

15. Section 5.102 is amended by revising paragraph (a)(2); removing in paragraphs (a)(4)(ii) the word "agency" and inserting in its place the words "contracting office"; adding paragraphs (a)(5) and (a)(6); and removing in paragraph (b) the reference "5.202(a)" and inserting in its place the reference "5.202(a)(1)" as follows:

5.102 Availability of solicitations.

(a) * * *

(2) Provide copies of a limited solicitation to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6;

* * * * *

(5) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted.

(6) Agencies may require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation documents.

* * * * *

Subpart 5.2 [Amended]

16. Subpart 5.2 is amended by removing in the title the word "CONTRACTS" and inserting in its place the words "CONTRACT ACTIONS".

17. Section 5.201 is amended by revising paragraphs (a) through (c) to read as follows:

5.201 General.

(a) As required by the Small Business Act (15 U.S.C. 637(c)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416), agencies shall furnish for publication in the CBD notices of proposed contract actions of $10,000 and above as specified below.

(b) For acquisition of supplies and services in the United States, its possessions, or Puerto Rico, other than those covered by the exceptions in 5.202 and special situations in 5.205, the contracting officer shall transmit a notice to the CBD (synopsis) (see 5.207) for each proposed—

(1) Contract action meeting the threshold in 5.201(a);

(2) Effort to locate private commercial sources for cost comparison purposes under OMB Circular A–76 (see 5.205(d));

(3) Modification to an existing contract for additional supplies or services that meets the threshold in 5.201(a); or

(4) Contract action in any amount when advantageous to industry or the Government.

(c) The primary purposes of the CBD notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

* * * * *

18. Section 5.202 is revised to read as follows:

5.202 Exceptions.

The contracting officer need not submit the notice required by 5.201 when—

(a) The Contracting officer determines that—

(1) The contract action is of a classified nature, and the synopsis cannot be worded to preclude the disclosure of classified information; or disclosure of the agency's needs would compromise the national security. Other proposed classified contract actions shall be published in the CBD, even though access to classified matter might be necessary to submit a proposal or perform the contract;

(2) The contract action is to fulfill a need for supplies or services that is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals and not comply with the time periods specified in 5.203;

(3) The contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, has the effect of requiring that the acquisition shall be from specified sources;

(4) The contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the SBA using the authority of section 8(a) of the Small Business Act, or from a specified source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The contract action is for utility services and only one source is available;

(6) The contract action is an order placed under a requirements contract;

(7) The contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), or an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would improperly disclose the originality of thought or innovativeness of the proposed research;

(8) The contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(9) The contract action is made under conditions described in 6.302–3, or 6.302–5 with regard to brand name commercial items for authorized resale, and advance notice is not appropriate or reasonable; or

(10) The contract action is made under the terms of an existing contract that was previously synopsized in sufficient detail to comply with the requirements of 5.207 with respect to the current contract action.

(b) The head of the agency determines in writing after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

19. Section 5.203 and its title are revised to read as follows:

5.203 Publicizing and response time.

Whenever agencies are required to publish notice of contract actions under 5.201, they shall proceed as follows:

(a) A proper notice of the contract action shall be published in the CBD at least 15 days before issuance of a solicitation.

(b) Agencies shall allow at least 30 days response time for receipt of bids or proposals from the date of issuance of a solicitation.

(c) Agencies shall allow at least 30 days response time from the date of publication of a proper notice of intent

to contract for architect-engineer services or before issuance of a unilateral sole source order under a basic ordering agreement or similar arrangement.

(d) Agencies shall allow at least 45 days response time for receipt of bids or proposals from the date of issuance of the notice required in 5.201 for contract actions categorized as research and development.

(e) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(f) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted) following transmittal of the synopsis to the CBD.

20. Section 5.204 is revised to read as follows:

5.204 Presolicitation notices.

Contracting officers shall publicize presolicitation notices in the CBD (see 15.404 and 36.302). Synopsizing is still required prior to issuance of any resulting solicitation (see 5.201 and 5.203).

21. Section 5.205 is amended by revising the first sentence in paragraph (a); removing and reserving paragraph (b); and revising paragraphs (c) and (d) to read as follows:

5.205 Special situations.

(a) * * * Contracting officers shall publish in the CBD advance notices of their interest in R&D fields, subject to the exceptions in 5.203. * * *

* * * * *

(b) [Reserved]

(c) *Architect-engineer services.* Except when exempted by 5.202, contracting officers shall publicize notices of intent to contract for architect-engineer services as follows:

(1) Synopsize each proposed contract action to be made in the United States, its possessions, and Puerto Rico for which the total fee (including phases and options) is expected to exceed $10,000.

(2) When the total fee is not expected to exceed $10,000, or when the contract action is to be made outside the United States, its possessions, and Puerto Rico, the contracting officer may display a notice of the proposed contract action at the contracting office and use other optional publicizing methods authorized by 5.101(b).

(d) *Effort to locate commercial sources under OMB Circular A-76.* When determining the availability of commercial sources under the procedures prescribed in Subpart 7.3 and OMB Circular A-76, the contracting officer shall not arrive at a conclusion that there are no commercial sources capable of providing the required supplies or services until publicizing the requirement in the CBD at least three times in a 90 calendar-day period, with a minimum of 30 calendar days between each. When necessary to meet an urgent requirement, this may be limited to a total of two publications in the CBD in a 30 calendar-day period, with a minimum of 15 calendar days between each.

5.206 [Amended]

22. Section 5.206 is amended by removing in the title the words "Synopses of" and inserting in their place the word "Publicizing", and in paragraph (a)(2) removing the words "formally advertised" and inserting in their place the words "sealed bid".

23. Section 5.207 is amended by removing in the introductory text of paragraph (a) the word "contracts" and inserting in its place the words "contract actions"; revising the second sentence of paragraph (b)(1); revising the third sentence of paragraph (b)(2); revising paragraphs (b)(3), (b)(4)(iv), (b)(4)(vii) and (b)(5); adding paragraph (b)(6); removing in paragraph (d)(2) the number "5.207(b)(5)" and inserting in its place the words "Part 25"; adding paragraph (d)(3); revising the title in paragraph (e)(1) and removing paragraph (e)(4), to read as follows:

5.207 Preparation and transmittal of synopses.

(b) * * *

(1) * * * Prepare the synopsis to ensure that it includes a clear description of the supplies or services to be contracted for, is not unnecessarily restrictive of competition, and will allow a prospective offeror to make an informal business judgment as to whether a copy of the solicitation should be requested.

(2) * * * Put each separate proposed contract action in a separate paragraph. * * *

(3) *Contracting office and address.* Begin the name, address, and telephone number of the contracting office on the first line of the text. Do not abbreviate except for the names of States. The address shall include an attention phrase, including title, code, and telephone number, that identifies the person(s) to contact for further information and for obtaining a copy of the solicitation. In addition, the contracting officer's name, business address, and telephone number shall be included if different from that of the person to contact for further information.

* * * * *

(4) * * *

(vi) Size, dimensions, or other form, fit, or function.

(vii) Predominant material of manufacture.

* * * * *

(5) Insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(6) In the case of a contract action under Subpart 6.3, insert a statement of the authority and justification, and the identity of the intended source(s) (See 5.207(d)(3)).

* * * * *

(d) * * *

(3) If the synopsis is for a proposed contract action intended to be awarded on a sole source basis, the synopsis shall include reference to Numbered Note 22.

* * * * *

(e) * * *

(1) *Availability of specification, plans, drawing, or other technical data.* * * *

* * * * *

24. Section 5.301 is revised to read as follows:

5.301 General.

Except for classified contract actions that were not synopsized in accordance with 5.202(a), contracting officers shall synopsize in the CBD awards exceeding $25,000 that are likely to result in the award of subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

5.303 [Amended]

25. Section 5.303 is amended by removing wherever they appear in paragraph (b)(1) the words "formal advertising" and inserting in their place the words "sealed bidding".

5.403 [Amended]

26. Section 5.403 is amended by removing in the title of paragraph (b) the word "solicitations" and inserting in its place the word "solicitation".

27. A new Part 6 is added to read as follows:

PART 6—COMPETITION REQUIREMENTS

Sec.

6.000 Scope of part.
6.001 Applicability.
6.002 Limitations.
6.003 Definitions.

Subpart 6.1—Full and Open Competition

6.100 Scope of subpart.

Sec.
6.101 Policy.
6.102 Use of competitive procedures.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.
6.201 Policy.
6.202 Establishing or maintaining alternative sources.
6.203 Set-asides for small business and labor surplus area concerns.

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.
6.301 Policy.
6.302 Circumstances permitting other than full and open competition.
6.302–1 Only one responsible source.
6.302–2 Unusual and compelling urgency.
6.302–3 Industrial mobilization; or experimental, developmental, or research work.
6.302–4 International agreement.
6.302–5 Authorized or required by statute.
6.302–6 National security.
6.302–7 Public interest.
6.303 Justifications.
6.303–1 Requirements.
6.303–2 Content.
6.304 Approval of the justification.
6.305 Availability of the justification.

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Subpart 6.5—Competition Advocates

6.501 Requirement.
6.502 Duties and responsibilities.

Authority: 40 U.S.C. 486(c); Chapter 137, 10 U.S.C., and 42 U.S.C. 2453(c).

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results of competition (e.g., adequate price competition), which are addressed in other parts (e.g., Part 15).

6.001 Applicability.

This part applies to all acquisitions except—

(a) Contracts awarded using the small purchase procedures of Part 13;

(b) Contracts awarded under the 8(a) program (see Subpart 19.8);

(c) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(d) Contract modifications that are within the scope and under the terms of an existing contract;

(e) Orders placed under requirements contracts or definite-quantity contracts; or

(f) Orders placed under indefinite-quantity contracts that were entered into pursuant to this Part when—

(1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for all requirements contained in the order; or

(2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order.

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 Definitions.

"Full and open competition," when used with respect to a contract action, means that all responsible sources are permitted to compete.

"Sole source acquisition" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

"Procuring activity," as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" shall be synonymous with "contracting activity" as defined in subpart 2.1.

Subpart 6.1—Full and Open Competition

6.100 Scope of subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

(a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure or combination of competitive procedures contained in this subpart that is best suited to the circumstances of the contract action. Contracting officers must use good judgment in selecting the procedure that best meets the needs of the Government.

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids.* (See 6.401(a).)

(b) *Competitive proposals.* (See 6.401(b).) If sealed bids are not appropriated under (a) above, contracting officers shall request competitive proposals or use the other competitive procedures under (c) or (d) below.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).

(d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92–582 (40 U.S.C. 541 et seq.) is a competitive procedure (see Subpart 36.6 for procedures).

(2) Competitive selection of basic research proposals for award (see Part 35 for procedures) is a competitive procedure if award results from—

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

(ii) A peer or scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259 (b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure if ordering offices follow the procedures in 8.405–1 in placing orders under this program.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

§ 6.200 Scope of subpart.

This subpart prescribes policies and procedures for providing for full and open competition after excluding one or more sources.

§ 6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract

action under the circumstances described in 6.202 or 6.203 below.

§ 6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition, of such supplies or services;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization; or

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b)(1) Every proposed contract action under the authority of paragraph (a) above shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in (a)(1) above is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

§ 6.203 Set-asides for small business and labor surplus area concerns.

(a) To fulfill the statutory requirements relating to small business concerns and labor surplus area concerns, contracting officers may set aside solicitations to allow only such business concerns to compete. This includes contract actions conducted under the Small Business Innovation Research Program established under Pub. L. 97–219.

(b) No separate justification or determination and findings is required under this part to set aside a contract action for small business or labor surplus area concerns.

(c) Subpart 19.5 prescribes policies and procedures that shall be followed with respect to small business set-asides.

(d) Subpart 20.2 prescribes policies and procedures that shall be followed with respect to labor surplus area set-asides.

Subpart 6.3—Other Than Full and Open Competition

§ 6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

§ 6.301 Policy.

(a) 41 U.S.C. 253(c) and 10 U.S.C. 2304(c) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to 10 U.S.C. 2304(c). Other executive agencies are subject to 41 U.S.C. 253(c). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency. (See 6.302.)

(c) Contracting without providing for full and open competition shall not be justified on the basis of (1) a lack of advance planning by the requiring activity or (2) concerns related to the amount of funds available (e.g., funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102 (a) or (b), if appropriate, or any other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302-1 Only one responsible source.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(1) or 41 U.S.C. 253(c)(1).

(2) When the supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for.

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302–7; it shall not be used when any of the other circumstances is applicable. This authority may be used in situations such as the following (these examples are not intended to be all-inclusive):

(1) The required supplies or services are available from only one source.

(2) Follow-on contracts for the continued development or production of a major system or highly specialized equipment, including major components thereof, may be deemed to be available only from the original source when it is likely that award to any other source would result in—

(i) Substantial duplication of cost to the Government that is not expecfed to be recovered through competition; or

(ii) Unacceptable delays in fulfilling the agency's requirements.

(3) Contracts for supplies or services that result from acceptance of an unsolicited research proposal shall be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique and innovative concept, the substance of which—

(i) Is not otherwise available to the Government; and

(ii) Does not resemble the substance of a pending competitive acquisition.

(4) The existence of patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(5) When acquiring electric power or energy, gas (natural or manufactured), water, or other utility services, circumstances may dictate that only one supplier can furnish the service (see 8.304–5(d)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(6) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered.

6.302-2 Unusual and compelling urgency.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(2) or 41 U.S.C. 253(c)(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where (1) an unusual and compelling urgency precludes full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justification and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-3 Industrial mobilization; or experimental, developmental, or research work.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(3) or 41 U.S.C. 253(c)(3).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order (i) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization, or (ii) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

(b) *Application.* (1) Use of the authority in (a)(2)(i) above may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services, prevent the loss of a supplier's ability and employees' skills, or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition as appropriate under this part);

(iv) Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

(v) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada;

(vi) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production;

(vii) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base; or

(viii) Acquire items covered by Subpart 8.2, Jewel Bearings and Related Items.

(2) Use of the authority in (a)(2)(ii) above may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to (b)(2) (i) or (ii) above.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

§ 6.302-4 International agreement.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(4) or 41 U.S.C. 253(c)(4).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—

(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used in, the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

§ 6.302-5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5).

(2) Full and open competition need not be provided for when (i) a statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or (ii) the agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see 8.6);

(2) Qualified Nonprofit Agencies for the Blind or other Severely Handicapped—41 U.S.C. 46–48c (see 8.7);

(3) Government Printing and Binding—44 U.S.C. 501–504, 1121 (see 8.8); or

(4) Utility Services—40 U.S.C. 481 (see 8.3).

(c) *Limitations.* (1) The authority in (a)(2)(ii) above may be used only for purchase of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see 6.301(d)).

(2) Contracts awarded using this authority shall be supported by the

written justifications and approvals described in 6.303 and 6.304, except for those contracts awarded under (b)(2) above.

6.302-6 National security.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(6) or 41 U.S.C. 253(c)(6).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (e.g., would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) See 5.202(a)(1) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-7 Public interest.

(a) *Authority.* (1) Citations: 10 U.S.C. 2304(c)(7) or 41 U.S.C. 253(c)(7).

(2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) *Application.* This authority may be used when none of the other authorities in 6.302 apply.

(c) *Limitations.* (1) A written determination to use this authority shall be made in accordance with Subpart 1.7, by (i) The Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or (ii) the head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under (c)(1) above.

(4) This D & F shall not be made on a class basis.

6.303 Justifications.

6.303-1 Requirements.

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in 6.302, the use of such actions in writing;

(2) Certifies the accuracy and completeness of the justification; and

(3) Obtains the approval required by 6.304.

(b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(c) Justifications required by (a) above may be made on an individual or class basis. However, any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis.

(d) Contract actions subject to the Agreement on Government Procurement (see Subpart 25.4, Foreign Acquisition) may be made without providing for full and open competition only when permitted and justified pursuant to this subpart. If, in such a contract action, the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition, a copy of the justification shall also be forwarded, in accordance with agency procedures, to the agency's point of contact with the Office of the Unied States Trade Representative.

(e) The justification for contracts awarded under the authority cited in 6.302-2 may be prepared and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

6.303-2 Content.

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for other than full and open competition."

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market survey conducted (see 7.101) and the results or a statement of the reasons a market survey was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(b)(2), an estimate of the cost that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (e.g., verifying the Government's minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

6.304 Approval of the justification.

(a) Except for (b) below, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding $100,000, at a level above the contracting officer. This review and approval is not required for—

(i) Contracts under the authority cited in 6.302–4 or 6.302–5;

(ii) Contracts for electric power or energy, gas (natural or manufactured), water, or other utility services when such services are available from only one source; or

(iii) Contracts for educational services from nonprofit institutions.

(2) For a proposed contract over $100,000 but not exceeding $1,000,000, by the competition advocate for the procuring activity designated pursuant to 6.501. This authority is not delegable.

(3) For a proposed contract over $1,000,000 but not exceeding $10,000,000, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over $10,000,000, by the senior procurement executive of the agency designated pursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. This authority is not delegable.

(b) Any justification for a contract awarded under the authority of 6.302–7, regardless of dollar amount, shall be considered approved when the determination required by 6.302–7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

6.305 Availability of the justification.

(1) The justification required by 6.303–1 and any related information shall be made available for public inspection as required by 10 U.S.C. 2304(f)(4) and 41 U.S.C. 303(f)(4). Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) in determining whether other data should be removed.

(2) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15 are both acceptable procedures for use under Subparts 6.1., 6.2 and, when appropriate, under Subpart 6.3. Contracting officers shall exercise good judgment in selecting the method of contracting that best meets the need of the Government, if sealed bidding is not appropriate.

(a) *Sealed bids.* (See Part 14 for procedures.) Contracting officers shall solicit sealed bids if—

(1) Time permits the solicitation, submission, and evaluation of sealed bids;

(2) The award will be made on the basis of price and other price-related factors;

(3) It is not necessary to conduct discussions with the responding offerors about their bids; and

(4) There is reasonable expectation of receiving more than one sealed bid.

(b) *Competitive proposals.* (See Part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) above.

(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States, it possessions, or Puerto Rico. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

Subpart 6.5—Competition Advocates

6.501 Requirement.

Ad required by Section 20 of the Office of Federal Procurement Policy* Act, the head of each executive agency shall designate a competition advocate for the agency and for each procuring activity of the agency. The competition advocates shall—

(a) Be in positions other than that of the agency senior procurement executive;

(b) Not be assigned any duties or responsibilities that are inconsistent with 6.502 below; and

(c) Be provided with staff or assistance (e.g., specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns), as may be necessary to carry out the advocate's duties and responsibilities.

6.502 Duties and responsibilities.

(a) Agency competition advocates shall—

(1) Be responsible for challenging barriers to and promoting full and open competition in the acquisition of supplies and services by the agency;

(2) Review the contracting operations of the agency and identify and report to the agency senior procurement executive—

(i) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency; and

(ii) Any condition or action that has the effect of unnecessarily restricting competition in the contract actions of the agency.

(3) Prepare and submit an annual report to the agency senior procurement executive, in accordance with agency procedures, describing—

(i) Such advocate's activities under this subpart;

(ii) New initiatives required to increase competition;

(iii) Any barriers to full and open competition that remain; and

(iv) Other ways in which the agency has emphasized competition in areas such as acquisition training and research.

(4) Recommend to the senior procurement executive of the agency goals and plans for increasing competition on a fiscal year basis; and

(5) Recommend to the senior procurement executive of the agency a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

(b) Procuring activity competition advocates designated pursuant to 6.501 shall be responsible for—

(1) Promoting full and open competition in the procuring activity; and

(2) Challenging barriers to such competition, including unnecessarily detailed specifications and unnecessarily restrictive statements of need.

PART 7—ACQUISITION PLANNING

28. Section 7.101 is amended by alphabetically adding the following definition to read as follows:

7.101 Definitions.

* * * * *

"Market survey" means attempts to ascertain whether other qualified sources capable of satisfying the Government's requirement exist. This testing of the marketplace may range from written or telephone contacts with knowledgeable federal and non-federal experts regarding similar or duplicate requirements, and the results of any market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (e.g., technical/scientific journals, or the Commerce Business Daily), or solicitations for information or planning purposes. (See 15.405)

* * * * *

29. Section 7.102 is revised to read as follows:

7.102 Policy.

Agencies shall perform acquisition planning and conduct market surveys to promote and provide for full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2301(a)(5) and 41 U.S.C. 253A(a)(1). This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

30. Section 7.103 is amended by redesignating the existing paragraphs (a) through (h) as (c) through (j) and adding new paragraphs (a) and (b) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(a) Ensuring that in no case is a contract entered into without full and open competition on the basis of a lack of acquisition planning or concerns related to the amount of funds available to the agency for acquisitions (10 U.S.C. 2304(f)(5) and 41 U.S.C. 253(f)(5)(A)).

(b) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired (10 U.S.C. 2305(a)(1)(A) and 41 U.S.C. 253A(a)(1)). (See Part 6 and 10.002.)

* * * * *

31. Section 7.104 is amended by revising paragraph (c) to read as follows:

7.104 General procedures.

* * * * *

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition, the plan shall also be coordinated with and concurred in by the cognizant competition advocate.

32. Section 7.105 is amended by revising the second sentence in paragraph (a)(5); removing in the first sentence of paragraph (b)(1) the word "will" and inserting in its place the word "can"; adding a sentence at the end of paragraph (b)(1); revising paragraph (b)(2); removing from paragraph (b)(4) the words "formal advertising" and inserting in their place the words "sealed bidding"; removing paragraph (b)(5) and redesignating paragraphs (6) through (20) as (5) through (19); adding paragraph (b)(12)(iv); and revising the milestone steps of new paragraph (b)(18) as follows:

7.105 Contents of written acquisition plans.

* * * * *

(a) * * *

(5) * * * Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

* * * * *

(b) * * *

(1) * * * If the acquisition or part of it is for other than commercial or commercial-type products, address the extent and results of the market survey conducted or the reasons one was not or will not be conducted.

(2) *Competition.* (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

* * * * *

(12) * * *

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

* * * * *

(18) * * *

Acquisition plan approval.
Statement of work.
Specifications.
Data requirements.
Completion of acquisition-package preparation.
Purchase request.
Justification and approval for other than full and open competition where applicable and/or any required D&F approval.
Issuance of synopsis.
Issuance of solicitation.
Evaluations of proposals, audits, and field reports.
Beginning and completion of negotiations.
Contract preparation, review, and clearance.
Contract award.

* * * * *

7.304 [Amended]

33. Section 7.304 is amended by removing in paragraph (d)(1)(ii) the words "formally advertised" and inserting in their place the words "sealed bid".

7.305 [Amended]

34. Section 7.305 is amended by removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding" and removing the word "(Advertised)" and inserting in its place the words "(Sealed-Bid)".

7.306 [Amended]

35. Section 7.306 is amended by removing from the title in paragraph (a) the words "Formal advertising:" and inserting in their place the words "Sealed bidding:".

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

36. Section 8.001 is amended by revising paragraph (b) to read as follows:

8.001 Priorities for use of Government supply sources.

* * * * *

(b) Sources other than those listed in paragraph (a) may be used as prescribed in 41 CFR 101-26.301 and in an unusual and compelling urgency as prescribed in 6.302-2 and in 41 CFR 101-25.101-5.

37. Section 8.304-5 is amended by adding a second sentence in paragraph (a), adding the words "6 and" in the first sentence of paragraph (c) following the word "Parts"; removing the second sentence in paragraph (c); and removing in the second sentence in paragraph (d) the words "competitive bids or" and inserting in their place the words "sealed bids or competitive".

8.304-5 Agency acquisition.

(a) * * * DOD contracting offices shall proceed in accordance with agency procedures.

* * * * *

8.401 [Amended]

38. Section 8.401 is amended by removing in paragraph (a) the word "primarily" and inserting in its place the word "including".

39. Section 8.405-1 is amended by adding an introductory paragraph to read as follows:

8.405-1 Ordering from multiple-award schedules.

When ordering from multiple-award schedules, ordering offices shall use the procedures set forth below. When these procedures are followed, orders placed against schedules will result in the lowest overall cost alternative to meet the needs of the Government.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

40. Section 9.206-1 is amended by revising the second sentence in paragraph (c)(5) to read as follows:

9.206-1 General.

(c) * * *

(5) * * * As a minimum, contracting officers shall comply with 5.203.

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

41. Section 10.001 is amended by alphabetically adding the definition "Market research", revising the second sentence in the definition of "Specification", and revising the third sentence in the definition of "Standard" as follows:

10.001 Definitions.

* * * * *

"Market research" means the process used for collecting and analyzing information about the entire market available to satisfy the minimum agency needs to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

* * * * *

* * * Specifications shall state only the Government's actual minimum needs and be designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

* * * Standards may be used in specifications, invitations for bids, proposals, and contracts.

* * * * *

42. Section 10.002 is revised to read as follows:

10.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1) and 41 U.S.C. 253A(a) regarding the preparation for acquisition of supplies and services:

(1) Agencies shall specify needs in a manner designed to promote full and open competition (see Part 6) for acquisitions.

(2) Agencies shall develop specifications and purchase descriptions using market research in a manner designed to promote full and open competition, with due regard to the nature of the supplies or services to be acquired.

(3) In solicitations, agencies shall include specifications and purchase descriptions that—

(i) Permit full and open competition; and

(ii) Include restrictive provisions or conditions only to the extent necessary to satisfy the minimum needs of the agency or as authorized by law.

(4) Agencies shall prepare specifications and purchase descriptions which reflect the minimum needs of the agency and the market available to satisfy such needs. Specifications and purchase descriptions may be stated in terms of—

(i) Function, so that a variety of products or services may qualify;

(ii) Performance, including specifications of the range of acceptable characteristics or of the minimum acceptable standards; or

(iii) Design requirements.

(b) Acquisition policies and procedures of defense agencies shall require descriptions of agency requirements, whenever practicable, to be stated in terms of functions to be performed or performance required.

10.004 [Amended]

43. Section 10.004 is amended by removing in paragraph (a)(1) the words "that will encourage maximum practicable" and inserting in their place the words "designed to promote full and open".

10.006 [Amended]

44. Section 10.006 is amended by removing in paragraph (a)(1)(i) the words "a public exigency" and inserting in their place the words "an unusual and compelling urgency,".

PART 11—ACQUISITION AND DISTRIBUTION OF COMMERCIAL PRODUCTS

11.001 [Amended]

45. Section 11.001 is amended by removing the definition "Market research and analysis".

11.002 [Amended]

46. Section 11.002 is amended by removing the words "governing regulations" and inserting in their place the words "the requirements of Part 6" and by adding a second and third sentence as follows:

11.002 Policy.

* * * In a manner consistent with statutes, Executive Orders, and the requirements of Part 6 regarding competition, agencies shall acquire commercial products and use commercial distribution systems whenever these products or distribution systems adequately satisfy the Government's needs (except see Part 8, Required Sources of Supplies and Services). DoD, NASA, and the Coast Guard are required by 10 U.S.C. 2301(b) to promote the use of commercial products whenever practicable consistent with the requirements of Part 6.

11.004 [Amended]

47. Section 11.004 is amended by removing in the first sentence of paragraph (b) the words "assure adequate" and inserting in its place the words "ensure full and open".

PART 12—CONTRACT DELIVERY OR PERFORMANCE

12.201 [Amended]

48. Section 12.201 is amended by inserting a period following the word "construction" and removing the remainder of the sentence.

PART 13—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

13.101 [Amended]

49. Section 13.101 is amended by removing in paragraph (c)(1), under the definition "Small purchase procedures", the words "formal advertising" and

inserting in their place the words "sealed bidding".

50. Section 13.104 is amended by removing the first sentence in paragraph (a) and by adding paragraph (g) to read as follows:

13.104 Procedures.

* * * * *

(g) When proposed purchases covered by this part are required to be publicized under 5.201, the contracting officer shall proceed in accordance with 5.203.

51. Section 13.106 is amended by revising paragraph (b)(1); removing in the first sentence of paragraph (b)(3) the word "Reasonable" and inserting in its place the words "Maximum practicable"; and revising the first sentence of paragraph (b)(5) as follows:

13.106 Competition and price reasonableness.

* * * * *

(b) *Purchase over $1,000.* (1) Contracting officers shall solicit quotations from a reasonable number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, price and other factors considered, including the administrative cost of the purchase. Solicitations may only be limited to one source if the contracting officer determines that only one source is reasonably available.

* * * * *

(5) Generally, solicitation of at least three sources may be considered to promote competition to the maximum extent practicable. * * *

* * * * *

13.204 [Amended]

52. Section 13.204 is amended by removing in paragraph (c) the words "sole source" and inserting in their place the words "from only one source" and in paragraph (d) removing the word "adequate" and inserting in its place the words "maximum practicable".

53. Section 13.502 is amended by revising paragraph (b)(3)(ii) to read as follows:

13.502 Unpriced purchase orders.

* * * * *

(b) * * *

(3) * * *

(ii) Material available from only one source and for which cost cannot be readily established; or

* * * * *

13.505-3 [Amended]

54. Section 13.505-3 is amended by removing in the first sentence of paragraph (b)(1) the words "public exigency circumstances," and inserting in their place the words "unusual and compelling urgency,".

PART 14—SEALED BIDDING

55. The title of Part 14 is amended by removing the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

14.000 [Amended]

56. Section 14.000 is amended by removing in paragraphs (a) and (e) the words "formal advertising" and inserting in their place the words "sealed bidding".

Subpart 14.1 [Amended]

57. The title of Subpart 14.1 is amended by removing the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

58. Section 14.101 is amended by removing in the title and introductory text the words "formal advertising" and inserting in their place the words "sealed bidding"; by revising the second sentence of paragraph (a), by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d), and revising new paragraph (e) to read as follows:

14.101 Element of sealed bidding.

* * * * *

(a) * * * Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. * * *

* * * * *

(d) *Evaluation of bids.* Bids shall be evaluated without discussions.

(e) *Contract award.* After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

59. Section 14.103-1 is amended by revising paragraph (a), removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), and revising new paragraphs (c) and (d) to read as follows:

154.103-1 General.

(a) Sealed bidding shall be used whenever the conditions in 6.401(a) are met. This requirement applies to any proposed contract action under Part 6.

* * * * *

(c) Sealed bidding may be used for classified acquisitions (see 4.401) if its use does not violate agency security requirements.

(d) The policy for pricing modifications of sealed bid contracts appears in 15.804-2.

60. Section 14.103-2 is amended by removing in the introductory text the words "formal advertising" and inserting in their place the words "sealed bidding" and revising paragraphs (c) and (d) to read as follows:

14.103-2 Limitations.

* * * * *

(c) The requirements of 1.602-1(b) and Part 6 have been met; and

(d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, considering only price and the price-related factors included in the invitation, as provided in Subpart 14.4.

14.104 [Amended]

61. Section 14.104 is amended by removing in the first sentence the words "formal advertising" and inserting in their place the words "sealed bidding".

14.201-2 [Amended]

62. Section 14.201-2 is amended by removing in paragraph (c) the word "free" and inserting in its place the word "open".

63. Section 14.201-5 is amended by adding a sentence at the end of paragraph (b) and revising paragraph (c) to read as follows:

14.201-5 Part IV—Representations and instructions.

* * * * *

(b) * * * Invitations shall include the time and place for bid openings, and shall advise bidders that bids will be evaluated without discussions (see 52.214-10 and, for construction contracts, 52.214-19).

(c) *Section M, Evaluation factors for award.* Identify the price-related factors other than the bid price that will be considered in evaluating bids and awarding the contract. (See 14.201-8.)

64. Section 14.201-6 is amended by removing all references to the words "formal advertising" throughout the section and inserting in their place the words "sealed bidding"; by removing in paragraph (k) the word "fair" and inserting in its place the word "full"; and by revising the second sentence of paragraph (n) to read as follows:

14.201-6 Solicitation provisions.

* * * * *

(n) * * * See 15.407(b) regarding use of this provision in sealed bidding.

* * * * *

14.201-7 [Amended]

65. Section 14.201-7 is amended by removing all references to the words "formal advertising" wherever they appear in the section and inserting in their place the words "sealed bidding" and by removing in paragraphs (b)(1) and (c)(1) the figure "$500,000" and inserting in its place the figure "$100,000".

66. Section 14.201-8 is added to read as follows:

14.201-8 Price-related factors.

The factors set forth in paragraphs (a) through (e) below may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable. (See 14.201-5(c).)

(a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see 47.303 and 47.305), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.

(b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids, if the change does not constitute a ground for rejection under 14.404.

(c) Advantages or disadvantages to the Government that might result from making more than one award (see 14.201-6(q)). The contracting officer shall assume, for the purpose of making multiple awards, that $250 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(d) Federal, State, and local taxes (see Part 29).

(e) Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 25).

67. Section 14.202-1 is amended by revising paragraph (a) and by removing in paragraph (b) the word "preinvitation" and inserting in its place the word "presolicitation" as follows.

14.202-1 Bidding time.

(a) *Policy.* A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see 36.303(a).) A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided when synopsis is required by Subpart 5.2.

* * * * *

14.202-4 [Amended]

68. Section 14.202-4 is amended by removing in paragraph (c) the words "formal advertising" and inserting in their place the words "sealed bidding".

69. Section 14.203-1 is amended by revising the first sentence to read as follows and by removing the second sentence as follows:

14.203-1 Mailing or delivery to prospective bidders.

Invitations for bids or presolicitation notices shall be mailed or delivered to prospective bidders as specified in 14.205, and shall be provided to others in accordance with 5.102. * * *

70. Section 14.203-2 is amended by revising paragraph (b) to read as follows:

14.203-2 Dissemination of information concerning invitations for bids.

* * * * *

(b) For procedures that apply to publishing notices in the Commerce Business Daily to determine whether commercial sources are available, as prescribed by OMB Circular A-76, see 5.205(d) and 7.303(b).

14.205-2 [Amended]

71. Section 14.205-2 is amended by removing in paragraph (a) the word "preinvitation" wherever it appears out the paragraph and inserting in its place the word "presolicitation".

14.205-4 [Amended]

72. Section 14.205-4 is amended by removing in paragraphs (b) and (c) the word "preinvitation" wherever it appears the paragraphs and inserting in its place the word "presolicitation."

73. Section 14.211 is amended by removing, in the titles of paragraphs (a) and (b), the words, "synopsis or"; and by revising the first sentence of paragraph (a) to read as follows:

14.211 Release of acquisition information.

(a) * * * Information concerning proposed acquisition shall not be released outside the Government before solicitation except for presolicitation notices in accordance with 14.205-4(c) or 36.302, or long-range acquisition estimates in accordance with 5.404, or synopses in accordance with 5.201. * * *

* * * * *

14.301 [Amended]

74. Section 14.301 is amended by removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

75. Section 14.404-1 is amended by removing in paragraph (a)(3) the word "readvertised" and inserting in its place the word "resolicited", by revising the introductory text of paragraph (c) and paragraph (c)(6), by removing in paragraph (c)(9) the word "Government's" and inserting in its place the word "public's", by removing in paragraph (d) the word "readvertisement" and inserting in its place the word "resoliciting", and by revising paragraph (e) to read as follows:

14.404-1 Cancellation of invitations after opening.

* * * * *

(c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with paragraph (a)(1) above, the agency head determines in writing that—

* * * * *

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible bidder;

* * * * *

(e) Under some circumstances, completion of the acquisition after cancellation of the invitation for bids may be appropriate.

(1) If the invitation for bids has been cancelled for the reasons specified in (c)(6) or (7) above, and the agency head has authorized in the determination in (c) the completion of the acquisition through negotiation, the contracting officer shall proceed in accordance with 15.103.

(2) If the invitation for bids has been cancelled for the reasons specified in (c)(1), (2), (4), (5), or (9), or for the reasons in (c) (6) or (7) and completion through negotiation is not authorized under (e)(1), the contracting officer shall proceed with a new acquisition.

14.406-4 [Amended]

76. Section 14.406-4 is amended by removing in the introductory text the reference "Part 33" and inserting in its place the reference "Subpart 33.2".

77. Section 14.407-1 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 14.407-1 General.

(a) The contracting officer shall make a contract award (1) by written notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. * * *

(b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain the reasons for the small number of responses. * * *

* * * * *

14.407-5 [Removed]

78. Section 14.407-5 is removed and reserved.

14.408-1 [Amended]

79. Section 14.408-1 is amended by removing in the introductory text of paragraph (a), in the first sentence of paragraph (c), and in the first sentence of paragraph (d) the word "office" and inserting in its place the word "officer".

Subpart 14.5—[Amended]

80. The title of Subpart 14.5 is amended by removing the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

81. Section 14.501 is amended by revising the first sentence of the introductory text and by removing in the second sentence of the introductory text the words "formal advertising" and inserting in their place the words "sealed bidding" as follows:

14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. * * *

* * * * *

82. Section 14.502 is amended by revising the introductory text of paragraph (a), by removing in paragraph (a)(1) the words "to permit full and free competition", and by removing in the introductory text of paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding" as follows:

14.502 Conditions for use.

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

* * * * *

83. Section 14.503-1 is amended by revising the first two sentences of paragraph (a) by removing in the third sentence of paragraph (f)(1) the word "office" and inserting in its place the word "officer", and by removing in the first sentence of paragraph (i) the words "formal advertising" and inserting in their place the words "sealed bidding" as follows:

14.503-1 Step one.

(a) Requests for technical proposals shall be distributed in accordance with 14.203-1. In addition, requests shall be synopsized in accordance with Part 5.

* * * * *

84. Section 14.503-2 is amended by revising the introductory text of paragraph (a), and by removing in paragraph (b) the reference "5.206(b)" and inserting in its place the reference "5.206(a)(2)" as follows:

14.503-2 Step two.

(a) Sealed bidding procedures shall be followed except that invitations for bids shall—

* * * * *

85. Section 15.101 is revised to read to follows:

15.101 Definition.

"Negotiation" means contracting through the use of either competitive or other-than-competitive proposals and discussions. Any contract awarded without using sealed bidding procedures is a negotiated contract (see 14.101).

86. Section 15.102 is amended by revising the first sentence to read as follows:

15.102 General.

Negotiation is a procedure that includes the receipt of proposals from offerors, permits bargaining, and usually affords an opportunity to revise their offers before award of a contract. * * *

87. Section 15.103 is revised to read as follows:

15.103 Converting from sealed bidding to negotiation procedures.

When the agency head has determined, in accordance with 14.404-1(e)(1), that an invitation for bids is to be cancelled and that use of negotiation is appropriate to complete the acquisition, the contracting officer may negotiate without issuing a new solicitation subject to the following conditions—

(a) Prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by the contracting officer to each responsible bidder that submitted a bid in response to the invitation for bids;

(b) The negotiated price is the lowest negotiated price offered by any responsible bidder; and

(c) The negotiated price is lower than the lowest rejected bid price of a responsible bidder that submitted a bid in response to the invitation for bids.

15.104 [Removed]

88. Section 15.104 is removed and reserved.

15.105 [Removed]

89. Section 15.105 is removed and reserved.

15.106-1 [Amended]

90. Section 15.106-1 is amended by removing in the introductory text of paragraph (b) the words "(including small business restricted advertising)".

Subpart 15.2 [Removed]

91. Subpart 15.2 is removed and reserved.

Subpart 15.3 [Removed]

92. Subpart 15.3 is removed and reserved.

15.401 [Amended]

93. Section 15.401 is amended by adding after paragraph (a) the word "and", by removing paragraph (b), by redesignating paragraph (c) as paragraph (b), and by removing in paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

94. Section 15.402 is amended by adding a new paragraph (g) to read as follows:

15.402 General.

* * * * *

(g) If, after considering any responses to a proper notice of proposed sole source contract action (see 5.207(d)(3)), the contracting officer determines that more than one source can meet the Government's needs, the contracting officer shall solicit offers using competitive procedures. The contracting officer shall proceed in accordance with 5.203 for publicizing and response times.

15.406-1 [Amended]

95. Section 15.406-1 is amended by removing in the first sentence of paragraph (a) the reference "Table 15-2" and inserting in its place the reference "Table 15-1" and by redesignating the Table 15-2 as Table 15-1.

96. Section 15.406-5 is amended by revising paragraph (c) to read as follows:

15.406-5 Part IV—Representations and instructions.

* * * * *

(c) *Section M, Evaluation factors for award.* Identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract (see 15.605(e)) and state the relative importance the Government places on those evaluation factors and subfactors.

15.407 [Amended]

97. Section 15.407 is amended by removing in the first sentence of paragraph (b) the reference "(see 15.213(d))" and the words "for applications specified in 15.213(b)(1))".

15.408 [Amended]

98. Section 15.408 is amended by removing in paragraph (a) the words "the policy in 15.105 and" and by removing in paragraph (a) the words "Part 5" and inserting in their place the words "Parts 5 and 6".

15.411 [Amended]

99. Section 15.411 is amended by removing in the first sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

100. Section 15.501 is amended by revising the definition of "Unsolicited proposals" to read as follows:

15.501 Definitions.

* * * * *

"Unsolicited proposal" means a written proposal that is submitted to an agency on the initative of the submitter for the purpose of obtaining a contract with the Government and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of needs).

101. Section 15.502 is revised to read as follows:

15.502 Policy.

Agencies shall encourage the submission of unsolicited research proposals and avoid organizational or regulatory constraints that may inhibit generation and acceptance of innovative and unique research ideas from prospective contractors. Other unsolicited proposals may be accepted (see 15.507).

15.503 [Amended]

102. Section 15.503 is amended by removing in paragraph (c)(1) the word "or" and inserting in its place the word "and", by removing in paragraph (d) the words "broad agency announcements" and inserting in their place the words "a publicized general statement of agency needs", and by removing in paragraph (e) the word "or" and inserting in its place the word "and".

103. Section 15.506-2 is amended by revising paragraph (a)(1) and by adding in paragraph (a)(2) a comma after the word "technical" as follows:

15.506-2 Evaluation.

(a) * * *

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

* * * * *

104. Section 15.507 is amended by revising paragraphs (a) and (b) to read as follows:

15.507 Contracting methods.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. Agency contact points shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement; or

(3) Does not demonstrate an innovative and unique method, approach, or concept.

(b) The contracting officer may commence negotiation only when—

(1) The unsolicited proposal has received a favorable comprehensive evaluation;

(2) The unsolicited proposal is not of the character described in 15.507(a);

(3) The agency technical office sponsoring the contract supports its recommendation with facts and circumstances that preclude competition, including consideration of the evaluation factors in 15.506-2(a), furnishes the necessary funds, and provides the certification required by 6.303-2(b);

(4) The contracting officer has complied with the synopsis requirements of Subpart 5.2; and

(5) The contracting officer has executed any justification and obtained any approval or determination and findings that is required by Subpart 6.3.

* * * * *

105. Section 15.601 is amended by revising the definition of "Discussion" to read as follows:

15.601 Definitions.

* * * * *

"Discussion," as used in this subpart, means any oral or written communication between the Government and an offeror (other than communications conducted for the purpose of minor clarification), whether or not initiated by the Government, that (a) involves information essential for determining the acceptability of a proposal, or (b) provides the offeror an opportunity to revise or modify its proposal.

* * * * *

15.602 [Amended]

106. Section 15.602 is amended by removing in paragraph (b) the words "sole source award or to".

107. Section 15.605 is amended by revising paragraph (e) to read as follows:

15.605 Evaluation factors.

* * * * *

(e) The solicitation shall clearly state the evaluation factors, including price or cost and any significant subfactors, that will be considered in making the source selection and their relative importance (see 15.406-5(c)). Numerical weights, which may be employed in the evaluation of proposals, need not be disclosed in solicitations. The solicitation shall inform offerors of minimum requirements that apply to particular evaluation factors and significant subfactors.

15.606 [Amended]

108. Section 15.606 is amended by removing in paragraph (c) the reference "15.407(b)(8)" and inserting in its place the reference "15.407(c)(8)".

109. Section 15.608 is amended by redesignating the introductory test as paragraph (a), redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2), and redesignating paragraphs (b)(1) through (b)(4) as paragraphs (a)(2)(i) through (a)(2)(iv); by adding a sentence in paragraph (a) following the first sentence; and by adding a new paragraph (b) to read as follows:

15.608 Proposal evaluation.

(a) * * * An agency shall evaluate competitive proposals solely on the factors specified in the solicitation.

* * * * *

(b) All proposals received in response to a solicitation may be rejected if the agency head determines in writing that—

(1) All otherwise acceptable proposals received are at unreasonably prices;

(2) The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see Subpart 3.3 for reports to be made to the Department of Justice);

(3) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3

shows that performance by the Government is more economical; or

(4) For other reasons, cancellation is clearly in the Government's interest.

15.609 [Amended]

110. Section 15.609 is amended by removing in the second sentence of paragraph (a) the word "is" and inserting in its place the words "shall be" and by revising the reference in paragraph (c) to read "15.1001(b)".

111. Section 15.610 is amended by removing paragraphs (a)(1), (a)(3), and (a)(5); by redesignating paragraph (a)(2) as paragraph (a)(1), redesignating paragraph (a)(4) as paragraph (a)(2), and redesignating paragraph (a)(6) as paragraph (a)(3); by adding after paragraph (a)(2) the word "or"; and by revising the introductory text of paragraph (a)(3) to read as follows:

15.610 Written or oral discussion.

(a) * * *

(3) In which it can be clearly demonstrated from the existence of full and open competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in the lowest overall cost to the Government at a fair and reasonable price; *provided*, that—

15.611 [Amended]

112. Section 15.611 is amended by removing in paragraph (d) the words "consistent with the established evaluation factors" and inserting in their place the words "considering price and the other factors included in the solicitation (but see 15.608(b))".

15.612 [Amended]

113. Section 15.612 is amended by removing in the second sentence of paragraph (d)(2) the word "recommendation" and inserting in its place the word "decision" and by removing in paragraph (f) the reference "15.1002" and inserting in its place the reference "15.1003".

15.800 [Amended]

114. Section 15.800 is amended by removing in paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

115. Section 15.802 is amended by revising paragraph (a) to read as follows:

15.802 Policy.

(a) 10 U.S.C. 2306(f) and 41 U.S.C. 254(d) provide that all executive agencies shall require a prime contractor or any subcontractor to submit and certify cost or pricing data under certain circumstances. The Acts also require inclusion of contract clauses that provide for reduction of the contract price by any significant amounts that such price was increased because of submission of contractor or subcontractor defective cost or pricing data.

* * * * *

15.804-1 [Amended]

116. Section 15.804-1 is amended by removing in the first sentence of paragraph (b) the word "Regulation".

15.804-2 [Amended]

117. Section 15.804-2 is amended by removing all references to the figure "$500,000" throughout the section and inserting in its place the figure "$100,000"; by removing in the first sentence of paragraph (a)(1)(ii) the words "formally advertised" and inserting in their place the words "sealed bid"; by removing in the second sentence of paragraph (a)(1)(ii) the figures "$150,000", "$350,000", and "$200,000" and inserting in their places the figures "$30,000", "$70,000", and "$40,000", respectively.

15.804-3 [Amended]

118. Section 15.804-3 is amended by removing in the second sentence of paragraph (c)(7) and in the first sentence of paragraph (e) the figure "$500,000" and inserting in its place the figure "$100,000".

15.804-4 [Amended]

119. Section 15.804-4 is amended by removing in paragraphs (h)(1) and (h)(2) the figure "$500,000" and inserting in its place the figure "$100,000".

15.804-6 [Amended]

120. Section 15.804-6 is amended by removing in paragraph (b)(2) the reference to "Table 15-3" and inserting in its place a reference to "Table 15-2", by redesignating "Table 15-3" as "Table 15-2", by removing in the paragraph of Table 15-2 entitled "Subcontracted Items" the figure "$500,000" and inserting in its place the figure "$100,000", and by removing in paragraph (g)(2)(ii) the figure "$500,000" and inserting in its place the figure "$100,000".

15.805-2 [Amended]

121. Section 15.805-2 is amended by removing in paragraph (a) the words "price quotations" and inserting in their place the words "proposed prices" and by removing throughout paragraph (b) the word "quotations" and inserting in its place the words "proposed prices".

15.806 [Amended]

122. Section 15.806 is amended by removing throughout paragraph (b) the figure "$500,000" and inserting in its place the figure "$100,000".

15.808 [Amended]

123. Section 15.808 is amended by removing in paragraphs (a)(6) and (a)(7) the figure "$500,000" and inserting in its place the figure "$100,000".

Subpart 15.10 [Amended]

124. Subpart 15.10 is amended by revising the title to read: "Subpart 15.10—Preaward, Award, and Postaward Notifications, Protests, and Mistakes".

15.1001 [Amended]

125. Section 15.1001 is amended by revising the title to read "15.1001 Notifications to unsuccessful offerors."; removing the references after paragraphs (a)(2) through (a)(4); and removing in paragraph (c)(3) the words "and subject to the exceptions in 15.1001(a)".

15.1002, 15.1003, 15.1004 [Redesignated]

126. Sections 15.1002, 15.1003, and 15.1004 are redesignated as sections 15.1003, 15.1004, and 15.1005, respectively. New section 15.1002 is added to read as follows:

15.1002 Notification to successful offeror.

The contracting officer shall award a contract with reasonable promptness to the successful offeror (selected in accordance with 15.611(d)) by transmitting written notice of the award to that offeror (but see 15.608(b)).

15.1003 [Amended]

127. Newly redesignated section 15.1003 is amended by adding in paragraph (a) the word "alone" after the word "price".

15.1004 [Amended]

128. Newly redesignated section 15.1004 is amended by removing the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 16—TYPES OF CONTRACTS

129. Section 16.102 is amended by removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding"; and revising the second sentence of paragraph (d) to read as follows:

16.102 Policies.

* * * * *

(d) * * * Minimum requirements for the content of D&F's required by this part are specified in 1.704.

130. Section 16.103 is amended by revising paragraph (d)(3) to read as follows:

16.103 Negotiating contract type.

* * * * *

(d) * * *

(3) Awards made on the set-aside portion of sealed bid solicitations partially set aside for either small business or labor surplus area concerns.

131. Section 16.104 is amended by removing in the first sentence of paragraph (b) the parenthetical reference "(see 15.805–2),"; and revising the second sentence of paragraph (b) to read as follows:

16.104 Factors in selecting contract types.

* * * * *

(b) * * * The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See 15.808–2.)

* * * * *

16.203–2 [Amended]

132. Section 16.203–2 is amended by removing in the fourth sentence of the introductory text the works "formally advertised" and inserting in their place the words "sealed bid".

16.301–3 [Amended]

133. Section 16.301–3 is amended by removing in paragraph (c)(2) the reference "41 U.S.C. 254(b), 257(c)," and inserting in its place the reference "41 U.S.C. 254(b), 257(b),"; and in paragraph (d) removing the reference "15.903(e)" and inserting in this place the reference "15.903(d)".

16.306 [Amended]

134. Section 16.306 is amended by removing in paragraph (c)(2) the reference "(see 15.903(c))," and inserting in its place the reference "(see 15.903(d))."

16.603–3 [Amended]

135. Section 16.603–3 ia amended by removing in paragraph (b) the words "practicable, or" inserting in their place the words "is required by Part 6; or ".

136. Section 16.703 is amended by removing paragraph (c)(2), redesignating paragraph (c)(3) as (c)(2), revising paragraphs (d)(1)(i), (d)(1)(iii), and (d)(2)(iii), and adding paragraph (d)(2)(iv) as follows:

16.703 Basic ordering agreements.

* * * * *

(d) * * *

(1) * * *

(i) Obtain competition in accordance with Part 6;

* * * * *

(iii) Sign or obtain any applicable justifications and approvals, and any determination and findings, in accordance with 1.602–1(b), and comply with other requirements, as if the order were a contract awarded independently of a basic ordering agreement.

* * * * *

(2) * * *

(iii) If applicable, cite the authority under 6.302 in each order.

(iv) Comply with 5.203 when synopsis is required by 5.201.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

17.102–2 [Amended]

137. Section 17.102–2 is amended by removing in the second sentence of paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bidding"; and removing the words "(either competitive or noncompetitive)".

137a. Section 17.102–3 is amended by revising the fifth sentence of paragraph (d)(4) to read as follows:

17.102–3 Objectives.

* * * * *

(d) * * *

(4) * * * The head of a contracting activity or a designee may authorize the use of a solicitation requesting only multiyear prices provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives listed in 17.102–3(a).

17.103–1 [Amended]

138. Section 17.103–1 is amended by removing in paragraphs (c) and (e) in four places, the words "formal advertising" and inserting in their place, the words "sealed bidding".

17.103–4 [Amended]

139. Section 17.103–4 is amended by removing in paragraph (c) the word "noncompetitive" and inserting in its place the words "sole source".

140. Section 17.104–2 is amended by revising paragraph (b) to read to follows:

17.104–2 Multiyear subcontracts.

* * * * *

(b) Multiyear subcontracts may be particularly desirable under a multi-year prime contract awarded without full and open competition, since effective competition at the subcontract level may be enhanced and the attendant cost reductions realized the prime contractor and the Government.

141. Section 17.205 is amended by revising paragraph (b) to read as follows:

17.205 Documentation.

* * * * *

(b) Any justifications and approvals and any determination and findings required by Part 6 shall specify both the basic requirement and the increase permitted by the option.

142. Section 17.207 is amended by removing in paragraph (c)(2) the word "and"; adding in paragraph (c)(3), following "considered," the word "and"; adding paragraph (c)(4); and revising the first sentence of paragraph (f) as follows:

17.207 Exercise of options.

* * * * *

(c) * * *

(4) The option was synopsized in accordance with Part 5 unless exempted by 5.202(a)(10) or other appropriate exemptions in 5.202.

* * * * *

(f) Before exercising an option, the contracting officer shall determine that such action is in accordance with the terms of the option, the requirements of this section, and Part 6. * * *

* * * * *

143. Section 17.504 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

17.504 Ordering procedures.

* * * * *

(d) * * *

(1) If a justification and approval or a determination and findings (D&F) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval and the D&F.

* * * * *

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract including (i) having adequate statutory authority for the contractual action and (ii) complying fully with the competition requirements of Part 6 (see 6.002).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19.101 [Amended]

144. Section 19.101 is amended by removing the definition of the term "Small business restricted advertising".

19.302 [Amended]

145. Section 19.302 is amended by removing in paragraph (d)(1) the words "formally advertised" and inserting in their place the words "sealed bid".

19.501 [Amended]

146. Section 19.501 is amended by adding at the end of paragraph (a) the reference "(see 6.203)"; and removing in the fourth sentence of paragraph (c) the reference "19.502-2(a)" and inserting in its place the reference "19.502-2".

147. Section 19.502-4 is revised to read as follows:

19.502-4 Methods of conducting set-asides.

(a) Total and partial small business set-asides may be conducted by using sealed bids (see Part 14) or competitive proposals (see Part 15). (See Part 6 for competition requirements.)

(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

19.507 [Amended]

148. Section 19.507 is amended by removing from the second sentence of paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

19.702 [Amended]

149. Section 19.702 is amended by removing in the first sentence of paragraph (a)(2) the words "formally advertised" and inserting in their place the words "sealed bid".

19.705-4 [Amended]

150. Section 19.705-4 is amended by removing in the first sentence of paragraph (b) the words "formally advertised" and inserting in their place the words "sealed bid".

19.705-5 [Amended]

151. Section 19.705-5 is amended by removing in paragraph (b) the reference "19.703(a) (2) and (3)" and inserting in its place the reference "19.702(a) (1) and (2)"; and removing the reference "19.705" and inserting in its place the reference "19.704".

19.708 [Amended]

152. Section 19.708 is amended by removing in the second sentence of paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

19.809-1 [Amended]

153. Section 19.809-1 is amended by removing the third sentence in paragraph (a) and removing and reserving paragraph (b)(1).

PART 20—LABOR SURPLUS AREA CONCERNS

154. Section 20.204 is amended by revising paragraph (a) and removing the first sentence of paragraph (b) as follows:

20.204 Award procedures.

(a) The contracting officer shall award contracts involving total LSA set-asides by using sealed bids (see Part 14) or competitive proposals (see Part 15). See Part 6 for competition requirements.

* * * * *

20.205 [Amended]

155. Section 20.205 is amended by removing in paragraph (a) the word "advertising" and inserting in its place the words "sealed bidding".

20.206 [Removed]

156. Section 20.206 is removed.

PART 25—FOREIGN ACQUISITION

157. Section 25.402 is amended by adding paragraph (d) to read as follows:

25.402 Policy.

* * * * *

(d) Acquisitions of eligible products are subject to the requirements of Part 6. The use of the authorities cited in 6.302-3(a)(2)(i) or 6.302-7 requires compliance with 6.303-1(d).

PART 27—PATENTS, DATA, AND COPYRIGHTS

158. Section 27.104 is amended by revising paragraph (e) to read as follows:

27.104 General guidance.

* * * * *

(e) The Government acquires supplies or services on a competitive basis in accordance with Part 6, but it is important that the efforts directed toward full and open competition not improperly demand or use data relating to private developments.

* * * * *

27.203-1 [Amended]

159. Section 27.203-1 is amended by removing in paragraph (b)(2)(i) the words "formally advertised" and by removing in paragraph (b)(2)(ii) the words "formal advertising" and inserting in their place the words "sealed bid".

27.203-2 [Amended]

160. Section 27.203-2 is amended by removing in the title and in paragraph (a) the words "formerly advertised" and inserting in their place the words "sealed bid".

27.302 [Amended]

161. Section 27.302 is amended by removing in the second sentence of paragraph (a)(1) the words "free competition and" and inserting in their place the words "full and open competition and free".

27.304-1 [Amended]

162. Section 27.304-1 is amended by removing in paragraph (a)(2) the words "free competition and" and inserting in their place the words "full and open competition and free".

PART 28—BONDS AND INSURANCE

28.000 [Amended]

163. Section 28.000 is amended by removing the word "advertised" from the first sentence and inserting in its place the words "sealed bid".

PART 29—TAXES

29.401-3 [Amended]

164. Section 29.401-3 is amended by removing the word "Advertised" from the title and inserting in its place the words "Sealed bid"; and removing in paragraph (a) the words "formal advertising" and inserting in their place the words "sealed bidding".

PART 30—COST ACCOUNTING STANDARDS

30.000 [Amended]

165. Section 30.000 is amended by removing the words "formally advertised" from the third sentence and inserting in their place the words "sealed bid".

30.301 [Amended]

166. Section 30.301 is amended by removing in paragraph (b)(1) the words "Formally advertised" and inserting in their place the words "Sealed bid".

PART 32—CONTRACT FINANCING

32.401 [Amended]

167. Section 32.401 is amended by removing the words "formally advertised" and inserting in their place the words "sealed bid".

168. Section 32.405 is amended by removing in the section title the words "formally advertised" and inserting in their place the words "sealed bid" and revising the second sentence of paragraph (a) to read as follows:

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

(a) * * * These advance payments may be made at or after award of sealed bid contracts as well as negotiated contracts.

* * * * *

32.410 [Amended]

169. Section 32.410 is amended by removing in paragraph (a)(1) of the clause the words "(formally advertised)" and inserting in their place the words "(sealed bid)".

PART 34—MAJOR SYSTEM ACQUISITION

170. Section 34.002 is amended by revising paragraphs (a) and (b) to read as follows:

34.002 Policy.

* * * * *

(a) Promote innovation and full and open competition in the development of major system concepts by (1) expressing agency needs and major system acquisition program objectives in terms of the agency's mission and not in terms of specified systems to satisfy needs, and (2) focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial. (See Part 6 for competition policies.)

171. Section 34.005-1 is amended by revising the first sentence of paragraph (a) to read as follows:

34.005-1 Competition.

(a) The program manager shall, throughout the acquisition process, promote full and open competition and sustain effective competition between alternative major system concepts and sources, as long as it is economically beneficial and practicable to do so. * * *

* * * * *

172. Section 34.005-2 is amended by revising paragraph (a)(2) and the introductory text of paragraph (b); and removing from paragraph (c) the acronym "RFP" and inserting in its place the word "solicitation".

34.005-2 Mission-oriented solicitation.

(a) * * *

(2) If appropriate, hold a presolicitation conference (see 15.404) and/or send copies of the proposed solicitation to all prospective offerors for their comments. After evaluation of these comments, the solicitation should be revised, if appropriate.

(b) The contracting officer shall send the final solicitation to all prospective offerors. It shall—

* * * * *

173. Section 35.006 is amended by revising paragraph (a) to read as follows:

35.006 Contracting methods and contract type.

(a) In R&D acquisitions, the precise specifications necessary for sealed bidding are generally not available, thus making negotiation necessary. However, the use of negotiation in R&D contracting does not change the obligation to comply with Part 6.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

174. Section 36.103 is amended by revising paragraph (a) to read as follows:

36.103 Methods of contracting.

(a) Contracting officers shall acquire construction using sealed bid procedures if the conditions in 6.401(a) apply, except that sealed bidding need not be used for construction contracts to be performed outside the United States, its possessions, or Puerto Rico. (See 6.401(b)(2).)

* * * * *

36.203 [Amended]

175. Section 36.203 is amended by removing in paragraph (b) the words "formal advertising" and inserting in their place the words "sealed bidding".

36.205 [Amended]

176. Section 36.205 is amended by removing in paragraph (b) the parenthetical phrase "(both invitations for bids and requests for proposals)".

Subpart 36.3—[Amended]

177. Subpart 36.3 is amended by removing in the title the words "FORMAL ADVERTISING" and inserting in their place the words "SEALED BIDDING".

36.301 [Amended]

178. Section 36.301 is amended by removing the words "formal advertising" and inserting in their place the words "sealed bidding".

179. Section 36.302 is amended by removing in paragraph (b)(6) the word "preinvitation" and inserting in its place the word "presolicitation"; and adding paragraph (b)(9) to read as follows:

36.302 Presolicitation notices.

* * * * *

(b) * * *

(9) Be publicized in the Commerce Business Daily in accordance with 5.204.

36.303 [Amended]

180. Section 36.303 is amended by adding in paragraph (a), following the parenthetical sentence, another parenthetical statement "(but see 5.203 and 14.202-1)"; and removing in paragraph (d) the word "preinvitation" and inserting in its place the word "presolicitation".

36.401 [Reserved]

181. Section 36.401 is removed and reserved.

182. Section 36.601 is amended by removing in the third sentence the words "formal advertising" and inserting in their place the word "solicitation" and adding a fourth sentence as follows:

36.601 Policy.

* * * Compliance with the procedures in this subpart will constitute a competitive procedure in the acquisition of architect-engineer services (see 6.102(d)(1)).

PART 37—SERVICE CONTRACTING

183. Section 37.105 is revised to read as follows:

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met (except see 6.401(b)).

(b) The provisions of statute and Part 6 of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

184. Section 37.205 is amended by revising paragraph (b)(3) to read as follows:

37.205 Management controls.

* * * * *

(b) * * *

(3) Contracts are competitively awarded in accordance with Part 6 to ensure that costs are reasonable and to avoid charges of favoritism;

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

185. Section 38.101 is amended by revising the second sentence of paragraph (a) to read as follows:

38.101 General.

(a) * * * Indefinite delivery contracts including requirements contracts are awarded, using competitive procedures, to commercial firms to provide supplies and services at stated prices for given periods of time.* * *

* * * * *

186. Section 38.102–1 is amended by adding a sentence to paragraph (a) following the first sentence, to read as follows:

38.102–1 Single-award schedules.

(a) * * * All responsible firms may submit offers in response to a solicitation for a single-award schedule contract.* * *

* * * * *

187. Section 38.102–2 is amended by adding a sentence to paragraph (a), following the first sentence, redesignating the existing paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

38.102–2 Multiple-award schedules.

(a) * * * All responsible firms may submit offers in response to a solicitation for multiple award schedule contracts. * * *

* * * * *

(c) Prices under the multiple-award schedule program are based on discounts from commercial pricelists. Contracts are awarded after the schedules contracting officer determines that the prices, terms, and conditions offered are fair and reasonable. Orders placed by ordering offices in accordance with 8.405–1 will result in the lowest overall cost alternative to meet the needs of the Government (see 6.102(d)(3).)

* * * * *

188. Section 38.102–3 is amended by removing paragraph (b); redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and revising the first sentence of redesignated paragraph (b) to read as follows:

38.102–3 New Item Introductory Schedule.

* * * * *

(b) The NIIS is published approximately four times a year and is cumulative. * * *

* * * * *

189. Section 38.203 is amended by adding two new sentences in paragraph (a) preceding the first sentence as follows:

38.203 Solicitation preparation.

(a) Schedule contracting officers shall comply with the policies and procedures of Part 5 and Part 6. All responsible sources shall be allowed to submit offers in response to solicitations for Federal Supply Schedule contracts. * * *

* * * * *

PART 42—CONTRACT ADMINISTRATION

190. Section 42.1105 is amended by revising the criterion of Criticality Designator A to read as follows:

42.1105 Assignment of criticality designator.

* * * * *

Criticality designator	Criterion
A	Critical contracts, including DX-rated contracts (see Subpart 12.3), contracts citing the authority in 6.302-2 (unusual and compelling urgency), and contracts for major systems.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201–2 [Amended]

191. Section 44.201–2 is amended by removing in paragraph (b)(2) at the end of the sentence, the "period" and adding "; except that for DOD, Coast Guard, and NASA, the amounts shall be the greater of the small purchase limitation in Part 13 or 5 percent of the total estimated cost of the prime contract."

192. Section 44.204 is amended by adding a sentence to paragraph (b) following the first sentence, and by removing in paragraph (e) the word "appropriate" as follows:

44.204 Contract clauses.

* * * * *

(b) * * * If the contracting office is in DoD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. * * *

* * * * *

193. Section 44.302 is amended by revising the first and second sentences in paragraph (a) to read as follows:

44.302 Requirements.

(a) Except as provided in paragraph (b) below, a CPSR shall be conducted for each contractor whose sales to the Government, using other than sealed bid procedures are expected to exceed $10 million during the next 12 months. Such sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulation). * * *

* * * * *

PART 47—TRANSPORTATION

47.200 [Amended]

194. Section 47.200 is amended by removing in the introductory text of paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bid".

47.206–1 [Amended]

195. Section 47.206–1 is amended by removing the section number and title and redesignating the text as section 47.206.

47.206–2 [Removed]

196. Section 47.206–2 is removed.

47.301–2 [Amended]

197. Section 47.301–2 is amended by removing in the first sentence the word "bids" and inserting in its place the word "offers".

PART 49—TERMINATION OF CONTRACTS

198. Section 49.402–6 is amended by revising paragraph (b) to read as follows:

49.402–6 Repurchase against contractor's account.

* * * * *

(b) If the repurchase is for a quantity not over the undelivered quantity terminated for default, the Default clause authorizes the contracting officer to use any terms and acquisition method deemed appropriate for the repurchase. However, the contracting officer shall obtain competition to the maximum extent practicable for the repurchase. The contracting officer shall cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition. If the repurchase is for a quantity over the undelivered quantity

terminated for default, the contracting officer shall treat the entire quantity as a new acquisition.

199. Section 49.405 is amended by revising the second sentence to read as follows:

49.405 Completion by another contractor.

* * * The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure.* * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

200. Section 50.203 is amended by revising paragraph (a)(3) and adding to the end of the second sentence of paragraph (c) ", or FAR 15.103.".

50.203 Limitations on exercise of authority.

* * * * *

(a) * * *

(3) Providing for other than full and open competition for award of contracts for supplies or services; or

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

201. Section 52.203–2 is amended by revising the introductory text; by removing in the title of the provision the date "1984" and inserting "1985" in its place; by removing in paragraph (a)(2) the words "formally advertised" and inserting in their place the words "sealed bid"; and by removing both derivation lines following "(end of provisions)" as follows:

52.203–2 Certificate of Independent Price Determination.

As prescribed in 3.103–1, insert the following provision. If the solicitation is a Request for Quotations, the terms "Quotation" and "Quoter" may be substituted for "Offer" and "Offeror."

* * * * *

52.203–4 [Amended]

202. Section 52.203–4 is amended by removing from the second sentence of the introductory text the words "Offeror" and "Offer" and inserting in their place the words "Offer" and Offeror."

203. Section 52.207–1 is amended by removing in the section title the word "(Advertised)" and inserting in its place the words "(Sealed-Bid)"; revising the introductory paragraph; removing in the title of the provision the words "(ADVERTISED) (APR 1984)" and inserting in their place the words "(SEALED-BID) (APR 1985)"; and by removing following the derivation line "(End of provision)", as follows:

52.207–1 Notice of Cost Comparison (Sealed-Bid).

As prescribed in 7.305(a), insert the following provision:

* * * * *

52.214–1 [Amended]

204. Section 52.214–1 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; removing in the introductory text the words "in all invitations, for bids"; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984) and inserting in their place the words "SEALED BIDDING (APR 1985)"; removing the definition "Advertised"; removing in the definitions "Offer" and "Solicitation" the words "formal advertising" and inserting in their place the words "sealed bidding"; and removing the derivation line following "(End of provision)".

52.214–2 [Amended]

205. Section 52.214–2 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; and removing both derivation lines following "(End of provision)".

52.214–3 [Amended]

206. Section 52.214–3 is amended by inserting a colon after the word "provision" in the introductory text and removing the remainder of the sentence.

207. Section 52.214–10 is amended by removing in the Section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; removing in the introductory text the words "in invitations for bids except those for construction"; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; revising paragraph (a); and by removing the derivation line following "(End of provision)" as follows:

52.214–10 Contract Award—Sealed Bidding.

* * * * *

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

* * * * *

52.214–11 [Amended]

208. Section 52.214–11 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; by removing in the introductory text the words "in invitations for bids to which the uniform contract format applies"; and by removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)"; inserting in their place the words "SEALED BIDDING (APR 1985)"; and removing the derivation line following "(End of provision)".

52.214–14 [Amended]

209. Section 52.214–14 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence; removing in the title of the provision the words "FORMAL ADVERTISING (APR 1984)" and inserting in their place the words "SEALED BIDDING (APR 1985)"; and by removing both derivation lines following "(End of provision)".

52.214–17 [Amended]

210. Section 52.214–17 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence.

52.214–19 [Amended]

211. Section 52.214–19 is amended by removing in the section title the words "Formal Advertising" and inserting in their place the words "Sealed Bidding"; inserting a colon after the word "provision" in the introductory text and removing the remainder of the sentence; removing in the title of the provision the words "FORMAL ADVERTISING" and "1984" and inserting in their place the words "SEALED BIDDING" and "1985"; removing in paragraph (a) the words "price and other factors considered" and inserting in their place the words "considering only price and the price-related factors specified in the solicitation"; and removing the derivation line following "(End of provision)".

52.214–23 [Amended]

212. Section 52.214–23 is amended by removing the words "Formal Advertising" wherever they appear in the section title & text and inserting in their place the words "Sealed Bidding"; removing in the title of the provision the

figure "1984" and inserting in its place "1985"; and removing the derivation line following "(End of provision)".

52.214-24 [Amended]

213. Section 52.214-24 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence.

52.214-25 [Amended]

214. Section 52.214-25 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; inserting a colon following the word "provision" in the introductory text and removing the remainder of the sentence; removing in the provision title the figure "1984" and inserting in its place the figure "1985"; and removing both derivation lines following "(End of provision)".

215. Section 52.214-26 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; revising the introductory text; removing in the title of the clause the figure "1984" and inserting in its place the figure "1985"; and removing both derivation lines following "End of clause" as follows:

52.214-26 Audit-Sealed Bidding.

As prescribed in 14.201-7(a), insert the following clause:

* * * * *

216. Section 52.214-27 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; revising the introductory text; removing in the clause title the figure "1984" and inserting in its place the figure "1985"; and removing in paragraph (a) the figure "$500,000" and insert in its place the figure "$100,000"; and removing both derivation lines following "(End of clause)" as follows:

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(b), insert the following clause:

* * * * *

217. Section 52.214-28 is amended by removing the words "Formal Advertising" wherever they appear and inserting in their place the words "Sealed Bidding"; revising the introductory text; removing in the title of the clause the figure "(1984)" and inserting in its place the figure "(1985)"; removing the figure "$500,000" wherever it appears and inserting in its palce the figure "$100,000"; revising paragraph (b)(1); and removing both derivation lines following "(End of clause)" as follows:

52.214-8 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(c), insert the following clause:

* * * * *

(b) * * *

(1) Based on adequate price competition;

* * * * * *

218. Section 52.215-1, introductory text, is revised to read as follows:

52.215-1 Examination of Records by Comptroller General.

As prescribed in 15.106-1(b), insert the following clause:

* * * * *

219. Section 52.215-4 is revised to read as follows:

52.215-4 Notice of Possible Standardization.

As prescribed in 15.407(b), insert the following provision:

Notice of Possible Standardization (APR 1985)

If the supplies for which this solicitation has been issued are established as standard, future contracts for the required supplies may be awarded without providing for full and open competition under section 6.302-1 of the Federal Acquisition Regulation

(End of Provision)

220. Section 52.215-16 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the septence; removing in the title of the provision the figure "1984" and inserting in its place the figure "1985"; revising paragraph (b)(1) of the provision; and removing the derivation line following "(End of provision)" as follows:

52.215-16 Contract Award.

* * * * *

(b) * * *

(1) reject any or all offers if such action is in the public interest; * * *

* * * * *

221. Section 52.215-23 is amended by revising the introductory text; removing in the title of the clause the figure "1984" and inserting in its place the figure "1985"; removing in paragraph (a) the figure "$500,000" and inserting in its place "$100,000"; and removing both derivation lines following "(End of clause)" as follows:

52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.804-8(b), insert the following clause:

* * * * *

52.215-24 [Amended]

222. Section 52.215-24 is amended by inserting a colon following the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph; removing in the title of the clause the figure "1984" and inserting the figure "1985"; removing the figure "$500,000" wherever it appears and inserting in its place the figure "$100,000"; and removing both derivation lines following "End of clause)".

52.215-25 [Amended]

223. Section 52.215-25 is amended by inserting a colon following the word "clause" in the first sentence of the introductory text and removing the remainder of the paragraph; removing from the title the figure "1984" and inserting in its place the figure "1985"; removing the figure "$500,000" wherever it appears, and inserting in its place the figure "$100,000"; and removing both derivation lines following "(End of clause)".

224. Section 52.225-6 is amended by inserting a colon following the word "provision" in the introductory text and removing the remainder of the paragraph; removing in the title of the provision the figure "1984" and inserting in its place the figure "1985"; revising paragraph (b) of the provision; and removing the derivation line following "(End of provision)" as follows:

52.225-6 Balance of Payments Program Certificate.

* * * * *

(b) For evaluation purposes only, each offer of an end product other than a domestic end product shall be increased by 50 percent. Any domestic end product offer that exceeds such evaluated other end product shall be considered unreasonable in cost or inconsistent with the public interest.

* * * * *

52.229-2 [Amended]

225. Section 52.229-2 is amended by removing the derivation line following "(End of clause)".

226. Section 52.229-3 is amended by revising the introductory text to read as follows:

52.229-3 Federal, State, and local taxes.

As prescribed in 29.401-3, insert the following clause:

227. Section 52.244-2 is amended by adding, following the last derivation line, an Alternate I to the clause, as follows:

52.244-2 Subcontracts Under Cost-Reimbursement and Letter Contracts.

* * * * *

Alternate I (APR 1985). If the contracting office is in DOD, the Coast Guard, or NASA, substitute the following subparagraph (a)(2) for subparagraph (a)(2) of the basic clause:

(a) (2) The proposed subcontract is fixed-price and exceeds the greater of (i) the small purchase limitation in Part 13 of the Federal Acquisition Regulation or (ii) 5 percent of the total estimated cost of this contract.

228. Section 52.245–16 is amended by revising the introductory clause; removing in the title of the clause the figure "1984" and inserting in its place the figure "1985"; removing in the third sentence of paragraph (a) of the clause the words "formally advertised" and inserting in their place the words "sealed bid"; and removing the derivation line following "(End of clause)".

52.245–16 Contract Award.

As prescribed in 15.407(d)(4), insert the following provision:

* * * * *

PART 53—FORMS

229. Section 52.200 is amended by removing twice in the third sentence the words "Formal Advertising" and inserting in their place the words "Sealed Bidding".

53.214 [Amended]

230. Section 53.214 is amended by removing in the title and in the introductory paragraph the words "Formal advertising" and inserting in their place the words "Sealed bidding"; removing in paragraph (a) the words "formally advertised" and inserting in their place the words "sealed bid"; and removing in paragraph (c) the date "(10/83)" and inserting in its place the date "(4/85)".

53.215–1 [Amended]

231. Section 53.215–1 is amended by removing in paragraph (b) the date "(10/83)" and inserting in its place the date "(4/85)".

53.236–1 [Amended]

232. Section 53.236–1 is amended by removing in paragraphs (a) and (d) the date "(10/83)" and inserting in its place the date "(4/85)".

233. Section 53.236–2 is amended by adding in paragraph (a) a second sentence as follows:

53.236–2 Architect-engineer services (SF's 252, 254, 255, 1421).

* * * * *

(a) * * * [Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.]

234. Sections 53.301–26 (Standard Form 26), 53.301–33 (Standard Form 33), 53.301–1417 (Standard Form 1417) and 53.301–1442 (Standard Form 1442) are revised to read as follows:

BILLING CODE 6820–61–M

53.301–26 Standard Form 26, Award/Contract.

FAC 84–5 APRIL 1, 1985

PART 53—FORMS 53.301–26

AWARD/CONTRACT	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶	RATING	PAGE OF PAGES
2. CONTRACT (Proc. Inst. Ident.) NO.	3. EFFECTIVE DATE	4. REQUISITION/PURCHASE REQUEST/PROJECT NO.	

5. ISSUED BY CODE	6. ADMINISTERED BY (If other than Item 5) CODE

7. NAME AND ADDRESS OF CONTRACTOR (No., street, city, county, State and ZIP Code)	8. DELIVERY ☐ FOB ORIGIN ☐ OTHER (See below)
	9. DISCOUNT FOR PROMPT PAYMENT
	10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN ▶ ITEM
CODE FACILITY CODE	

11. SHIP TO/MARK FOR CODE	12. PAYMENT WILL BE MADE BY CODE

13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION: ☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )	14. ACCOUNTING AND APPROPRIATION DATA

15A. ITEM NO	15B. SUPPLIES/SERVICES	15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT
				15G. TOTAL AMOUNT OF CONTRACT ▶	$

16. TABLE OF CONTENTS

(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)
		PART I — THE SCHEDULE				PART II — CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III — LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV — REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD	
	H	SPECIAL CONTRACT REQUIREMENTS					

CONTRACTING OFFICER WILL COMPLETE ITEM 17 OR 18 AS APPLICABLE

17. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

18. ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

19A. NAME AND TITLE OF SIGNER (Type or print)	20A. NAME OF CONTRACTING OFFICER

19B. NAME OF CONTRACTOR	19C. DATE SIGNED	20B. UNITED STATES OF AMERICA	20C. DATE SIGNED
BY _____ (Signature of person authorized to sign)		BY _____ (Signature of Contracting Officer)	

NSN 7540-01-152-8069
PREVIOUS EDITION UNUSABLE

25-105

STANDARD FORM 26 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(a)

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985 O—350-498(91)

53.301–33 Standard Form 33, Solicitation, Offer and Award.

FAC 84–5 APRIL 1, 1985

53.301–33 FEDERAL ACQUISITION REGULATION (FAR)

SOLICITATION, OFFER AND AWARD	1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 350) ▶	RATING	PAGE OF PAGES

2. CONTRACT NO.	3. SOLICITATION NO.	4. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED (RFP)	5. DATE ISSUED	6. REQUISITION/PURCHASE NO.

7. ISSUED BY CODE

8. ADDRESS OFFER TO *(If other than Item 7)*

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

SOLICITATION

9. Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in _____ until _____ *(Hour)* local time _____ *(Date)*

CAUTION – LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: ▶	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

11. TABLE OF CONTENTS

(✓)	SEC.	DESCRIPTION	PAGE(S)	(✓)	SEC.	DESCRIPTION	PAGE(S)
		PART I – THE SCHEDULE				PART II – CONTRACT CLAUSES	
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES	
	B	SUPPLIES OR SERVICES AND PRICES/COSTS				PART III – LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.	
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS	
	D	PACKAGING AND MARKING				PART IV – REPRESENTATIONS AND INSTRUCTIONS	
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS	
	F	DELIVERIES OR PERFORMANCE					
	G	CONTRACT ADMINISTRATION DATA			L	INSTRS., CONDS., AND NOTICES TO OFFERORS	
	H	SPECIAL CONTRACT REQUIREMENTS			M	EVALUATION FACTORS FOR AWARD	

OFFER *(Must be fully completed by offeror)*

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days *(60 calendar days unless a different period is inserted by the offeror)* from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT *(See Section I, Clause No. 52.232-8)* ▶	10 CALENDAR DAYS %	20 CALENDAR DAYS %	30 CALENDAR DAYS %	CALENDAR DAYS %

14. ACKNOWLEDGMENT OF AMENDMENTS *(The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated)*	AMENDMENT NO.	DATE	AMENDMENT NO.	DATE

15A. NAME AND ADDRESS OF OFFEROR	CODE	FACILITY	16. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER *(Type or print)*

15B. TELEPHONE NO. *(Include area code)*	15C. ☐ CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE – ENTER SUCH ADDRESS IN SCHEDULE	17. SIGNATURE	18. OFFER DATE

AWARD *(To be completed by Government)*

19. ACCEPTED AS TO ITEMS NUMBERED	20. AMOUNT	21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:

☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )

23. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ *(4 copies unless otherwise specified)* ITEM

24. ADMINISTERED BY *(If other than Item 7)* CODE	25. PAYMENT WILL BE MADE BY CODE

26. NAME OF CONTRACTING OFFICER *(Type or print)*	27. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*	28. AWARD DATE

IMPORTANT – Award will be made on this Form, or on Standard Form 26, or by other authorized official written notice.

NSN 7540–01–152–8064
PREVIOUS EDITION NOT USABLE

33-132

STANDARD FORM 33 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.214(c)

53.301–1417 Standard Form 1417, Pre-solicitation Notice (Construction Contract).

FAC 84–5 APRIL 1, 1985

PART 53—FORMS 53.301-1417

PRE-SOLICITATION NOTICE (CONSTRUCTION CONTRACT)	1. PROJECT NO.	2. DATE OF NOTICE	3. DATE SOLICITATION DOCUMENTS AVAILABLE (Approx.)

NOTE: The project number in Items 1 and 16 may be the same as the Invitation or Proposal Number.

4. OFFERS TO BE RECEIVED BY (AT PLACE SPECIFIED FOR RECEIPT OF OFFERS) ▶	A. TIME A.M. P.M.	B. DATE (Month, day, year)	5. TIME FOR COMPLETION (Calendar days)

6A. ISSUING OFFICE (Name, address and ZIP code)	7. PROJECT TITLE AND LOCATION
6B. ROOM NO. / 6C. TELEPHONE NO. (Include area code)	

INSTRUCTIONS: a. Solicitation Documents will be issued upon receipt of your affirmative response to this Pre-Solicitation Notice by the DUE DATE set forth in Item 15. b. If a charge is required under Item 8A, your affirmative response must include a certified check, cashier's check or money order, in the applicable amount, made payable to Agency (shown in Item 9). Refund (when specified in Item 8B) will be made upon your return of the bid documents in good condition, without marks, notes, or mutilations, within 20 calendar days after the final date for receipt of offers. c. The Issuing Office, at its discretion, may make bid documents available to plan rooms of the Associated General Contractors, Chambers of Commerce, Dodge Reports, and other similar contractors' commercial service facilities. d. Bid guarantee is required with any bid in excess of $25,000. Bid guarantee shall be in the amount of 20 percent of the amount of the bid, or $3,000,000, whichever is less. For bid guarantee purposes, the amount of the bid is the aggregate of the Lump Sum Base Bid, all Alternates (if any), and the product(s) of each unit price (if any) multiplied by the applicable number of units shown on the Bid Form. e. NOTICE TO SMALL BUSINESS FIRMS: A program for the purpose of assisting qualified small business concerns in obtaining certain bid, payment, or performance bonds that are otherwise not obtainable is available through the Small Business Administration (SBA). For information concerning SBA's surety bond guarantee assistance, contact your SBA District office.

8A. CHARGE FOR SOLICITATION DOCUMENTS	8B. IS THIS CHARGE REFUNDABLE?	9. MAKE CHECK PAYABLE TO:
$	☐ YES ☐ NO	

10. ESTIMATED COST RANGE OF PROJECT		11. OFFERS COVERING THE PROJECT RESTRICTED TO SMALL BUSINESS?	12. SUBCONTRACTING PROGRAM REQUIRED?
A. FROM	B. TO		
$	$	☐ YES ☐ NO	☐ YES ☐ NO

13. DESCRIPTION OF WORK (Physical characteristics)

IMPORTANT: FAILURE TO COMPLETE AND RETURN THIS PART OF THE NOTICE TO THE ISSUING OFFICE, ON OR BEFORE THE DUE DATE SHOWN IN ITEM 15, MAY RESULT IN YOUR NAME BEING REMOVED FROM OUR MAILING LIST.

14. ACTION REQUESTED (Check applicable box)			15. DUE DATE
A. I AM INTERESTED IN BIDDING ON THIS PROJECT AS A: ☐ PRIME CONTRACTOR ☐ PRINCIPAL SUBCONTRACTOR		B. I AM NOT INTERESTED IN BIDDING ON THIS PROJECT. RETAIN MY NAME ON YOUR MAILING LIST.	
NO. OF SET(S) YOU REQUIRE OF SOLICITATION DOCUMENTS		C. REMOVE MY NAME FROM YOUR MAILING LIST.	16. PROJECT NO.

17. NAME AND ADDRESS OF FIRM (City, State and ZIP code)

18. NAME AND TITLE OF FIRM REPRESENTATIVE	19. SIGNATURE OF REPRESENTATIVE	20. DATE SIGNED

NSN 7540-01-148-3531 1417-101 STANDARD FORM 1417 (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.236-1(b)

53.301–1442 Standard Form 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair).

FAC 84–5 APRIL 1, 1985

53.301-1442 FEDERAL ACQUISITION REGULATION (FAR)

SOLICITATION, OFFER, AND AWARD *(Construction, Alteration, or Repair)*	1. SOLICITATION NO.	2. TYPE OF SOLICITATION ☐ SEALED BID (IFB) ☐ NEGOTIATED *(RFP)*	3. DATE ISSUED	PAGE OF PAGES

IMPORTANT – The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NO.	5. REQUISITION/PURCHASE REQUEST NO.	6. PROJECT NO.

7. ISSUED BY CODE	8. ADDRESS OFFER TO

9. FOR INFORMATION CALL:	A. NAME	B. TELEPHONE NO. *(Include area code)* *(NO COLLECT CALLS)*

SOLICITATION

NOTE: In sealed bid solicitations "offer" and "offeror" mean "bid" and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS *(Title, identifying no., date)*:

11. The Contractor shall begin performance within _____ calendar days and complete it within _____ calendar days after receiving ☐ award, ☐ notice to proceed. This performance period is ☐ mandatory, ☐ negotiable. *(See _____.)*

12A. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? *(If "YES," indicate within how many calendar days after award in Item 12B.)* ☐ YES ☐ NO	12B. CALENDAR DAYS

13. ADDITIONAL SOLICITATION REQUIREMENTS:

A. Sealed offers in original and _____ copies to perform the work required are due at the place specified in Item 8 by _____ *(hour)* local time _____ *(date)*. If this is a sealed bid solicitation, offers must be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.

B. An offer guarantee ☐ is, ☐ is not required.

C. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.

D. Offers providing less than _____ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

NSN 7540-01-155-3212 1442-101 **STANDARD FORM 1442** (REV. 4-85)
Prescribed by GSA
FAR (48 CFR) 53.236-1(e)

53-146

FAC 84-5 APRIL 1, 1985

PART 53—FORMS 53.301-1442

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)	15. TELEPHONE NO. (Include area code)
	16. REMITTANCE ADDRESS (Include only if different than Item 14)
CODE FACILITY CODE	

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within _____ calendar days after the date offers are due. *(Insert any number equal to or greater than the minimum requirement stated in Item 13D. Failure to insert any number means the offeror accepts the minimum in Item 13D.)*

AMOUNTS ▶

18. The offeror agrees to furnish any required performance and payment bonds

19. ACKNOWLEDGMENT OF AMENDMENTS
(The offeror acknowledges receipt of amendments to the solicitation — give number and date of each)

AMENDMENT NO										
DATE										

20A. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)	20B. SIGNATURE	20C. OFFER DATE

AWARD *(To be completed by Government)*

21. ITEMS ACCEPTED

22. AMOUNT	23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN ▶ (4 copies unless otherwise specified)	ITEM	25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO ☐ 10 U.S.C. 2304(c)( ) ☐ 41 U.S.C. 253(c)( )
26. ADMINISTERED BY CODE		27. PAYMENT WILL BE MADE BY

CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE

☐ 28. NEGOTIATED AGREEMENT *(Contractor is required to sign this document and return _____ copies to issuing office.)* Contractor agrees to furnish and deliver all items or perform all work, requisitions identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD *(Contractor is not required to sign this document.)* Your offer on this solicitation, is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30A. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN (Type or print)	31A. NAME OF CONTRACTING OFFICER (Type or print)

30B. SIGNATURE	30C. DATE	31B. UNITED STATES OF AMERICA BY	31C. AWARD DATE

STANDARD FORM 1442 BACK (REV. 4-8

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[FR Doc. 85-806 Filed 1-10-85; 8:45 am]
BILLING CODE 6820-61-C

federal register

Friday
January 11, 1985

Part V

General Services Administration Board of Contract Appeals

48 CFR Ch. 61
Rules of Procedure; Final Rule

GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

48 CFR Ch. 61

Rules of Procedure

AGENCY: GSA Board of Contract Appeals.

ACTION: Final rule.

SUMMARY: The GSA Board of Contract Appeals issues revisions to its rules of procedure which will govern proceedings before the Board in contract appeals and petitions and in protests involving procurement of automatic data processing goods and services (ADP).

EFFECTIVE DATE: January 11, 1985.

FOR FURTHER INFORMATION CONTACT: James J. Regan, Chief Counsel, GSA Board of Contract Appeals, (202) 566–0890. Copies of the rules may be obtained from: Office of the Clerk of the Board, (202) 566–0116.

SUPPLEMENTARY INFORMATION: Section 2713 of the Competition in Contracting Act of 1984, to be codified at 40 U.S.C. 759(h), provides that protests involving procurement of ADP may be filed with the Board on or after January 15, 1985. The Act also provides that the Board is to adopt and issue rules and procedures necessary for the expeditious resolution of such protests. The Board's rules of procedure which govern proceedings in contract appeals were issued June 1, 1984, by the Acting Administrator of GSA. They were published in Appendix B to 48 CFR Chapter 5 on September 13, 1984, at 49 FR 35938. A notice requesting comments on proposed amendments to these rules relating to proceedings before the Board in ADP protests was published on September 14, 1984, at 49 FR 36114. The final rules of the Board were issued on November 30, 1984, by the Chief Judge and Chairman of the Board by BCA Order 2806.1. The publication of these final rules has the effect of revising Appendix B to 48 CFR Chapter 5 and of redesignating the Board's rules as 48 CFR Chapter 61. These rules also implement 48 CFR Part 33.

The rules refer to forms contained in the Appendix to the rules. These forms have not been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3501). They will be published in final form after OMB approval is obtained.

List of Subjects in 48 CFR Chapter 61

Government procurement.

1. A new Chapter 61 is added to 48 CFR to read: Chapter 61—General Services Administration Board of Contract Appeals.

2. Appendix B of 48 CFR Chapter 5 is transferred to new Chapter 61, redesignated as Part 6101, and revised. Part 6101 reads as follows:

PART 6101—RULES OF THE GENERAL SERVICES ADMINISTRATION BOARD OF CONTRACT APPEALS

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Authority: 41 U.S.C. 601–613; sec. 2713, Pub. L. 98–369, 98 Stat. 1175–1203.

6101.0 Foreword.

The General Services Administration (GSA) Board of Contract Appeals was established in GSA pursuant to the Contract Disputes Act of 1978, 41 U.S.C. 601–613, as an independent tribunal to hear and decide contract disputes between contractors and GSA and other agencies of the United States, to conduct proceedings concerning petitions for a contracting officer's written decision pursuant to 41 U.S.C. 605(c)(4), and to hear and decide appeals taken under the Disputes clause and in connection with contract-related claims. Additionally, the Board hears and decides protests filed under section 2713 of the Competition in Contracting Act of 1984, to be codified at 40 U.S.C. 759(h), involving procurements conducted under 40 U.S.C. 759. The authority of the Board is exercised in accordance with the rules in this part and the agency standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

6101.1 Scope of rules; definitions; construction; rulings and orders; panels; situs (Rule 1).

(a) *Scope.* The rules in this part govern proceedings in appeals relating to contracts filed with the Board on or after June 1, 1984, and all further proceedings in appeals then pending, except to the extent that in the opinion of the Board, their application in a particular appeal pending on the effective date would be infeasible or would work an injustice, in which event the former procedure applies. The rules in this part also govern proceedings in protests involving procurements conducted under 40 U.S.C. 759, filed with the Board on or after January 15, 1985, and proceedings concerning any petition filed with the Board for an order directing a contracting officer to issue a written decision on a claim.

(b) *Definitions* (1) *Appeal; appellant.* The term "appeal" means a submission to the Board of a contract dispute. For purposes of this part, a "protest" is not an appeal. The term "appellant" means the contractor filing an appeal with the Board.

(2) *Case.* The term "case" means an appeal, protest, or petition.

(3) *Filing.* Filing occurs upon receipt by the Office of the Clerk of the Board during the Board's working hours, except that in an appeal and in a petition, and not in any other kind of case:

(i) Filing may also be made with the Board by submitting a written notice of appeal to the contracting officer or to the head of the contracting agency;

(ii) The filing date of a document that has been mailed through the United States Postal Service is the date it is mailed; and

(iii) The filing date of a telegram is the date it is first transmitted by the telegraph company.

A postmark affixed by the United States Postal Service shall be presumed to establish the date of mailing; postmarks affixed by postage meters will not be accepted as evidence of the date of mailing. The date placed on a telegram by the telegraph company shall be presumed to establish the date of first transmission.

(4) *Interested party.* The term "interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

(5) *Intervening agency.* The term "intervening agency" means either the General Services Administration (GSA), or the agency for which GSA is conducting the procurement, when the agency seeking to intervene has submitted a motion to intervene in a protest in accordance with 6101.5(a)(3)(ii).

(6) *Intervenor of right.* The term "intervenor of right" means an interested party who files with the Board a notice of intervention in accordance with 6101.5(a)(3)(i) and who has not filed a protest concerning the same procurement with the United States General Accounting Office (GAO).

(7) *Permissive intervenor.* The term "permissive intervenor" means any entity that is an interested party and has previously filed a protest concerning the same procurement at the GAO, or in the United States Claims Court, or in a district court of the United States.

(8) *Party.* The term "party" means an appellant, petitioner, protester, respondent, intervenor of right, intervening agency, or permissive intervenor.

(9) *Petition; petitioner.* The term "petition" means a request filed with the Board under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term "petitioner" means the contractor submitting the petition.

(10) *Protest; protester.* The term "protest" means a written objection by an interested party to a solicitation by a federal agency for bids or proposals for a proposed contract for the procurement or a written objection to a proposed award or the award of such a contract which is filed with the Board by the protester to initiate the protest proceeding. The term "protester" means an interested party who files a protest with the Board and who has not filed a protest with the GAO concerning the same procurement.

(11) *Respondent.* The term "respondent" means the Government agency whose decision, action, or inaction is the subject of an appeal, protest, or petition.

(c) *Construction.* The rules in this part shall be construed to secure the just, speedy, and inexpensive resolution of every case.

(d) *Rulings, orders, and directions.* The Board may make such rulings and issue such orders and directions as are necessary to secure the just, speedy, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to the rules in this part may be made on the motion or application of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as are just.

(e) *Panels.* Each case is assigned to a panel consisting of one or more administrative judges, one of whom is designated the panel chairman. In appeals not processed under 6101.13 or 6101.14, a panel shall consist of three or more administrative judges. The panel chairman has responsibility for processing the case and may, without referral to other panel members, temporarily suspend procurement authority in a protest, rule on nondispositive motions, and dismiss a case with prejudice upon the joint request or with the joint consent of the parties. Concurrence of a majority of the panel, if more than one judge is assigned, is required for the following actions:

(1) Adjudicating an appeal or protest on the merits or denying or refusing such an adjudication; and

(2) Issuing a ruling, order, or opinion deciding a motion filed under 6101.32 or 6101.33.

Any action that may be taken by a panel may be taken by the full Board pursuant to 6101.30.

(f) *Situs.* The Board's address is: 18th and F Streets, N.W., Washington, D.C. 20405. The Board's telephone number is (202) 566-0116.

6101.2 Time: Enlargement; computation (Rule 2).

(a) *Time for performing required actions.* All time limitations prescribed in this part or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) *Enlarging time.* Upon application of a party for good cause shown, the Board may enlarge any time prescribed by this part or by an order or direction of the Board. The exceptions are the time limits for filing appeals and protests (6101.5(b) (1) and (3)) and for convening the suspension hearing (6101.19(a)(2)). A written application is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even though the request was filed after the time for taking the required action expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) *Computing time.* Except as otherwise required by law, in computing a period of time prescribed by this part or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is a Saturday, a Sunday, or a legal holiday under federal law, in which event the period shall include the next business day. When the period of time prescribed or allowed is less than 7 days, any intervening Saturday, Sunday, or federal holiday shall not be counted. When the period of time prescribed or allowed is 7 days or more, intervening Saturdays, Sundays, and federal holidays shall be counted except as otherwise provided. The exceptions are the 10-day time limits for filing protests (6101.5(b)(3) (ii) and (iii)) and submitting the protest file (6101.4(a)), the 15-day period for filing the protest answer (6101.7(c)(2)), the 25-day period for commencement of the hearing on the merits of the protests, and the 45-day period for deciding the protest. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

6101.3 Service of papers (Rule 3).

(a) *On whom service must be made.* Except as this part provides or the Board may order, when a party sends a document to the Board it must at the same time send a copy to any other party in the manner provided in paragraph (b) of this rule. Subpoenas (6101.20) and posthearing and reply briefs (6101.25) are exceptions to this requirement. Any papers required to be served on a party shall be filed with the Board before service or within a reasonable time thereafter, but the Board may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the Board or for use in a proceeding.

(b) *When service must be made*—(1) *Appeals and petitions.* Except as this part provides or the Board may order, when a party to an appeal or petition files a document with the Board, it must serve a copy on the other party by mail or some other equally or more expeditious means of transmittal.

(2) *Protests.* When a protest is filed with the Board, the protester must serve a copy on the contracting officer whose decision or action is being protested by means reasonably calculated to effect delivery on the same day the protest is filed with the Board. When a party to a protest files with the Board any other document, it must serve a copy on every other party by means reasonably calculated to effect delivery within 1 day after the document is filed with the Board. Documents filed in camera pursuant to 6101.12(h) need not be served on the other parties.

(c) *Proof of service.* Except when service is not required, a party sending a document to the Board must indicate to the Board that a copy has also been sent to every other party. This may be done by certificate of service, by the notation of a carbon copy (cc:), or by any other means that can reasonably be expected to indicate to the Board that other parties have received a copy.

(d) *Failure to make service.* If a document sent to the Board by a party does not indicate that a copy has been served on every other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response and may also direct the party that submitted the document to serve a copy on any other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

6101.4 The appeal file; protest file (Rule 4).

(a) *Submission to the Board by the contracting officer.* Within 30 days from receipt of notice that an appeal has been filed, or in a protest, within 10 days after its filing excluding Saturdays, Sundays, and federal holidays, or within such time as the Board may allow, the contracting officer shall file with the Board appeal or protest file exhibits consisting of all documents and other tangible things relevant to the claim or protest and to the contracting officer's decision which has been appealed or protested, including:

(1) The contracting officer's decision, if any, from which the appeal or protest is taken;

(2) The contract, if any, including amendments, specifications, plans, drawings;

(3) All correspondence between or among the parties that is relevant to the appeal or protest, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;

(4) Affidavits or statements of any witnesses on the matter in dispute or under protest and transcripts of any testimony taken before the filing of the notice of appeal or protest;

(5) All documents and other tangible things on which the contracting officer relied in making the decision or in taking the action protested, including a copy of the agency procurement request, the delegation of procurement authority, if any, and any correspondence relating thereto;

(6) The abstract of bids, if any;

(7) In a protest, a copy of the solicitation, protester's bid or proposal, and, if bid opening has occurred and no contract has been awarded, a copy of any bid relevant to the protest;

(8) In a protest of a negotiated procurement when no award has been made, a copy of any offer or proposal being considered for award and which is relevant to the protest (ordinarily, these documents will be submitted in camera pursuant to 6101.12(h)); and

(9) Any additional existing evidence or information deemed necessary to determine the merits of the appeal or protest.

The contracting officer shall serve a copy of the appeal or protest file on the appellant and on all other parties at the same time that the contracting officer files it with the Board, except that the contracting officer need not serve on the appellant or on any other party those documents furnished the Board in camera pursuant to 6101.12(h) or those documents previously furnished. However, the contracting officer must serve on the appellant or protester and on all other parties a list identifying the specific documents filed with the Board giving sufficient details necessary for their recognition. However, the list must not reveal the number and identity of the offerors whose proposals are filed in camera and should include an identifying statement, e.g., "proposal(s) being considered for award." This list must also be filed with the Board as an exhibit to the appeal or protest file.

(b) *Submission to the Board by appellant or any other party.* Within 30 days after filing of the respondent's appeal file exhibits, within 5 days after receipt of the respondent's protest file exhibits, or within such time as the Board may allow, the appellant or any other party shall file with the Board for inclusion in the appeal or protest file documents or other tangible things relevant to the appeal or protest that have not been submitted by the contracting officer. The appellant or any other party shall serve a copy of its additional exhibits upon the respondent and every other party at the same time as it files them with the Board.

(c) *Submissions on order of the Board.* The Board may, at any time during the pendency of the appeal or protest, require any party to file other documents and tangible things as additional exhibits.

(d) *Organization of the appeal and protest files.* Appeal and protest file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first, bound on the left margin except where size or shape makes such binding impracticable, numbered, tabbed, and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. The index should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board in camera or otherwise not served on every other party.

(e) *Lengthy or bulky documents.* The Board may waive the requirement to furnish other parties copies of bulky, lengthy, or outsized documents submitted to the Board as exhibits. The requirements of paragraph (d) of this section apply to such documents. In addition, the party submitting them shall

make them reasonably available to all other parties for inspection if it has retained copies, and the Board will also make them available for inspection at its offices.

(f) *Use of appeal or protest file as evidence.* All exhibits in the appeal or protest file are part of the record upon which the Board will render its decision, except for those as to which an objection has been sustained. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal or protest is submitted on the record pursuant to 6101.11, at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(g) *When appeal or protest file not required.* The Board may postpone or dispense with the submission of any or all appeal or protest file exhibits.

6101.5 Filing cases; time limits for filing; docketing; notice of protest by contracting officer (Rule 5).

(a) *Filing cases.* An appeal is commenced by filing a notice of appeal with the Board, or by submitting a notice of appeal to the contracting officer or to the head of the contracting agency. A proceeding on a petition or a protest is commenced by filing it with the Board.

(1) *Notice of appeal; petition.* (i) A notice of appeal or petition shall be in writing and should be signed by the appellant or petitioner or by the appellant's or petitioner's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the contractor can satisfy this requirement by attaching a copy of the contracting officer's decision to the notice of appeal. If an appeal is taken from the failure of a contracting officer to issue a decision, or if a petition is filed with the Board, the notice of appeal or petition should describe in detail the claim that the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal or petition.

(ii) A written notice in any form, including the one specified in the Appendix to this part, is sufficient to initiate an appeal. The notice of appeal, or a petition, should include the following information: (A) The number and date of the contract; (B) the name of the agency and the component thereof against which the claim has been asserted; (C) the name of the contracting officer whose decision or failure to decide is appealed and the date of the decision, if any; (D) a brief account of the circumstances giving rise to the appeal; and (E) an estimate of the amount of money in controversy, if any, and if known.

(iii) The appellant or petitioner must send a copy of the notice of appeal or petition to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) *Protest.* The only acceptable form for a protest is the pleading prescribed in 6101.7(b)(2), which must be filed with the Board, with a copy to the contracting officer as prescribed in 6101.3(b)(2). A protest may not be filed with the Board by an interested party who has filed a protest concerning the same procurement with the GAO. Any other interested party or agency described in paragraph (a)(3) of this section may participate as a party to a protest by filing a notice of intervention or a motion to intervene, as appropriate.

(3) *Intervention.* Intervention as a party in a protest is permitted, as follows:

(i) *Notice of intervention by intervenor of right.* An intervenor of right may intervene in a protest by filing a notice of intervention with the Board and serving copies upon all known parties and upon any potential intervening agency. It shall be the responsibility of the intervenor to contact the Board or the respondent to obtain any information it requires for filing its notice of intervention and for serving it upon other parties. The notice shall set forth the name, address, and telephone number of the person signing the notice, the nature of the party's direct economic interest that would be affected by the award of the contract or by failure to award the contract, the party's statement of position regarding the protest, and any other grounds for protest. All such grounds must be fully supported by specific allegations and, where practicable, affidavits or other pertinent documents, and must be timely asserted as provided in paragraph (b)(3) of this section. Receipt of such notice will be acknowledged by the Board, and it shall be the responsibility of the intervenor to contract the Board to ascertain the status of the protest, including the time and place of any hearings or other proceedings.

(ii) *Motion to intervene by intervening agency.* The Board may permit an intervening agency, upon motion timely filed pursuant to paragraph (b)(4) of this section, to intervene in a protest provided that the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. The GSA is eligible to intervene on the question of whether a delegation of procurement authority is required or whether the procuring agency has failed to meet any condition of a delegation granted by specific request or by regulation. The agency for which GSA is conducting the procurement may be permitted to intervene in an appropriate case.

(iii) *Motion to intervene by permissive intervenor.* The Board may permit any entity defined in 6101.1(b)(7), upon motion timely filed pursuant to paragraph (b)(4) of this section, to intervene in a protest. Such entity is eligible to intervene on the issues already under protest and only if its participation will not unduly delay or prejudice the rights of the original parties. This limited participation may affect the applicant's rights of discovery and cross-examination and involvement in any hearing or settlement of the protest. A permissive intervenor will not be permitted to elect a hearing (6101.9).

(b) *Time limits for filing appeals, petitions, protests and for intervening—*(1) *Appeals—*(i) An appeal from a decision of a contracting officer shall be filed no later than 90 days after the date the appellant receives that decision.

(ii) An appeal may be filed with the Board should the contracting officer fail or refuse to issue a timely decision on a claim submitted in writing, properly certified if required.

(2) *Petitions.* A contractor may file with the Board a petition that the Board direct a contracting officer to issue a written decision on a claim.

(3) *Protests.* A protest will be considered by the Board if it includes the information required by 6101.7(b)(2) and is timely filed. In determining the time for filing protests under paragraphs (b)(3) (ii) and (iii) of this section, intervening Saturdays, Sundays, and federal holidays shall not be counted.

(i) A protest based upon alleged improprieties in any type of solicitation which are apparent before bid opening or the closing date for receipt of initial proposals shall be filed before bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must

be protested no later than the next closing date for receipt of proposal following the incorporation; and

(ii) A protest, other than one covered in paragraph (b)(3)(i) of this section, shall be filed no later than 10 days after the basis for the protest is known or should have been known, whichever is earlier.

(iii) If a protest has been filed initially with the agency, any subsequent protest to the Board filed within 10 days of formal notification of, or actual or constructive knowledge of, initial adverse agency action will be considered, provided that the initial protest to the agency was filed in accordance with the applicable time limit in paragraphs (b)(3) (i) and (ii) of this section.

(iv) A protest which is timely under this rule but is filed more that 10 calendar days after contract award will not be subject to the procedure in 6101.19 for suspension hearing and decision.

(4) *Intervention.* Any intervenor of right or intervening agency receiving notice of a protest as provided in paragraph (d) of this section may, by intervening within 4 days after receipt of notice, participate fully as a party to a protest. When such a party intervenes, it may raise at the time it files its notice or motion any new issue concerning the protested procurement, provided that the new issue is timely raised under paragraph (b)(3) of this section and further that the notice or motion complies fully with the pertinent requirements of paragraph (a)(3) of this section. An intervening agency may also file a motion to intervene within 4 days of receipt of a notice of intervention which raises a new issue.

(c) *Notice of docketing.* Notices of appeal, petitions, and protests will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to all parties.

(d) *Notice of protest by contracting officer.* Within 1 day after receipt of a copy of the protest, the contracting officer shall give oral or written notice of the protest: to all firms solicited who appear to be affected by the protest, if sealed bids or initial offers or proposals have not been opened; to all bidders or offerors, if no award has been made and bids have been opened or the date for receipt of initial proposals has passed; or, if award has been made, to the contractor and all bidders or offerors. If the procuring agency is other than the GSA, notice shall also be given to the GSA official delegating procurement authority to the agency. If the GSA is procuring on behalf of another agency, notice shall also be given by the contracting officer to that agency. If written notice is provided under this paragraph it must be provided by means reasonably calculated to effect delivery within 1 day after the copy of the protest is received by the contracting officer. The contracting officer will confirm by written notification to the Board within 5 days after receipt of the protest whether the requisite notice was provided and list all persons and agencies to whom such notice was given.

6101.6 Appearances; notice of appearance (Rule 6).

(a) *Appearances before the Board—*(1) *Appellant; petitioner; protester; intervenor.* Any appellant, petitioner, protester, or intervenor may appear before the Board by an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, in the District of Columbia, or in a foreign country. Alternatively, an individual appellant, petitioner, protester, or intervenor may appear in his own behalf; a corporation, trust, or association may appear by one of its officers or by any other authorized representative; and a partnership may appear by one of its members or by any other authorized representative.

(2) *Respondent; intervening agency.* The respondent and any intervening agency may appear before the Board by an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, in the District of Columbia, or in a foreign country. Alternatively, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(b) *Notice of appearance.* Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, protest, notice of intervention, or motion to intervene shall be deemed to have appeared on behalf of the appellant, petitioner, protester, or intervenor, and the head of the respondent agency's or the intervening agency's litigation office shall be deemed to have appeared on behalf of the respondent. A notice of appearance in the form specified in the Appendix to this part is sufficient.

6101.7 Pleadings (Rule 7).

(a) *Pleadings required and permitted.* Except as the Board may otherwise order, the Board requires the submission of a complaint or a protest and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) *Complaint; protest—*(1) *Complaint.* No later than 30 days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant.

(2) *Protest.* A protest is commenced by filing it with the Board. The initial filing in a protest shall be in writing and signed by the protester or by the protester's attorney or authorized representative. It shall include:

(i) The name, address, and telephone number of the person signing the protest;

(ii) The number and date of the solicitation and the date for submission of sealed bids or initial proposals;

(iii) If a contract has been awarded, the number and date of the contract, and to whom awarded (if known);

(iv) The name and component of the agency and the name of the contracting officer whose decision the Board is being asked to review;

(v) The grounds for protest, which must be fully supported by specific allegations, including citations to statutes, regulations, or delegations of procurement authority claimed to be violated, and, where practicable, affidavits or other documents;

(vi) A statement of the basis of the Board's jurisdiction to hear and consider the protest;

(vii) Proof of the timeliness of the protest; and

(viii) If a hearing is sought to determine whether procurement authority should be suspended (suspension hearing) or to determine the merits of the protest, a specific request for such a hearing or hearings.

A protest timely filed which does not include the information required by this section will not be considered unless it is timely amended as permitted by paragraph (f)(2)(i) of this section.

(c) *Answer—*(1) *Appeal answer.* No later than 30 days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint as well as any affirmative defenses it chooses to assert. In lieu of answering, the respondent may

file a dispositive motion of one of the sorts enumerated in 6101.8(c) or a motion for a more definite statement; if such a motion if filed and is denied by the Board in whole or in part, the respondent shall file its answer no later than 30 days after the Board's ruling on the motion. If no answer or motion is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by paragraph (f)(1) of this section. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(2) *Protest answer.* No later than 15 days after the filing of the protest, the respondent shall file its answer with the Board setting forth its defenses to the protest, and its findings, actions, and recommendations in the matter. Intervening Saturdays, Sundays, or federal holidays shall not be counted in determining the time for filing this pleading. A dispositive motion or a motion for a more definite statement may not be filed in lieu of the protest answer.

(d) *Reply to an answer or response to a notice of intervention or motion to intervene.* If the Board orders or permits a reply to an answer or a response to a notice of intervention or motion to intervene, it shall be filed as directed by the Board.

(e) *Modifications to requirement for pleadings.* If the appellant has elected the small claims procedure provided by 6101.13 or the accelerated procedure provided by 6101.14, the submission of pleadings shall be governed by the applicable section.

(f) *Amendment of pleadings*—(1) *Appeals.* Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed; if the pleading is one to which no responsive pleading it permitted, such amendment may be made at any time within 20 days after it is served, or, in small claims proceedings under 6101.13, within 10 days after it is served. The Board may permit the parties to amend pleadings further on conditions fair to both parties. If a response to the unamended pleading was required by this part or by an order of the Board, a response to the amended pleading shall be filed no later than 30 days after the filing of the amended pleading, or, in small claims proceedings, no later than 15 days after the filing of the amended pleading. 6101.12(e) concerns amendments to pleadings to conform to the evidence.

(2) *Protests.* (i) If a timely protest does not include all the information required by paragraph (b)(2) of this section, the Board may, in its discretion, so inform the protester and grant it leave to amend the protest to supply the missing information, except that a protest may be amended to include the information required in paragraph (b)(2)(v) of this section only if that information is filed in writing with the Board and served upon the contracting officer within the time limits of 6101.5(b)(3). Enlargement of time (6101.2(b)) will not be granted to comply with this requirement. As to any other information required in paragraph (b)(2) of this section, the Board will ordinarily grant such additional time for the filing of an amendment to the protest as is reasonable and fair in the circumstances. Except for purposes of determining the timeliness of the initial filing, the filing date of a protest which is amended by leave of the Board shall be the date of the filing of the amendment.

(ii) The notice of intervention or motion to intervene provided for in 6101.5(a)(3) may not be amended after the time limits set in 6101.5(b)(4) for filing such notice or motion.

6101.8 Motions (Rule 8).

(a) *How motions are made.* Motions may be oral or written. A written motion shall indicate the relief or order sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor, and, in addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this section. 6101.25 prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party.

(b) *When motions may be made.* A motion filed in lieu of an answer pursuant to 6101.7(c)(1) shall be filed no later than the date on which the answer is required to be filed. Any other dispositive motion shall be made as soon as the grounds therefor are known, except that all dispositive motions in a protest shall be filed no later than 15 days after the filing of the protest. Any other motion shall be made promptly or as required by this part.

(c) *Dispositive motions.* The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted or for failure to state a valid basis for protest;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment) in appeals;

(4) Motions to dismiss a protest which is frivolous or untimely filed;

(5) Any other motion to dismiss with prejudice.

(d) *Other motions.* Other motions may be made in good faith and in proper form.

(e) *Jurisdictional questions.* The Board may at any time consider the issue of its jurisdiction to decide a case. When all facts touching upon the Board's jurisdiction are not of record, decision of a jurisdictional question may be deferred pending hearing on the merits or the filing of record submissions.

(f) *Procedure.* In an appeal, a party may respond to a written motion other than a motion pursuant to 6101.31, 6101.32, or 6101.33 at any time within 20 days after the filing of the motion. Responses to motions pursuant to 6101.31, 6101.32, or 6101.33 may be made only as permitted or directed by the Board. In a protest, a party may respond to any written motion only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties. Procedure on oral motions made at hearing shall be determined as necessary in the course of their consideration.

(g) *Motions for summary relief in appeals.* With each motion for summary relief, there shall be served and filed a statement of the material facts as to which the moving party contends there is no genuine issue, and this statement shall include references to the supporting affidavits and documents, if any, and to the 6101.4 appeal file exhibits relied on to support such statement. Parties opposing such a motion shall serve and file, together with their opposing legal memoranda and opposing affidavits and documents, if any, a concise statement setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated. All material facts set forth in the statement required to be served and filed by the moving party are deemed to be admitted unless controverted by the statement required to be served by an opposing party.

(h) *Effect of pending motion.* Except as this part provides or the Board may order, a pending motion shall not excuse the parties from proceeding with the appeal or protest in accordance with this part and the orders and directions of the Board. In an appeal, if a motion is initially filed in lieu of an answer the answer will be due as prescribed by 6101.7(c).

6101.9 Election of hearing or record submission (Rule 9).

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to 6101.11. Such an election may be filed at any time unless a time for filing is prescribed by the Board or by 6101.13 (small claims procedure) or 6101.14 (accelerated procedure). A party electing to submit its case on the record pursuant to 6101.11 may also elect to appear at a hearing solely to cross-examine any witness presented by an opposing party, provided that the Board is informed of that party's intention within 10 days of its receipt of notice of the election of hearing by the opposing party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices if they are not apparent. A hearing will be held if one of the parties elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of another party or parties, it shall consult with such other party or parties before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit on the record shall be due as provided in 6101.11.

6101.10 Conferences; conference memorandum; prehearing order; sanctions; prehearing and presubmission briefs (Rule 10).

(a) *Conferences.* The Board may convene the parties in conference, either by telephone or in person, for any purpose. In protests, a conference will ordinarily be held within 6 days after the filing of the protest. The conference may be stenographically or electronically recorded by the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understanding on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Any other matter that may aid in the disposition of the case.

(b) *Conference memorandum.* The Board may prepare a memorandum of the results of a conference, including any rulings or orders, and place such memorandum in the record of the case. A copy of the memorandum will be sent to each party, and each party shall have 5 days after receipt of the memorandum to object to the substance of it.

(c) *Prehearing order.* The Board may issue a prehearing or presubmission order to govern the proceedings in a case.

(d) *Sanctions.* When the Board has issued written directions or orders to any party, whether on its own initiative or following a prehearing or presubmission conference, and any party fails to comply, the Board may make such orders with regard to the failure as are just, including the following:

(1) Ordering that the facts pertaining to the matter in dispute shall be taken to be established for the purpose of the case in accordance with the contention of the party submitting documents or requests for admissions;

(2) Declaring a waiver of challenge of the accuracy of any statement or schedule of items and figures involved;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony; or

(5) Dismissing the case or any part thereof.

(e) *Prehearing or presubmission briefs.* A party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which first record submissions are due.

6101.11 Submission on the record without a hearing (Rule 11).

(a) *Submission on the record.* A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law.

The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) *Time for submission.* (1) If all parties have elected to submit their case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If at least one party has elected a hearing and any other party has elected to submit its case on the record, any party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs. The Board will accept a further record submission in the form of a reply brief if a party that attended the hearing is permitted to submit a reply brief; such a record submission will be due at the same time as the reply brief of the party or parties that attended the hearing. Submission and service of record submissions in the form of briefs are governed by 6101.25.

(c) *Objections to evidence.* Objections to evidence in a record submission may be made at any time within 10 days after the filing of the submission in an appeal or petition, or within 5 days in a protest. Replies to such objections, if any, may be made within 10 days after the filing of the objection. The Board may rule on such objections in its opinion deciding the merits of the case.

6101.12 Record of Board proceedings (Rule 12).

(a) *Composition of the record for decision.* The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal, petition, or protest;

(2) Appeal or protest file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(13) Anything else that the Board may designate part of the record.

All other papers and documents in a case are part of the administrative

record of the proceedings. The administrative record shall include file and hearing exhibits offered but not received in evidence in a case; it may also include correspondence with and among the parties, and depositions, interrogatories, offers of proof contained in the transcript, and other documents that are not part of the record for decision.

(b) *Time for entry into the record.* Except as the Board may otherwise order, nothing other than posthearing briefs will be received into the record after a hearing is completed. In cases submitted on the record without a hearing, nothing will be received into the record after the time for filing of the last record submission. Briefs will be due as provided in 6101.25(b).

(c) *Closing of the record.* Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(d) *Notice that the case is ready for decision.* The Board will give written notice to the parties when the record is closed and the case is ready for decision.

(e) *Amendments to conform to the evidence.* When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing (see 6101.21(h)) or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may formally amend the pleadings to conform to the proof or may order that the record be deemed to contain pleadings so amended.

(f) *Enlargement of the record.* The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(g) *Inspection of the record of proceedings; release of any paper, document, or tangible thing prohibited.* Except for any part thereof that is subject to a protective order, the record of proceedings in a case shall be made available for inspection by any person at the office of the Board during the Board's normal working hours. Except as provided in 6101.23(c), no paper, document, or tangible thing which is part of the record of proceedings in a case may be released from the offices of the Board. Copies may be obtained by any person as provided in 6101.38.

(h) *Submissions in camera.* (1) A party may by motion request that the Board receive and hold in camera documents that the party contends are privileged or confidential, stating the grounds therefor. The documents that are the subject of the motion shall be attached to the motion. If the Board denies the motion, the documents will be returned to the moving party. If the Board grants the motion, the documents will be held in camera and will be part of the record of the case.

(2) The Board may at any time determine that documents in its files should be held in camera. If such a determination is made, all parties will be so notified.

(3) During a hearing or other proceedings the Board in its discretion may allow in camera testimony that a party contends would involve privileged or confidential matters. The party requesting in camera testimony must furnish advance notice of such a request to the Board and all opposing parties stating the grounds therefor.

6101.13 Small claims procedure (Rule 13).

(a) *General.* THE SMALL CLAIMS PROCEDURE IS AVAILABLE IN APPEALS SOLELY AT THE APPELLANT'S ELECTION. This procedure shortens the time periods for and allows the elimination of many of the procedural steps required by this part so that the Board may render its decision, where practicable, within 120 days after the Board's receipt of the election. Pleadings, discovery, and other prehearing activities may be restricted or eliminated. An appellant may elect the accelerated procedure prescribed by 6101.14, instead of the small claims procedure prescribed by this section, for any appeal eligible for the small claims procedure.

(b) *Election of the small claims procedure.* In any appeal in which the amount in controversy is $10,000 or less, the appellant may elect the small claims procedure. Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after filing of the notice of docketing. A late election may be made only by leave of the Board.

(c) *Proceedings in small claims.* The Board may establish an expedited schedule for the proceedings other than that prescribed in paragraphs (c)(1) through (6) of this section. The Board will ordinarily conduct a prehearing or presubmission conference pursuant to 6101.10 for this purpose. Except as the Board may otherwise order, the parties shall proceed in small claims appeals as follows:

(1) The respondent's appeal file exhibits shall be filed either as prescribed by 6101.4(a) or no later than 15 days after the filing of the appellant's notice of election, whichever first occurs.

(2) If the Board permits the filing of a complaint, it shall be filed either as prescribed by 6101.7(b) or no later than 15 days after filing of the appellant's notice of election, whichever first occurs.

(3) The appellant's appeal file exhibits shall be filed no later than 10 days after the filing of the respondent's appeal file exhibits.

(4) If the Board has permitted the filing of a complaint, the answer shall be filed no later than 10 days after the filing of the complaint.

(5) The election of each party prescribed by 6101.9 shall be filed no later than 30 days after the filing of the appellant's election of the small claims procedure.

(6) If the Board permits discovery, it shall be concluded no later than 10 days before the hearing date or, if both parties have elected to submit on the record pursuant to 6101.11, no later than 10 days before the date prescribed by the Board for first record submissions under 6101.11(b).

(d) *Decisions under the small claims procedure.* (1) Written decisions may be rendered by a single administrative judge and will be summary in form. If there is a hearing, the Board may, at the conclusion of the hearing, render a summary oral opinion deciding the appeal. Any such oral opinion will be reduced to writing, and copies will be given to both parties for record and payment purposes and to establish a date for commencement of the period for filing a motion pursuant to 6101.32 or 6101.33.

(2) In the absence of fraud, a decision under the small claims procedure is final and conclusive and may not be appealed or set aside. Such decisions shall have no value as precedent.

(e) *Motions pursuant to 6101.31, 6101.32, and 6101.33.* A motion pursuant to 6101.31, 6101.32, or 6101.33 may be filed in an appeal decided under the small claims procedure. Ordinarily, such a motion will be decided by the administrative judge who decided the appeal or by one other administrative judge of the Board.

6101.14 Accelerated procedure (Rule 14).

(a) *General.* THE ACCELERATED PROCEDURE IS AVAILABLE IN APPEALS SOLELY AT THE APPELLANT'S ELECTION. This procedure shortens the time periods for

many of the procedural steps required by this part so that the Board may render its decision, where practicable, within 180 days after the Board's receipt of the election. An appellant may elect the accelerated procedure prescribed by this section, instead of the small claims procedure prescribed by 6101.13, for any appeal eligible for the small claims procedure. In cases proceeding under the accelerated procedure, the parties are encouraged to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs.

(b) *Election of the accelerated procedure.* In any appeal in which the amount in controversy is $50,000 or less, the appellant may elect the accelerated procedure. Except as the Board may otherwise order, such an election shall be made by written notice filed with the Board no later than 30 days after the date the appellant receives the Board's notice of docketing. A late election may be made only by leave of the Board.

(c) *Proceedings in accelerated appeals.* The Board may establish an expedited schedule for the proceedings other than that prescribed in paragraphs (c) (1) through (6) of this section. The Board will ordinarily conduct a prehearing or presubmission conference pursuant to 6101.10 for this purpose. Except as the Board may otherwise order, the parties shall proceed in accelerated appeals as follows:

(1) The respondent's appeal file exhibits shall be filed as prescribed by 6101.4(a).

(2) The complaint shall be filed as prescribed by 6101.7(b).

(3) The appellant's appeal file exhibits shall be filed no later than 20 days after the filing of the respondent's appeal file exhibits.

(4) The answer shall be filed no later than 20 days after the filing of the complaint.

(5) The election of each party prescribed by 6101.9 shall be filed no later than 60 days after the filing of the appellant's election of the accelerated procedure.

(6) All discovery shall be concluded no later than 20 days before the hearing date or, if neither party has elected a hearing, no later than 20 days before the date prescribed by the Board for first record submissions under 6101.11(b).

(d) *Decisions under the accelerated procedure.* Decisions will be written and may be rendered by a single administrative judge with the concurrence of one other administrative judge. In the event the two administrative judges disagree, the Chief Administrative Judge will designate a third administrative judge to participate in the decision.

(e) *Motions pursuant to 6101.31, 6101.32, and 6101.33.* A motion pursuant to 6101.31, 6101.32, or 6101.33 may be filed in an appeal decided under the accelerated procedure.

6101.15 General provisions governing discovery (Rule 15).

(a) *Discovery methods.* The parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents or other tangible things; and

(4) Requests for admissions.

Unless otherwise ordered by the Board or provided by this part the frequency of use of these methods is not limited.

(b) *Scope of discovery.* Except as otherwise limited by order of the Board in accordance with this part, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claims or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Conduct of discovery.* Unless the Board orders otherwise, the parties to an appeal may be written stipulation agree to the methods and procedures to be used in discovery, except that agreements affecting the time provided in 6101.17 for responses to requests for discovery may be made only with the approval of the Board. In protests, the parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the protest and is consistent with the requirements of 6101.19(a)(3). Permissive intervenors will not be permitted full rights of discovery. When a petition has been filed, the parties may engage in discovery only to the extent ordered by the Board.

(d) *Discovery conference.* At any time after a case has been filed, and ordinarily within 6 days after the filing of a protest, upon application of a party or on its own initiative, the Board may hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with 6101.10

(e) *Protective orders.* In connection with any discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(3) That discovery be conducted with no one present except persons designated by the Board;

(4) That confidential information not be disclosed or that it be disclosed only in a designated way; and

(5) Such other matters as justice may require.

(f) *Failure to make or cooperate in discovery: sanctions.* (1) A party may apply to the Board for an order compelling discovery when another party refuses or obstructs discovery. If a motion to compel discovery is denied in whole or in part, the Board may make a protective order of the type listed in paragraph (e) of this section.

(2) When the Board has entered an order to provide or permit discovery, and there is a failure to comply with that order, the Board may make such orders with regard to the failure as are just, including the following:

(i) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(ii) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence; and

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed.

(g) *Subpoenas.* A party may request the issuance of a subpoena in aid of discovery under the provisions of 6101.20.

6101.16 Depositions (Rule 16).

(a) *When depositions may be taken.* After an appeal has been filed, the parties may mutually agree to, or, upon application of a party, the Board may order, the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. In petitions and in protests, depositions may be taken only pursuant to Board order. Attendance of witnesses may be compelled by subpoena as provided in 6101.20, and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may, nevertheless, arrange to have a stenographic transcription made at its own expense.

(b) *Depositions: time; place; manner of taking.* The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions propounded to him.

(c) *Use of depositions.* At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of, a public or private corporation, partnership or association, or governmental agency, which is a party, may be used by the adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead; or

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment; or

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) *Depositions pending appeal from a decision of the Board.* If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action was pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named.

If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in 6101.15 and in this section. Thereupon, the depositions may be taken and used as prescribed in this part for depositions taken in actions pending before the Board. Upon request and for good cause shown, an administrative judge may issue or obtain a subpoena, in accordance with 6101.20, for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

6101.17 Interrogatories to parties; requests for admissions; requests for production of documents (Rule 17).

After a case has been filed, a party may serve on another party written interrogatories, requests for admissions, and requests for production of documents, except that in a petition and in a protest a party must first obtain a Board order permitting such discovery.

(a) *Written interrogatories.* Written interrogatories shall be answered separately in writing, signed under oath, and answered or objected to in an appeal or petition within 30 days after service or, in a protest, within 10 days after service. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference has been held, or some other event has occurred.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) *Written requests for admissions.* A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed or objected to, in an appeal or petition, within 30 days after service or, in a protest, within 10 days after service; otherwise, the matter therein may be deemed to be admitted.

(d) *Written requests for production of documents.* A written request for the production, inspection, and copying of any documents and things shall be answered or objected to, in an appeal or petition, within 30 days after service, or, in a protest, within 10 days after service.

(e) *Change in time for response.* Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in this section.

6101.18 Hearing examiners (Rule 18).

(a) *Designation.* In appropriate cases the Chief Administrative Judge may designate a duly appointed hearing examiner of the Board to conduct proceedings in a case that has been assigned to a panel. Any such designation shall be by written order of the Chief Administrative Judge, who may specify the authority of the hearing examiner. A copy of such designation shall be sent to each party. In the absence of any specification in the order, and subject to paragraph (c) of this section, the authority of the hearing examiner shall be as set forth in paragraph (b) of this section. In no event shall the authority of the hearing examiner specified in the order of designation exceed that set forth in paragraph (b) of this section. A party may object in writing to the designation of a hearing examiner to conduct a hearing. Such objection must be filed with the Chief Administrative Judge within 5 days of the objecting party's receipt of notice of the designation. The Chief Administrative Judge will rule on any such objection within 5 days of its receipt.

(b) *Authority.* Subject to paragraph (c) of this section and 6101.1(e), a hearing examiner may be given the authority, with respect to any case to which the hearing examiner has been designated, to:

(1) Correspond with the parties on behalf of the Board with respect to any matter within the hearing examiner's authority;

(2) Perform any act that would be within the authority of a single administrative judge of the Board, including the following:

(i) Establish the date and place of hearing;

(ii) Establish a schedule for record submissions when at least one of the parties has elected not to attend a hearing;

(iii) Conduct a prehearing or presubmission conference and make rulings or issue directions in the course of such a conference;

(iv) Conduct a hearing and make rulings in the course of that hearing, except for a ruling on the suspension of procurement authority pending a decision on a protest; and

(v) Make other rulings that do not relate to dispositive matters during the pendency of the case;

(3) Prepare recommended findings of fact and a recommended decision to be proposed to the assigned panel for adoption by the Board.

(c) *Limitations on authority.* Notwithstanding any other provision of this section, no hearing examiner of the Board may:

(1) Conduct any proceedings with respect to a case to which the hearing examiner has not been designated or in contravention of the order designating the hearing examiner;

(2) Conduct a hearing with respect to an appeal in which the amount in dispute is greater than $50,000;

(3) Take any action that has the effect of an adjudication of the case on the merits;

(4) Take any action that has the effect of striking, dismissing, or granting partial summary judgment with respect to any claim or defense of a party;

(5) Sign a subpoena; or

(6) Issue an oral decision at the conclusion of a hearing under the small claims procedure.

(d) *Amendment of rulings.* Upon motion of a party, the chairman of the panel to which an appeal has been assigned may amend, alter, or vacate any ruling made by the hearing examiner prescribed in paragraph (b) of this section. Such motions shall be filed within 5 days after the hearing is completed or, in cases submitted on the record, within 5 days after notice by the Board to the parties that the record is closed.

6101.19 Hearings: Scheduling; notice; unexcused absences; suspension decision (Rule 19).

(a) *Scheduling of hearings*—(1) *In general.* Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of this part, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to 6101.9 or otherwise. The time or place for hearing may be changed by the Board at any time.

(2) *Suspension hearing.* If an interested party in a protest filed either before or after contract award requests a hearing for the Board to determine whether to suspend procurement authority pending a decision on the merits of the protest, such hearing shall be held, whenever practicable, so that the determination whether to suspend will be made before bid opening or the closing date for receipt of initial proposals or, if bids have been opened or initial proposals received, before the anticipated award of the contract, and in any event no later than 10 days after the filing of the protest. A request for a suspension hearing will be denied if the protest is filed more than 10 calendar days after contract award.

(3) *Hearing protest on merits.* A hearing on the merits of a protest will be held no later than 25 days after the filing of the protest, excluding Saturdays, Sundays, and federal holidays, provided that a written request is filed by the protester, intervenor of right, or intervening agency no later than 2 days after such party's receipt of the protest answer.

(b) *Notice of hearing.* Notice of hearing will be by written order of the Board, except that it may be oral for a suspension hearing held under paragraph (a)(2) of this section. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing in an appeal shall, within 10 days of receipt of (1) a written notice of hearing or (2) any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing. Acknowledgment of a notice of hearing in a protest may be written or oral and shall be given within such time as the notice prescribes.

(c) *Unexcused absence from hearing.* In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to 6101.11.

(d) *Suspension decision.* The Board shall suspend the respondent's procurement authority, or a delegation thereof, pending a decision on the merits of the protest, unless the respondent establishes at hearing that: (1) absent suspension, contract award, if not already made, is likely to occur within 30 days; and (2) urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Board. The decision regarding suspension will be by order of the panel chairman and may be oral, to be reduced to writing as soon as practicable.

6101.20 Subpoenas (Rule 20).

(a) *Voluntary cooperation in lieu of subpoena.* Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) *Subpoenas in appeals governed by the Contract Disputes Act of 1978 and in protests pursuant to the Competition in Contracting Act of 1984*—(1) *General.* Upon the written request of any party filed with the Office of the Clerk of the Board, or on his or her own initiative, an administrative judge to whom a case is assigned or who is otherwise designated by the Chief Administrative Judge, may issue a subpoena that commands the person to whom it is directed to:

(i) Attend and give testimony at a disposition in a city or county where that person resides or is employed or transacts business in person or at another location convenient to that person that is specifically determined by the Board;

(ii) Attend and give testimony at a hearing; and

(iii) Produce the books, papers, documents, and other tangible things designated in the subpoena.

(2) *Request for subpoena.* A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any documentary evidence sought. A request for a subpoena shall be filed at least:

(i) 15 days in an appeal or petition, or 5 days in a protest, before a scheduled deposition where the attendance of a witness at a deposition is sought; and

(ii) 30 days in an appeal or petition, or 10 days in a protest, before a scheduled hearing where the attendance of a witness at a hearing is sought.

The Board may, in its discretion, honor requests for subpoenas not made within these time limitations.

(3) *Form; issuance.* (i) Every subpoena shall be in the form specified in the Appendix to this part. In issuing a subpoena to a requesting party, the administrative judge shall sign the subpoena and may, in his or her discretion, enter the name of the person to whom it is directed, but shall otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(ii) If the person subpoenaed is located in a foreign country, a letter rogatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 781–784.

(4) *Service.* (i) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(ii) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(5) *Proof of service.* The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completing and executing and submitting to the Board the "Return on Service" portion of a duplicate copy of the subpoena issued by an administrative judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as proof by executing the "Return on Service" in the presence of a notary.

(6) *Motion to quash or to modify.* Upon written motion by the person subpoenaed or by a party, made within 10 days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may (i) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (ii) require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence. Where circumstances require, the Board may act upon such a motion at any time after a copy has been served upon opposing parties.

(7) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony, produce evidence or both. If a person fails to obey such an order, the court may punish that person for contempt of court.

(c) *Subpoenas in appeals not governed by the Contract Disputes Act of 1978.*

(1) Upon written request of either party filed with the Office of the Clerk of the Board in appeals not governed by the provisions of the Contract Disputes Act of 1978, or on his or her own initiative, an administrative judge to whom a case is assigned or who is otherwise designated by the Chief Administrative Judge may obtain a subpoena from an appropriate United States district court through the Department of Justice, in accordance with the provisions of 5 U.S.C. 304, and Rule 45 of the Federal Rules of Civil Procedure.

(2) A request for a subpoena under this paragraph shall be filed at least 30 days in advance of a scheduled deposition or hearing. However, the Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(3) A request for a subpoena under this paragraph shall contain the same information required under paragraph (b)(2) of this section.

(4) In a case of refusal to obey a subpoena, the Board may apply appropriate sanctions or it may request the Department of Justice to seek enforcement of the subpoena.

6101.21 Hearing procedures (Rule 21).

(a) *Nature and conduct of hearings.* Hearings take the general form of adversary trials similar to those conducted without a jury in courts of general jurisdiction. Subject to the foregoing, hearings will be conducted as informally as is reasonable and appropriate given the nature of the dispute and the representation of the parties. The Board may exclude from the hearing room any or all prospective witnesses or persons other than the parties and counsel, except that a party or counsel may be excluded from the hearing room in case of disruptive conduct. Additionally, at the request of a party, the Board shall order witnesses excluded so that they cannot hear the testimony of other witnesses.

(b) *Continuances; change of location.* Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its discretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in 6101.19(a)) that it considers in scheduling hearings.

(c) *Availability of witnesses, documents, and other tangible things.* It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at hearing.

(d) *Enlargement of the record.* The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) *Examination of witnesses.* Witnesses before the Board will testify under oath or affirmation. A party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) *Refusal to be sworn.* If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to do so, and in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation, and in the event of the witness's continued refusal to swear or affirm, may seek enforcement of that subpoena pursuant to 6101.20.

(g) *Refusal to answer.* If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer, and in the event of continued refusal, the Board may state for the record the inferences it draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to 6101.20.

(h) *Issues not raised by pleadings.* If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the appeal. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted, the pleadings may be amended to conform to the evidence, as provided by 6101.12(e).

(i) *Delay by parties.* If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

6101.22 Admissibility and weight of evidence (Rule 22).

(a) *Admissibility.* Any relevant evidence may be received. The Board may exclude relevant evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy.

(b) *Federal Rules of Evidence.* As a general matter, and subject to the other provisions of this section, the Board will base its evidentiary rulings on the Federal Rules of Evidence.

(c) *Weight and credibility.* The Board will determine the weight to be given to evidence and the credibility to be accorded witnesses.

(d) *Submission of evidence in camera.* 6101.12(h) governs submissions in camera.

6101.23 Exhibits (Rule 23).

(a) *Marking of exhibits.* (1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if it is convenient for the Board and the parties, before the commencement of the hearing. They will be numbered consecutively as the exhibits of the party offering them.

(2) If a party elects to proceed on the record without a hearing pursuant to 6101.11, documentary evidence submitted by that party will be numbered consecutively by the Board as appeal or protest file exhibits.

(b) *Copies as exhibits.* Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, and such copies shall have the same force and effect as if they were the originals. If the Board so directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

(c) *Withdrawal of documentary exhibits and other papers.* With the permission of the Board, a party may remove an exhibit during the course of a proceeding. Otherwise, no withdrawal of any papers in the Board's file is permitted. Inspection of the file at the Board's offices is permitted by 6101.12(g).

(d) *Disposition of physical exhibits.* Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 days after the expiration of the period for appeal from the decision of the Board, unless it has been earlier withdrawn by the party that submitted it.

6101.24 Transcripts of proceedings; corrections (Rule 24).

(a) *Transcripts.* Except as the Board may otherwise order, all hearings of appeals or petitions other than those under the small claims procedure prescribed by 6101.13, and all hearings in connection with protests will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Copies or transcriptions of stenographic or electronic recordings not ordered to be transcribed by the Board will be furnished to the parties or other persons only on conditions prescribed by the Board, which may include the payment of the costs of copying or transcription. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) *Corrections.* Corrections to an official transcript will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

6101.25 Briefs and memoranda of law (Rule 25).

(a) *Form and content of briefs and memoranda of law.* Briefs and memoranda of law shall be typewritten on standard size 8½ by 11-inch paper. Otherwise, no particular form or organization is prescribed. Posthearing briefs should, at a minimum succinctly set forth (1) the facts of the case with citations to those places in the record where supporting evidence can be found and (2) argument with citations to supporting legal authorities. Memoranda

of law should generally adhere as closely as practicable to the form and content of briefs.

(b) *Submission and service of posthearing briefs.* Except as the Board may otherwise order, posthearing briefs shall be filed in an appeal 30 days after the Board's receipt of the transcript and in a protest 5 days after the Board's receipt of the transcript; reply briefs in an appeal, if filed, shall be filed 15 days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. The Board will serve each party's brief on the other party or parties; this is an exception to the general requirement for service of papers of 6101.3. In the event one party has elected a hearing and any other party has elected to submit its case on the record pursuant to 6101.11, the filing of record submissions in the form of briefs shall be governed by this section.

6101.26 Consolidation; separate hearings; separate determination of liability (Rule 26).

(a) *Consolidation.* When cases involving common questions of law or fact are pending, the Board may:

(1) Order a joint hearing of any or all of the matters at issue in the cases;

(2) Order the cases consolidated; or

(3) Make such other orders concerning the proceedings therein as are intended to avoid unnecessary costs or delay.

(b) *Separate hearings.* The Board may order a separate hearing of any case or cases or of any claims or issues or number of claims or issues therein. The Board may enter appropriate orders or decisions with respect to any claims or issues that are heard separately.

(c) *Separate determinations of liability.* The Board may:

(1) Limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings; and

(2) In its decision of an appeal, irrespective of whether there is evidence in the record concerning the amount of recovery, and whether or not a stipulation or order has been made, reserve determination of the amount of recovery for other proceedings. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, its decision on the question of the right to recover shall be final, subject to the provisions of 6101.31, 6101.32, and 6101.33

6101.27 Stay or suspension of proceedings; dismissals in lieu of stay or suspension (Rule 27).

(a) *Stay of proceedings to obtain contracting officer's decision.* The Board may in its discretion stay proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) *Suspension for other cause.* The Board may suspend proceedings in a case for good cause. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) *Dismissal in lieu of stay or suspension.* When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement. Such a dismissal may require reinstatement by a date certain or within a certain period of time after the occurrence of a specified event. If the order of dismissal does not otherwise provide, it will be subject to the provisions of 6101.28(a).

6101.28 Dismissals (Rule 28).

(a) *Voluntary dismissal.* (1) Upon motion of the appellant or by stipulation of the parties, a case may be dismissed by the Board. Unless otherwise stated in the appellant's motion or in the stipulation, the dismissal is without prejudice, except that such a dismissal operates as an adjudication upon the merits when requested by an appellant whose case based on or including the same claim has previously been dismissed by the Board.

(2) When a case has been dismissed without prejudice and has not been reinstated by the Board upon application of any party within three years of the date of dismissal, or within such shorter period as the Board may prescribe, the case shall be deemed to have been dismissed with prejudice as of the expiration of the applicable period.

(b) *Involuntary dismissal.* (1) Upon motion of the respondent or upon its own initiative, the Board may dismiss a case for failure to prosecute or comply with this part or any order of the Board.

(2) Unless the Board in its order for dismissal otherwise specifies, a dismissal under this paragraph (b), and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, shall be with prejudice and operate as an adjudication upon the merits.

6101.29 Decisions (Rule 29).

Except as provided in 6101.19(d) (protest suspension decision) and 6101.13 (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in 6101.12. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record. A decision on the merits of a protest will be issued within 45 days after the filing of the protest, excluding Saturdays, Sundays, and federal holidays, unless the Board's Chairman (Chief Administrative Judge) determines that the specific and unique circumstances of the protest require a longer period. In that event, the Board shall issue a decision within the longer period determined by the Board's Chairman.

6101.30 Full Board consideration (Rule 30).

A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when (a) it is necessary to secure or maintain uniformity of Board decisions, or (b) the matter to be referred is one of exceptional importance. The Chief Administrative Judge, on motion of any party, or at the request of any administrative judge of the Board, or on his or her own initiative, may order that a matter be considered by the full Board.

6101.31 Clerical mistakes (Rule 31).

Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe. During the pendency of an appeal from a Board decision, such mistakes may be so corrected before the certified list of record materials or the record itself is filed in the appellate tribunal, and thereafter while the appeal is pending may be so corrected only with leave of the appellate tribunal.

6101.32 Reconsideration; amendment of decisions; new hearings (Rule 32).

(a) *Grounds.* Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in 6101.33(a) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United

States. Reconsideration, or a new hearing, may be granted on all or any of the issues. On granting a motion for a new hearing, the Board may open the decision if one has been issued, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

(b) *Procedure.* Any motion under this section shall comply with the provisions of 6101.8 and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor.

If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) *Time for filing.* A motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed in an appeal or petition within 30 days and in a protest within 10 days after the date of receipt by the moving party of the decision or order. Not later than 30 days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

6101.33 Relief from decision or order (Rule 33).

(a) *Grounds.* The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) *Procedure.* Any motion under this section shall comply with the provisions of 6101.8 and 6101.32(b), and will be considered and ruled upon by the Board as provided in 6101.32(b).

(c) *Time for filing.* Any motion under this section shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 days, or, in protests and in appeals under the small claims procedure of 6101.13, no later than 30 days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under this section, the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) *Effect of motion.* A motion under this section does not affect the finality of a decision or suspend its operation.

6101.34 Harmless error (Rule 34).

No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or omitted to be done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

6101.35 Award of protest costs; amount of costs allowed (Rule 35).

(a) *Award of protest costs.* If the Board determines that a challenged agency action violates a statute or regulation or the conditions of any delegation of procurement authority under 40 U.S.C. 759, the Board may, in accordance with 31 U.S.C. 1304, award an appropriate interested party the costs of:

(1) Filing and pursuing the protest, including reasonable attorney's fees; and

(2) Bid and proposal preparation.

(b) *Amount of costs allowed.* Within 30 days after a decision sustaining a protest, an interested party may submit a motion, with supporting documentation and certification of accuracy requesting the Board to issue an order requiring respondent to pay the costs described in paragraph (a) of this section. Respondent will have 20 days after its filing to respond to the motion, and after any hearing requested by the moving party or respondent, the Board will then issue its determination. The award will be paid pursuant to 6101.36.

6101.36 Payment of Board awards (Rule 36).

(a) *Generally.* Payment of Board awards may be made in accordance with 31 U.S.C. 1304.

(b) *Conditions for payment.* Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) All parties must, by execution of a Certificate of Finality, waive their rights to relief under 6101.32 and 6101.33 and also their rights to appeal the decision of the Board to the United States Court of Appeals for the Federal Circuit; or

(2) The time for filing an appeal to the United States Court of Appeals for the Federal Circuit must expire.

(c) *Procedure for filing of certificates of finality.* Whenever the Board issues a decision or an order awarding a party any amount of money, it will attach to the copy of the decision sent to each party forms such as those illustrated in the Appendix to this part. The conditions for payment prescribed in paragraph (b)(1) of this section are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is executed on behalf of an appellant or appropriate interested party by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from the parties, the Board will forward a copy of each such certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the United States General Accounting Office to be certified for payment.

(d) *Procedure in absence of certificate of finality.* When one or more of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in paragraph (b)(2) of this section, any party to which an award has been made may file a written request that the Board forward its decision to the United States General Accounting Office for payment. Thereupon, the Board will forward a copy of that request and a certified copy of its decision to the United States General Accounting Office to be certified for payment.

(e) *Offer of award.* At any time after the filing of the case, the respondent may make an offer of award. If such offer is accepted by the appellant, the parties shall file with the Board a stipulation setting forth the terms of the offer and stating (1) that they will not seek reconsideration of, or relief from, the Board's decision and (2) that they will not appeal the decision. The Board will adopt the parties' stipulation by decision. The Board's decision under this paragraph is an adjudication of the case on the merits.

6101.37 Record on review of a Board decision (Rule 37).

(a) *Record on review.* When a party has filed a petition for review of a Board decision with the United States Court of Appeals for the Federal Circuit under 41 U.S.C. 607(g)(1) or under 40 U.S.C. 759(h)(6)(A), the record on review shall consist of the decision sought to be reviewed and the record before the Board as described in 6101.12. When the appellant has filed a notice of appeal of a decision in a pre-Contract Disputes Act case to the United States Claims Court under 41 U.S.C. 321–322, the record on appeal shall consist of the same materials.

(b) *Notice.* At the same time a party seeking review of a Board decision files a petition for review or a notice of appeal, that party shall file a copy of such petition with the Board.

(c) *Filing of certified list of record materials.* Promptly after service upon the Board of a copy of a petition for review of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the court upon the court's order during the pendency of the appeal.

(d) *Transmission of record or stipulated record in pre-Contract Disputes Act cases.* Within 40 days after the filing of the notice of appeal, the Office of the Clerk of the Board shall transmit to the Clerk of the United States Claims Court the entire record or such parts thereof as the parties may designate by stipulation filed with the Board, except that the Office of the Clerk of the Board shall retain documents and physical exhibits of unusual weight or bulk other than those designated by the parties. In lieu of filing the entire record or such parts thereof as the parties may designate, the Office of the Clerk of the Board may file a certified list of all materials constituting the record, or of such parts thereof as the parties may designate. The parties may also stipulate that neither the record nor a certified list be filed with the court. If none of the record or only parts thereof are filed with the court, the Board shall retain the parts not filed. Any stipulation of the parties shall be filed with the Board in sufficient time for the Office of the Clerk of the Board to assemble and file with the Clerk of the United States Claims Court those parts of the record designated by the stipulation, or a certified list of those parts, within the period specified herein. Upon request of the court or a party, the record or any part thereof retained by the Board shall be transmitted to the court notwithstanding any prior stipulation.

6101.38 Office of the Clerk of the Board (Rule 38).

(a) *Open for the filing of papers.* The Office of the Clerk shall receive all papers submitted for filing, and shall be open for this purpose daily, at a time set by the Chief Administrative Judge, except Saturdays, Sundays, and federal holidays.

(b) *Decisions and orders.* The Office of the Clerk shall keep in such form and manner as the Board may prescribe a correct copy of each decision or order of the Board subject to review and any other order or decision which the Board may direct to be kept.

(c) *Docket.* The Office of the Clerk shall keep a docket on which shall be entered the title and nature of all cases brought before the Board, the names of the persons filing such cases, the names of the attorneys or other persons appearing for the parties, and a record of all proceedings.

(d) *Copies and certification of papers.* Upon the request of any person, copies of papers and documents in a case may be provided by the Office of the Clerk. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in 6101.23(c), the Office of the Clerk will not release original records in its possession to any person.

6101.39 Seal of the Board (Rule 39).

The Seal of the Board shall be the Seal of the General Services Administration, engraved in the center of a circular piece of brass or steel, with the words "Board of Contract Appeals" on its outer margin. The Seal shall be the means of authentication of all records, subpoenas, and certificates issued by the Board.

6101.40 Forms (Rule 40).

The forms contained in the Appendix to this part are sufficient under this part and are intended to indicate the simplicity and brevity of statement which this part contemplates. The subpoena form is a required form, and it may not be altered.

Appendix: Form Nos. 1–5

Note.—The forms contained in the Appendix to this part will be published in the **Federal Register** after they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3501).

Dated: January 8, 1985.

Leonard J. Suchanek,

Chief Judge and Chairman, GSA Board of Contract Appeals.

[FR Doc. 85–878 Filed 1–10–85; 8:45 am]

BILLING CODE 4701–27–M

federal register

Friday
January 11, 1985

Part VI

Environmental Protection Agency

40 CFR Parts 35 and 130
Water Quality Planning and Management; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35 and 130

[OW-FRL-2633-3]

Water Quality Planning and Management

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) has revised the regulation governing the water quality planning and management activities outlined in sections 106, 205(g), 205(j), 208, 303 and 305 of the Clean Water Act (CWA). These are the activities that set State water quality goals and standards and which lead to regulatory, construction and other water quality management programs that accomplish the State's clean water goals. In response to criticisms that the existing regulation and resultant planning efforts were too complex and broad, EPA has simplified and shortened this regulation and has provided States and local governments with increased flexibility to operate their programs, while assuring that the basic requirements of the CWA are satisfied.

DATE: This rule is effective February 11, 1985.

ADDRESS: Comments received on the proposed regulation may be inspected at the Environmental Protection Agency, Room 945 East Tower, 401 M Street, S.W., (WH-586) Washington, D.C. 20460, (202) 382-7160.

FOR FURTHER INFORMATION CONTACT: Edward Richards, Chief, Water Quality Management Branch (202) 382-7160.

SUPPLEMENTARY INFORMATION: This regulation, 40 CFR Part 130, Water Quality Planning and Management, replaces 40 CFR Part 35, Subpart G, Grants for Water Quality Planning, Management and Implementation. Today's final regulation emphasizes the basic planning and management requirements of the CWA. The thrust of the CWA is to manage water quality. This regulation assures that State and local government programs lead to control measures. In developing the final regulation, EPA simplified and clarified program requirements to ensure that State, areawide, interstate, local and regional water quality agencies can implement individually effective water quality programs focused on priority issues and areas. Today's final regulation also recognizes that water quality agencies must properly manage and account for Federal funds and document improvements in water quality.

Approach: The Water Quality Management (WQM) program under sections 106, 205(g), 205(j), 208, 303, and 305 of the CWA sets out the planning and management activities to be undertaken by States and local governments to establish their water quality goals and standards and to develop programs which will meet those goals. Activities addressed by this regulation are discussed below.

Water quality standards (WQS)—WQS define the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States adopt WQS to protect public health or welfare, enhance the quality of water and serve the purposes of the Act. Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of treatment controls and strategies beyond the technology-based levels of treatment required by sections 301(b) and 306 of the Act.

Water quality monitoring—Water quality monitoring information utilizing chemical, physical and biological data for surface and ground-waters enables States and EPA to assure that environmental control decisions and priorities are based on sound scientific data. EPA encourages States to improve the quality of information available for water quality decisions and encourages the active involvment of State and local governments, dischargers and the public in developing cooperative monitoring efforts. Monitoring data provides information for adopting site-specific water quality standards; developing abatement and control requirements, including wasteload allocations/load allocations (WLAs/LAs) and total maximum daily loads (TMDLs); measuring water quality trends at the local, State and national level; and assessing WQM program performance.

Continuing Planning Process (CPP)—Section 303(e) of the Act requires each State to have a CPP. The CPP describes the processes used by the State in making water quality decisions. The regulation does not require a single CPP document but emphasizes the importance of effective processes which contribute to managing the implementation of water quality controls. Each State must review and update, as necessary, its CPP processes to meet its needs and the requirements of this regulation.

WQM plans—WQM plans provide a framework for managing water quality on an ongoing basis. WQM plans consist of initial plans completed by State or areawide water quality agencies in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans. WQM plans should identify point and nonpoint sources of pollution, consider alternative solutions and recommend control approaches and programs, including the financial and institutional measures, necessary for implementing the recommended solutions. In considering best management practices (BMPs) for the control of pollution from nonpoint sources, States should evaluate the costs of installing and implementing BMPs. It is expected that States will select and implement BMPs that have water quality, environmental and other benefits which exceed implementation costs. Continuing planning activities should focus on priority issues and water bodies. State work programs for CWA grant funds should reflect the priority activities identified in the State WQM plan.

To assure that WQM plans continue to provide effective frameworks for management, State and/or areawide plans shall be updated as needed to reflect changing water quality conditions, results of implementation activities, new requirements or to remove conditions in prior plan approvals. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan.

Total maximum daily loads (TMDLs)—TMDLs are important elements of WQM plans. Section 303(d) of the CWA requires each State to develop TMDLs for each water body that cannot meet water quality standards after point sources are controlled to prescribed technology-based levels. Once a TMDL has been completed, a wasteload allocation or load allocation (WLA/LA) for that TMDL forms the basis for permit limitations for individual dischargers.

The TMDL process assigns margins of safety, distributes treatment burdens and considers nonpoint source controls. TMDLs may be established using a pollutant by pollutant approach based on mathematical modeling or a biomonitoring approach using bioassays or biosurveys. In many cases, EPA believes both approaches will be needed. EPA has determined that under proper technical conditions TMDLs can be calculated for all pollutants (see 43 FR 60662, December 28, 1978).

Although section 303(d)(2) of the Act does not specifically mention either WLAs or LAs, it is impossible to evaluate whether a TMDL is technically sound and whether it will be able to achieve standards without evaluating component WLAs and LAs and how these loads were calculated. Thus, it is necessary for EPA to review and approve or disapprove a TMDL in conjunction with component WLAs and LAs.

Section 303(d)(1) of the Act requires each State to "identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) are not stringent enough to implement any water quality standard applicable to such waters," to establish TMDLs for these waters, and to submit them to EPA for approval. A strict interpretation of this section would mean that States would have to establish TMDLs for all waters where best practicable control technology currently available (BPT) and second treatment are not adequate to meet applicable WQS. However, those waters include a number of waters where other legally required pollution controls are sufficient to ensure compliance with WQS.

Such examples include best available technology economically achievable (BAT), new source performance standards, pretreatment standards, State or local effluent limitations more stringent that BPT and secondary treatment (under authority reserved by section 510 of the Act), and other required pollution controls, including best management practices (BMP) for nonpoint sources required by local, State, or Federal authority. Under such circumstances, establishing TMDLs would not contribute to accomplishing the goals of the Act and could draw resources from areas where there are water quality problems. Therefore, EPA believes it best serves the purposes of the Act to require States to establish TMDLs and submit them to EPA for approval only where such TMDLs are needed to "bridge the gap" between existing effluent limitations, other pollution controls and WQS. TMDLs would be estimated, rather than established, for those waters not covered by this interpretation, in accordance with section 303(d)(3) of the Act. States must continue to submit all TMDLs and WLAs/LAs established for water quality limited segments to EPA for review and approval.

EPA expects States to assign priorities as required by section 303(d) of the Act to water quality limited segments that need new or updated TMDLs and to develop TMDLs and WLSs/LAs according to CWA requirements and individual water quality goals. Such priorities must consider uses of waters and the severity of the pollution. Priorities may also take into account such factors as the need to refine National Pollution Discharge Elimination System (NPDES) permit limits and pending construction grant decisions.

Section 305(b) report—Section 305(b) of the Act requires States to report biennially to EPA on the status of the quality of their waters and the programs underway or needed to attain water quality goals. States may also include ground-water status and quality in the 305(b) report. The 305(b) report serves as the State's primary problem assessment and directs continuing planning and implementation activities. This report must include recommendations on current and future program activities needed to address problems in priority areas. The reports also form the basis for the National Water Quality Inventory Report to Congress. EPA is expecting the States to use water quality measures derived through the "States Evaluation of Progress under Clean Water Program (STEP)" project and additional information noted in the STEP project recommendation as the baseline in their 305(b) reports to improve the comparability of the reports for formulating the Inventory. The additional information requested in the recommendation includes basin/segment summaries and toxic information and other items agreed upon between the State and EPA Region. The final regulation affords States the opportunity to utilize the section 305(b) report to meet the reporting requirements of section 205(j).

Ground-water—The proposed regulation allowed States to address ground-water issues as part of their WQM process. Since proposing this regulation, EPA developed a ground-water protection strategy which recognizes that States are primarily responsible for comprehensive protection of ground-water and encourages development of State ground-water strategies and ground-water plans and programs. This regulation, however, does not require a mandatory State ground-water plan or program and does not require development of a ground-water plan element. States may develop a WQM plan element for ground-water if they so choose. Ground-water plans and programs developed as an element of the WQM plan may be administered in accordance with the processes for plan development, approval and update provided in this regulation. Because today's regulation imposes no new ground-water requirements, it was not necessary to propose the more detailed ground-water references prior to today's final promulgation. However, EPA requests comments on the inclusion of ground-water planning (other than nonpoint source planning) in the water quality management process outlined in the final rule.

WQM funding—Funding to States to support these activities is available under sections 106, 205(j) and 205(g) of the Act. Statutory eligibilities are described in "Financial Assistance for Continuing Environmental Programs," 40 CFR Part 35, Subpart A. Section 106 funding is available for a broad range of activities, while eligibilities under 205(j) and non-construction management eligibilities under 205(g) are limited to a narrower range of activities.

Annual work program—The work program is the State's key annual management document for performance of grant activities and is more than an agreement for the transfer of grant funds between EPA and the States. The work program describes a State's geographic priorities and activities for the coming year and should reflect the problem assessment and priorities of the 305(b) report and WQM plan. The work program outlines expected accomplishments in all program areas, including permits and enforcement, and is the basis of EPA overview and State accountability for grant funds. EPA encourages States to develop one work program for 106, 205(j) and nonconstruction management 205(g) funds and encourages areawide, local and regional planning agencies to participate actively in the development of work program activities related to the use of section 205(j) funds.

Response to Comments

Our responses to the 71 written comments received on specific features of the proposed regulation follow.

1. *Priority water bodies and priorities*—The proposed regulation did not contain a definition of the term priority water bodies. Eight commenters requested clarification of the term. Some had confused priority water bodies with the priority ranking of water quality limited segments needing TMSLs, or asked how priority water body lists have impacts on construction grants, permit and enforcement activities.

The term "priority water bodies" is a management concept originated by EPA to encourage States to focus resources

and control activities in areas where water quality decisions are needed. States are encouraged to identify priority water bodies—those waters for which regulatory or water quality control decisions are needed. State priority water body lists should provide an overall agenda of needed control actions and may include waters not meeting standards, as well as waters where controls are needed to maintain uses. Other priority setting mechanisms, such as the construction grants list and the list of water quality limited segments requiring TMDL analysis, should be consistent with, but will probably not be identical to, the priority water body list.

Since the CWA does not require States to develop a general priority water body list, this regulation does not require States to develop a list of priority water bodies. We do expect, though, that States will find it useful to develop a priority water body list as the primary determinant for establishing State pollution control priorities in response to their most significant water quality problems. States may use this list to coordinate construction grants, planning and standards, monitoring, permit and enforcement program activities.

The priority ranking of segments needing TMDL calculations required under section 303(d) of the Act and section 130.5(b)(1) of this regulation is not the same as the priority water body list. The section 303(d) ranking reflects the priority with which the States intend to complete TMDLs for specified segments.

2. *Definitions*—One commenter recommended that the definition of TMDL be revised to allow States to establish TMDLs for specific pollutants, expressed as a limitation averaged over an other than daily time period appropriate to the specific pollutant and environmental conditions. We are aware of the need for water quality-based effluent limitations which provide appropriate limits on the average mass of pollutant discharged per unit time period. Therefore, TMDLs and water quality-based effluent limitations may be expressed in terms of an appropriate averaging period, such as weekly or monthly, as long as compliance with applicable WQS is assured.

One commenter suggested that the definition of TMDL was not clear because referring to "total loadings of pollutants" implies that a TMDL should cover several pollutants. We revised the definition to clarify that a single TMDL covers only one specific pollutant or one property of pollution, for example, acidity, biochemical oxygen demand, radioactivity, or toxicity. Thus, more than one TMDL may be required for a segment where there may be violations of more than one criterion in the applicable WQS.

A number of commenters recommended that the regulation define what is meant by WLA. We have included definitions of WLA, which applies to point sources and LA, which applies to other sources.

One commenter suggested that the regulation should define the term "navigable waters". To avoid confusion, we have substituted the term "waters of the United States," which is the Act's definition of "navigable waters" and which is further defined in other regulations (e.g., 40 CFR 122.2).

One commenter suggested that the definition of BMP be made consistent with the definition in the previous WQM regulation since that definition is now generally accepted and used. We have revised the definition accordingly.

3. *Water Quality Standards (WQS)*—One commenter suggested that the fact that water quality standards are the State's water quality goals be reflected in the language of the regulation. We have revised the regulation to state that WQS are the water quality goals of a water body, or portion thereof, as well as the legal basis for control decisions required by the CWA.

Other commenters raised questions beyond the purview of the Water Quality Planning and Management regulation related to setting and attaining interstate water quality standards, site-specific criteria development and the public's role in use classification. We refer commenters to the final Water Quality Standards regulation, 40 CFR Part 131, 48 FR 51400, November 8, 1983, for answers to these questions.

4. *Water monitoring*—Two commenters noted that data collected through cooperative monitoring programs or data submitted by industry must be checked "carefully and thoroughly" for accuracy.

We emphasize that data collection efforts must be based on agreed upon scientific standards and protocols and that State water quality agencies should be convinced of the validity and accuracy of any data used to implement the water quality program. We recognize that there may be disagreements over data collection and analytical methods as well as interpretation of results. It is important that all parties agree in advance on procedures and methods to be employed in data collection and analysis.

One commenter questioned what strategy was referred to in section 130.4(b). The language of this paragraph was revised to clarify that no separate monitoring strategy is required by the regulation and that the monitoring activities referred to are the State's ongoing monitoring activities required by section 106(e)(1) of the Act and described in the annual State work program.

5. *Continuing planning process*—Two commenters suggested that the regulation prescribe the delegation of CPP functions to designated areawide agencies and emphasize joint State and area-wide development of CPPs. We have not made this change since section 303(e)(2) of the CWA expressly requires States to develop a CPP. We do recommend, though, that as CPPs are developed, State agencies consult with areawide agencies to be sure that updated CPPs accurately reflect water quality conditions and existing institutional responsibilities for water quality management. EPA will evaluate the effectiveness of CPP procedures during its regular annual review of State WQM programs.

6. *Water quality management plans*—One commenter noted that the format of the WQM plan section seemed to de-emphasize the significance attributed to the effects of nonpoint sources. This was not the intent. We have rewritten the WQM plan section to state that plans should continue to develop, recommend and guide implementation of solutions to nonpoint source pollution problems.

Two commenters noted that annual certification of WQM plans by the Governor or the Governor's designee is not necessarily productive and that the annual certification requirement is excessive. The final regulation requires an as needed, rather than an annual plan certification requirement. These updates need only to involve elements of the plan that require modification due to changes in water quality conditions, new requirements or proposed control measures. The Governor or Governor's designee must certify that any updates are consistent with the remainder of the plan. EPA will consider the last certified and approved plan elements to be in effect.

One commenter noted that the procedure for designation of management agencies in the proposed regulation departed from requirements in the previous regulation that designated management agencies (DMA) be recommended in WQM plans and certified by the Governor. We have revised the regulation to clarify that DMAs should continue to be recommended in WQM plans and certified by the Governor or his designee

in accordance with plan recommendations.

One commenter objected to inclusion in the plan of the identification of municipal and industrial waste treatment needs, establishment of construction priorities and schedules of completion of these treatment works. We have not changed this provision because section 208(b)(2)(A) of the Act requires this information in WQM plans and we believe that this provision is an important component of the plan.

One commenter asked why the proposed regulation included instructions to both areawide and State water quality agencies. This comment appears to be based on the assumption that all areawide WQM plans have been incorporated into State WQM plans. We recognize that some areawide WQM plans will be or are already incorporated into State WQM plans. This, however, is not always the case, and we think that State and areawide agencies are able to determine the most individually effective institutional planning arrangements. In some cases this may result in a consolidated State WQM plan, while in others separate State and areawide plans may be maintained.

We emphasize the flexibility of State and areawide WQM agencies to develop effective planning and management relationships and stress the importance and utility of continued areawide and local planning efforts. It is, however, still the responsibility of the State to assure that State and areawide plans together include all necessary elements for all geographic areas of the State.

One commenter was concerned that the annual WQM plan certification requirement could result in delays in using new or updated wasteload allocations to issue permits because the WLAs would only be incorporated once a year. We believe that the approach taken by the regulation will avoid delays in using new or updated wasteload allocations. Under the statute, when EPA approves a TMDL submitted to it under section 303(d), the TMDL is to be automatically incorporated into the State's WQM plan. The regulation treats this submittal and approval as the equivalent of a WQM plan update certification and approval. Consequently, approved TMDL's will be immediately effective for NPDES permit and WQM plan consistency determinations as required by section 208(e).

One commenter noted that regulatory nonpoint source programs are not prohibited if States determine they are an effective way of dealing with a nonpoint source pollution. We agree. The regulation does not prohibit the use of State regulatory programs for nonpoint source control.

One commenter noted that the proposed regulations allowed Regional Administrators discretionary authority over self-designation applications by Indian tribal organizations and also provided for prior EPA consultation with the State before approving such tribal applications. The commenter thought this was contrary to the principles of tribal self-determination and tribal management. EPA supports tribal self-determination and does not agree that the proposed regulation is contrary to this principle in intent or effect. The regulation simply provides for consultation with States on the specific questions of State assertions of jurisdiction over Indian lands. Where the Regional Administrator, following such consultation, makes a determination as a matter of Federal law that a State lacks jurisdiction over Indian lands, he or she is authorized to approve subsequent tribal self-designation applications in that State. The approval of tribal self-designation applications is fundamentally a Federal matter in which EPA affirms the authority of Indian tribal organizations to conduct water quality management planning on reservation areas as long as the requirements of the CWA are met.

Two commenters noted that Indian tribal water quality efforts would be greatly improved by the provision of direct EPA funding for these efforts. We connot do so because the lack of direct EPA funding for Indian tribal organizations stems from the statutory funding eligibilities of sections 106 and 205(j) of the Act.

7. *Total maximum daily loads*—The proposed regulation included alternatives for meeting the statutory TMDL review and approval requirements. Based upon the comments received, we have concluded that the most efficient way to meet the requirements of section 303(d) of the Act the EPA review and approve all TMDLs is to tailor the EPA level of review to what is reasonable and appropriate. The majority of commenters supported this approach. Thus, where a State has clearly described its TMDL process in its CPP and EPA has approved the process, EPA may conduct an in-depth review of a sample of the State's WLAa/LAs and TMSLs to determine how well the State is implementing its approved process. States are still required though, to submit all WLAs/LAs and TMDLs established for water quality limited segments to EPA for review and approval in accordance with section 303(d). This sample review, in conjunction with a less detailed review of all other WLAs/LAs and TMDLs submitted to EPA by the State, will provide a reasonable basis for approving or disapproving individual TMDLs. This detailed sample may include TMDLs supporting major construction grants and other major control measures.

One commenter recommended limiting EPA review of TMDLs to approval of the process for establishing them and to cases where States disagreed on appropriate TMDLs/WLAs/LAs for interstate waters. We have not incorporated this suggestion since section 303(d)(2) of the Act requires EPA to approve or disapprove all TMDLs.

One commenter opposed the alternative under which EPA would review individual WLAs/LAs and TMDLs when they were submitted with permit applications or construction grant applications. The commenter believed WLAs/LAs should be reviewed by EPA as early in the WQM process as possible. We agree that it is preferable for States to establish WLAs/LAs and TMDLs for their waters in advance of NPDES permit or construction grant decisions. However, if a State has many water bodies where new WLAs/LAs and TMDLs are needed, it may have to submit WLAs/LAs to EPA with the permit or construction grant applications.

One commenter pointed out that disapproval of a State's TMDLs without public review or opportunity for defense by the State is not desirable. If a State anticipates that a WLA/LA project will be either critical or controversial, we urge the State to involve the EPA Region and the public in these decisions throughout the WLA/LA and TMDL development process, rather than waiting until State approved WLAs/LAs and TMDLs are submitted to EPA for approval.

One commenter suggested that since TMDLs must be incorporated into WQM plans which must be approved by EPA, a separate EPA review of TMDLs is not necessary. We do not agree since section 303(d)(2) of the Act provides that after TMDLs are approved by EPA, they shall be incorporated into WQM plans. While the Act's requirements may result in two separate reviews, a combined review of proposed TMDLs and related WQM plan elements would be advantageous.

Two commenters advocated establishing pollutant concentration limits. One of them pointed out that a discharger could dump its entire TMDL into a stream within a short period,

perhaps minutes or one hour. Such an action could have a devastating effect on aquatic life. He suggested establishing concentration limits in addition to TMDLs. We agree. If spike discharges are expected to present a water quality problem, permits should impose both mass per day WLA limits and concentration limits on the discharger. EPA regulations, 40 CFR Part 122.63(f)(2), already provide for limiting effluents in terms of pollutant concentrations and this is a common practice in the NPDES permit process.

One commenter suggested it would be helpful to note in the preamble that section 302(b) of the Act provides for adjusting water quality based effluent limitations, based on lack of available technologies or unreasonable econmic or social costs. The adjustment procedure in section 302(b) of the Act only applies to effluent limitations established pursuant to section 302 and cannot delay the application of any effluent limitation established under section 301 of the Act. Section 301(b)(1)(C) of the Act requires achievement of any limitation, more stringent than a technology based one necessary to meet water quality standards, including water quality based effluent limitations resulting from a WLA/LA. Such limitations are not affected by section 302.

One commenter suggested that it is not a wise use of scarce resources to establish daily thermal loads in areas where no thermal dischargers are proposed or likely. We agree that States should established TMDLs according to actual needs and priorities. If total maximum daily thermal loads are not needed to meet water quality standards for certain areas, States should focus their resources on other areas where such loads are needed.

One commenter found the TMDL concept appropriate for very short segments with a minimum number of dischargers, but not for longer segments made more complex by multiple dischargers. We think it is clear from the Act that TMDLs are appropriate wherever effluent limitations are necessary to meet water quality standards, regardless of a segment's length or its number of dischargers. To the extent practicable, segment boundaries should be established to facilitate developing WLAs/LAs and TMDLs.

Two commenters believed that EPA should develop standard methods for biomonitoring prior to allowing their use by the States for establishing TMDLs. EPA is currently revising existing methodologies and developing a range of additional acceptable methodologies for biomonitoring. In the meantime, States are encouraged to use available biomonitoring methodologies.

8. *Water quality report*—One commenter suggested that the information called for under §§ 130.8(b)(2), 130.8(b)(3) and 130.8(b)(4) of the regulation would more appropriately be included in the WQM plan rather than the water quality report required under section 305(b) of the CWA. Section 305(b)(1)(A–E) of the CWA, however, requires the information specified in the referenced sections of the regulation. We also note that the regulation deletes the requirement for a duplicative problem assessment for WQM plans and emphasizes the role of the section 305(b) report as the primary water quality problem assessment document under the Act. The WQM plan may reference the problem assessment in the 305(b) report or may contain additional information which supplements the 305(b) report.

One commenter asked why the 305(b) report certification could not satisfy the annual section 205(j) CWA report requirement. This question indicates some confusion as to the intent of section 130.8(c) of the regulation. We have changed the regulation to clarify that the annual section 205(j) CWA report requirement can be satisfied by the biennial section 305(b) report, supplemented in the off year by a State certification that the most recently submitted section 305(b) report reflects current water quality conditions. If the most recently submitted section 305(b) report no longer portrays current water quality conditions, then the State need update only those portions which are no longer accurate. States may wish to submit the water quality report or certification with the annual work program.

Finally, language has been added to the regulation encouraging States to include information on the status and quality of ground-water in the 305(b) report.

9. *Resources*—Three commenters suggested that the regulation should reflect the scarcity of Federal and State resources available to conduct the activities specified in the regulation. We believe it does. Given that available resources for all the partners in the water quality process are limited, we encourage State, areawide, interstate, local and private sources to focus their activities on priority issues and water bodies.

One commenter requested that the specific types of funding EPA is considering to assist the States in the water quality planning process be identified. Available funds are those appropriated annually under sections 106, 205(g) and 205(j) of the CWA.

Specific funding eligibilities and grant administrative requirements for these funds are contained in the 40 CFR Part 35, Subpart A, Financial Assistance for Continuing Environmental Programs regulation.

10. *Public Participation*—Seven commenters noted that the proposal did not stress public involvement in the water quality management process. The water quality management process remains subject to the provisions of the 40 CFR Part 25 Public Participation regulation.

11. *Program Summary*—A number of commenters noted that the proposed regulation did not adequately explain how the components of the WQM program related to one another. Without these relationships it was difficult to understand how the various activities interact to result in a focused, effective WQM program. We have responded to this comment by adding a new section outlining the significance of the annual work program and language to the 305(b) and WQM plan sections stressing their relationship to the annual work program. Finally, we have put the sections of the regulation into a more logical sequence so that the discussion follows the WQM process.

Regulation Development

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an adverse effect on the economy or large numbers of individuals or businesses. The final rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers 2040–0071, 2040–0049 and 2010–0004.

Regulatory Flexibility Act

EPA has determined that these revisions to 40 CFR Part 35, Subpart G, will not have a significant impact on a substantial number of small entities. These revisions will reduce administrative burdens on Federal, State and local governments.

Since EPA's water quality planning and management program deals primarily with State water quality

agencies, it does not have a direct effect on small entities.

List of Subjects

40 CFR Part 35

Air pollution control, Grant programs—environmental protection, Indians, Pesticides and pests, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 130

Water pollution control, Environmental Protection.

Dated: January 4, 1985.

William D. Ruckelshaus,

Administrator.

PART 35—[AMENDED]

For the reasons set out in the preamble, Part 35 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority cite for Part 35 reads as follows:

Authority: Sec. 501(a), Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

§§ 35.1500, 35.1502, 35.1503, 35.1505, 35.1507, 35.1509—35.1509-3, 35.1511—35.1511-2, 35.1519—35.1519-3, 35.1521—35.1521-6, 35.1523—35.1523-6, 35.1525, 35.1527, 35.1529, 35.1531—35.1531-3 and 35.1533—35.1533-4 [Removed]

2. Part 35 is amended by removing §§ 35.1500, 35.1502, 35.1503, 35.1505, 35.1507, 35.1509—35.1509-3, 35.1511—35.1511-2, 35.1519—35.1519-3, 35.1521—35.1521-6, 35.1523—35.1523-6, 35.1525, 35.1527, 35.1529, 35.1531—35.1531-3 and 35.1533—35.1533-4.

3. 40 CFR Chapter I is amended by adding a new Part 130, reading as follows:

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

Sec.

130.0 Program summary and purpose.
130.1 Applicability.
130.2 Definitions.
130.3 Water quality standards.
130.4 Water quality monitoring.
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Authority: 33 U.S.C. 1251 *et seq.*

§ 130.0 Program summary and purpose.

(a) This subpart establishes policies and program requirements for water quality planning, management and implementation under sections 106, 205(j), non-construction management 205(g), 208, 303 and 305 of the Clean Water Act. The Water Quality Management (WQM) process described in the Act and in this regulation provides the authority for a consistent national approach for maintaining, improving and protecting water quality while allowing States to implement the most effective individual programs. The process is implemented jointly by EPA, the States, interstate agencies, and areawide, local and regional planning organizations. This regulation explains the requirements of the Act, describes the relationships between the several components of the WQM process and outlines the roles of the major participants in the process. The components of the WQM process are discussed below.

(b) Water quality standards (WQS) are the State's goals for individual water bodies and provide the legal basis for control decisions under the Act. Water quality monitoring activities provide the chemical, physical and biological data needed to determine the present quality of a State's waters and to identify the sources of pollutants in those waters. The primary assessment of the quality of a State's water is contained in its biennial Report to Congress required by section 305(b) of the Act.

(c) This report and other assessments of water quality are used in the State's WQM plans to identify priority water quality problems. These plans also contain the results of the State's analyses and management decisions which are necessary to control specific sources of pollution. The plans recommend control measures and designated management agencies (DMAs) to attain the goals established in the State's water quality standards.

(d) These control measures are implemented by issuing permits, building publicly-owned treatment works (POTWs), instituting best management practices for nonpoint sources of pollution and other means. After control measures are in place, the State evaluates the extent of the resulting improvements in water quality, conducts additional data gathering and planning to determine needed modifications in control measures and again institutes control measures.

(e) This process is a dynamic one, in which requirements and emphases vary over time. At present, States have completed WQM plans which are generally comprehensive in geographic and programmatic scope. Technology based controls are being implemented for most point sources of pollution. However, WQS have not been attained in many water bodies and are threatened in others.

(f) Present continuing planning requirements serve to identify these critical water bodies, develop plans for achieving higher levels of abatement and specify additional control measures. Consequently, this regulation reflects a programmatic emphasis on concentrating planning and abatement activities on priority water quality issues and geographic areas. EPA will focus its grant funds on activities designed to address these priorities. Annual work programs negotiated between EPA and State and interstate agencies will reflect this emphasis.

§ 130.1 Applicability.

(a) This subpart applies to all State, interstate, areawide and regional and local CWA water quality planning and management activities undertaken on or after February 11, 1985 including all updates and continuing certifications for approved Water Quality Management (WQM) plans developed under sections 208 and 303 of the Act.

(b) Planning and management activities undertaken prior to February 11, 1985 are governed by the requirements of the regulations in effect at the time of the last grant award.

§ 130.2 Definitions.

(a) *The Act.* The Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

(b) *Pollution.* The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(c) *Water quality standards (WQS).* Provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the Act.

(d) *Load or Loading.* An amount of matter or thermal energy that is introduced into a receiving water; to introduce matter or thermal energy into a receiving water. Loading may be either man-caused (pollutant loading) or natural (natural background loading).

(e) *Loading capacity.* The greatest amount of loading that a water can receive without violating water quality standards.

(f) *Load allocation (LA).* The portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best

estimates of the loading, which may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished.

(g) *Wasteload allocation (WLA).* The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(h) *Total maximum daily load (TMDL).* The sum of the individual WLAs for point sources and LAs for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(i) *Water quality limited segment.* Any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by sections 301(b) and 306 of the Act.

(j) *Water quality management (WQM) plan.* A State or areawide waste treatment management plan developed and updated in accordance with the provisions of sections 205(j), 208 and 303 of the Act and this regulation.

(k) *Areawide agency.* An agency designated under section 208 of the Act, which has responsibilities for WQM planning within a specified area of a State.

(l) *Best Management Practice (BMP).* Methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

(m) *Designated management agency (DMA).* An agency identified by a WQM plan and designated by the Governor to implement specific control recommendations.

§ 130.3 Water quality standards.

A water qualify standard (WQS) defines the water quality goals of a water body, or portion thereof, by designating the use or uses to be made of the water and by setting criteria necessary to protect the uses. States and EPA adopt WQS to protect public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act (CWA). "Serve the purposes of Act" (as defined in section 101(a)(2) and 303(c) of the Act) means that WQS should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water and take into consideration their use and value for public water supplies, propagation of fish, shellfish, wildlife, recreation in and on the water, and agricultural, industrial and other purposes including navigation. Such standards serve the dual purposes of establishing the water quality goals for a specific water body and serving as the regulatory basis for establishment of water quality-based treatment controls and strategies beyond the technology-based level of treatment required by sections 301(b) and 306 of the Act. States shall review and revise WQS in accordance with applicable regulations and, as appropriate, update their Water Quality Management (WQM) plans to reflect such revisions. Specific WQS requirements are found in 40 CFR Part 131.

§ 130.4 Water quality monitoring.

(a) In accordance with section 106(e)(1), States must establish appropriate monitoring methods and procedures (including biological monitoring) necessary to compile and analyze data on the quality of waters of the United States and, to the extent practicable, ground-waters.

(b) The State's water monitoring program shall include collection and analysis of physical, chemical and biological data and quality assurance and control programs to assure scientifically valid data. The uses of these data include determining abatement and control priorities; developing and reviewing water quality standards, total maximum daily loads, wasteload allocations and load allocations; assessing compliance with National Pollutant Discharge Elimination System (NPDES) permits by dischargers; reporting information to the public through the section 305(b) report and reviewing site-specific monitoring efforts.

§ 130.5 Continuing planning process.

(a) *General.* Each State shall establish and maintain a continuing planning process (CPP) as described under section 303[e](3](A–H) of the Act. Each State is responsible for managing its water quality program to implement the processes specified in the continuing planning process. EPA is responsible for periodically reviewing the adequacy of the State's CPP.

(b) *Content.* The State may determine the format of its CPP as long as the mininum requirements of the CWA and this regulation are met. The following processes must be described in each State CPP, and the State may include other processes at its discretion.

(1) The process for developing effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306 and section 307, and at least stringent as any requirements contained in applicable water quality standards in effect under authority of section 303 of the Act.

(2) The process for incorporating elements of any applicable areawide waste treatment plans under section 208, and applicable basin plans under section 209 of the Act.

(3) The process for developing total maximum daily loads (TMDLs) and individual water quality based effluent limitations for pollutants in accordance with section 303(d) of the Act and § 130.7(a) of this regulation.

(4) The process for updating and maintaining Water Quality Management (WQM) plans, including schedules for revision.

(5) The process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

(6) The process for establishing and assuring adequate implementation of new or revised water quality standards, including schedules of compliance, under section 303(c) of the Act.

(7) The process for assuring adequate controls over the disposition of all residual waste from any water treatment processing.

(8) The process for developing an inventory and ranking, in order of priority of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302 of the Act.

(9) The process for determining the priority of permit issuance.

(c) *Regional Administrator review.* The Regional Administrator shall review

approved State CPPs from time to time to ensure that the planning processes are consistent with the Act and this regulation. The Regional Administrator shall not approve any permit program under Title IV of the Act for any State which does not have an approved continuing planning process.

§ 130.6 Water quality management plans.

(a) *Water quality management (WQM) plans.* WQM plans consist of initial plans produced in accordance with sections 208 and 303(e) of the Act and certified and approved updates to those plans. Continuing water quality planning shall be based upon WQM plans and water quality problems identified in the latest 305(b) reports. State water quality planning should focus annually on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Water quality planning directed at the removal of conditions placed on previously certified and approved WQM plans should focus on removal of conditions which will lead to control decisions.

(b) *Use of WQM plans.* WQM plans are used to direct implementation. WQM plans draw upon the water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures, including the financial and institutional measures necessary for implementing recommended solutions. State annual work programs shall be based upon the priority issues identified in the State WQM plan.

(c) *WQM plan elements.* Sections 205(j), 208 and 303 of the Act specify water quality planning requirements. The following plan elements shall be included in the WQM plan or referenced as part of the WQM plan if contained in separate documents when they are needed to address water quality problems.

(1) *Total maximum daily loads.* TMDLs in accordance with sections 303(d) and 303(e)(3)(C) of the Act and § 130.7 of this Part.

(2) *Effluent limitations.* Effluent limitations including water quality based effluent limitations and schedules of compliance in accordance with section 303(e)(3)(A) of the Act and § 130.5 of this Part.

(3) *Municipal and industrial waste treatment.* Identification of anticipated municipal and industrial waste treatment works, including facilities for treatment of stormwater-induced combined sewer overflows; programs to provide necessary financial arrangements for such works; establishment of construction priorities and schedules for initiation and completion of such treatment works including an identification of open space and recreation opportunities from improved water quality in accordance with section 208(b)(2) (A) and (B) of the Act.

(4) *Nonpoint source management and control.*

(i) The plan shall describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses. Economic, institutional, and technical factors shall be considered in a continuing process of identifying control needs and evaluating and modifying the BMPs as necessary to achieve water quality goals.

(ii) Regulatory programs shall be identified where they are determined to be necessary by the State to attain or maintain an approved water use or where non-regulatory approaches are inappropriate in accomplishing that objective.

(iii) BMPs shall be identified for the nonpoint sources identified in section 208(b)(2)(F)–(K) of the Act and other nonpoint sources as follows:

(A) *Residual waste.* Identification of a process to control the disposition of all residual waste in the area which could affect water quality in accordance with section 208(b)(2)(J) of the Act.

(B) *Land disposal.* Identification of a process to control the disposal of pollutants on land or in subsurface excavations to protect ground and surface water quality in accordance with section 208(b)(2)(K) of the Act.

(C) *Agricultural and silvicultural.* Identification of procedures to control agricultural and silvicultural sources of pollution in accordance with section 208(b)(2)(F) of the Act.

(D) *Mines.* Identification of procedures to control mine-related sources of pollution in accordance with section 208(b)(2)(G) of the Act.

(E) *Construction.* Identification of procedures to control construction related sources of pollution in accordance with section 208(b)(2)(H) of the Act.

(F) *Saltwater intrusion.* Identification of procedures to control saltwater intrusion in accordance with section 208(b)(2)(I) of the Act.

(G) *Urban stormwater.* Identification of BMPs for urban stormwater control to achieve water quality goals and fiscal analysis of the necessary capital and operations and maintenance expenditures in accordance with section 208(b)(2)(A) of the Act.

(iv) The nonpoint source plan elements outlined in § 130.6(c)(4)(iii)(A)(G) of this regulation shall be the basis of water quality activities implemented through agreements or memoranda of understanding between EPA and other departments, agencies or instrumentalities of the United States in accordance with section 304(k) of the Act.

(5) *Management agencies.* Identification of agencies necessary to carry out the plan and provision for adequate authority for intergovernmental cooperation in accordance with sections 208(b)(2)(D) and 303(e)(3)(E) of the Act. Management agencies must demonstrate the legal, institutional, managerial and financial capability and specific activities necessary to carry out their responsibilities in accordance with section 208(c)(2)(A–I) of the Act.

(6) *Implementation measures.* Identification of implementation measures necessary to carry out the plan, including financing, the time needed to carry out the plan, and the economic, social and environmental impact of carrying out the plan in accordance with section 208(b)(2)(E).

(7) *Dredge or fill program.* Identification and development of programs for the control of dredge or fill material in accordance with section 208(b)(4)(B) of the Act.

(8) *Basin plans.* Identification of any relationship to applicable basin plans developed under section 209 of the Act.

(9) *Ground water.* Identification and development of programs for control of ground-water pollution including the provisions of section 208(b)(2)(K) of the Act. States are not required to develop ground-water WQM plan elements beyond the requirements of section 208(b)(2)(K) of the Act, but may develop a ground-water plan element if they determine it is necessary to address a ground-water quality problem. If a State chooses to develop a ground-water plan element, it should describe the essentials of a State program and should include, but is not limited to:

(i) Overall goals, policies and legislative authorities for protection of ground-water.

(ii) Monitoring and resource assessment programs in accordance with section 106(e)(1) of the Act.

(iii) Programs to control sources of contamination of ground-water including Federal programs delegated to the State and additional programs authorized in State statutes.

(iv) Procedures for coordination of ground-water protection programs among State agencies and with local and Federal agencies.

(v) Procedures for program management and administration including provision of program financing, training and technical assistance, public participation, and emergency management.

(d) *Planning on Indian lands.* (1) To the maximum extent feasible, States and areawide agencies shall coordinate with Indian tribal organizations within and adjacent to their planning areas in the development of water quality management (WQM) plans. Where appropriate, the Regional Administrator shall work with the State and Indian tribal organization to ensure development of WQM planning on Indian lands. The WQM planning area must include all lands within the reservation regardless of ownership.

(2) Where the Regional Administrator, after consultation with the State, determines that a State lacks authority to carry out effective WQM planning and implementation on Indian lands, the Regional Administrator may approve a self-designation application by an Indian tribal organization under section 208(a)(4) of the Act if the Indian tribal organization has the authority and capability to undertake effective WQM planning. After receipt of such a designation, the Indian tribal organization becomes responsible for developing and maintaining a WQM plan in accordance with sections 208 and 303 of the Act and section 130.6 of this Part.

(e) *Update and certification.* State and/or areawide agency WQM plans shall be updated as needed to reflect changing water quality conditions, results of implementation actions, new requirements or to remove conditions in prior conditional or partial plan approvals. Regional Administrators may require that State WQM plans be updated as needed. State Continuing Planning Processes (CPPs) shall specify the process and schedule used to revise WQM plans. The State shall ensure that State and areawide WQM plans together include all necessary plan elements and that such plans are consistent with one another. The Governor or the Governor's designee shall certify by letter to the Regional Administrator for EPA approval that WQM plan updates are consistent with all other parts of the plan. The certification may be contained in the annual State work program.

(f) *Consistency.* Construction grant and permit decisions must be made in accordance with certified and approved WQM plans as described in § 130.12(a) and 130.12(b).

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

(a) *General.* The process for identifying water quality limited segments still requiring wasteload allocations, load allocations and total maximum daily loads (WLAs/LAs and TMDLs), setting priorities for developing these loads; establishing these loads for segments identified, including water quality monitoring, modeling, data analysis, calculation methods, and list of pollutants to be regulated; submitting the State's list of segments identified, priority ranking, and loads established (WLAs/LAs/TMDLs) to EPA for approval; incorporating the approved loads into the State's WQM plans and NPDES permits; and involving the public, affected dischargers, designated areawide agencies, and local governments in this process shall be clearly described in the State Continuing Planning Process (CPP).

(b) Identification and priority setting for water quality limited segments still requiring WLAs/LAs and TMDLs.

(1) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs within its boundaries for which:

(i) technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) more stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or Federal authority (e.g., law, regulation, or treaty); and

(iii) other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority

are not stringent enough to implement any water quality standard (WQS) applicable to such waters. The State shall, establish a priority ranking for such water quality limited segments still requiring WLAs/LAs and TMDLs, taking into account the severity of the pollution and the uses to be made of such waters and shall identify the pollutants causing or expected to cause violations of the water quality standards.

(2) Each State shall identify those water quality limited segments still requiring WLAs/LAs and TMDLs or parts thereof within its boundaries for which controls on thermal discharges under section 301 or State or local requirements are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish and wildlife.

(c) Development of TMDLs and individual water quality based effluent limitations.

(1) Each State shall establish WLAs/LAs and TMDLs for the water quality limited segments identified in paragraph (b)(1) of this section, and in accordance with the priority ranking. For pollutants other than heat, WLAs/LAs and TMDLs shall be established at levels necessary to attain and maintain the applicable narrative and numerical WQS with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. Determinations of WLAs/LAs and TMDLs shall take into account critical conditions for stream flow, loading, and water quality parameters.

(i) TMDLs may be established using a pollutant-by-pollutant or biomonitoring approach. In many cases both techniques may be needed. Site-specific information should be used wherever possible.

(ii) TMDLs shall be established for all pollutants preventing or expected to prevent attainment of water quality standards as identified pursuant to paragraph (b)(1) of this section. Calculations to establish WLAs/LAs and TMDLs shall be subject to public review as defined in the State CPP.

(2) Each State shall estimate for the water quality limited segments still requiring WLAs/LAs and TMDLs identified in paragraph (b)(2) of this section, the total maximum daily thermal load which cannot be exceeded in order to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in the identified waters or parts thereof.

(d) *Submission and EPA approval.* (1) Each State shall submit to the Regional Administrator from time to time for approval the listing of water quality limited segments requiring WLAs/LAs and TMDLs identified under paragraph (b) of this section. All WLAs/LAs and TMDLs established under paragraph (c)

for water quality limited segments shall continue to be submitted to EPA for review and approval. Schedules for submission of WLAs/LAs and TMDLs shall be determined by the Regional Administrator and the State.

The Regional Administrator shall either approve or disapprove such listing and loadings not later than 30 days after the date of submission. If the Regional Administrator approves such listing and loadings, the State shall incorporate them into its current WQM plan. If the Regional Administrator disapproves such listing and loadings, he shall, not later than 30 days after the date of such disapproval, identify such waters in such State and establish such loads for such waters as determined necessary to implement applicable WQS. The Regional Administrator shall promptly issue a public notice seeking comment on such listing and loadings. After considering public comment and making any revisions he deems appropriate, the Regional Administrator shall transmit the listing and loads to the State, which shall incorporate them into its current WQM plan.

(e) For the specific purpose of developing information and as resources allow, each State shall identify all segments within its boundaries which it has not identified under paragraph (b) of this section and estimate for such waters the TMDLs with seasonal variations and margins of safety, for those pollutants which the Regional Administrator identifies under section 304(a)(2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife. However, there is no requirement for such loads to be submitted to EPA for approval, and establishing WLAs/LAs and TMDLs for those waters identified in paragraph (b) of this section shall be given higher priority.

§ 130.8 Water quality report.

(a) Each State shall prepare and submit biennially to the Regional Administrator a water quality report in accordance with section 305(b) of the Act. The water quality report serves as the primary assessment of State water quality. Based upon the water quality data and problems identified in the 305(b) report, States develop water quality management (WQM) plan elements to help direct all subsequent control activities. Water quality problems identified in the 305(b) report should be analyzed through water quality management planning leading to the development of alternative controls and procedures for problems identified in the latest 305(b) report. States may also use the 305(b) report to describe ground-water quality and to guide development of ground-water plans and programs. Water quality problems identified in the 305(b) report should be emphasized and reflected in the State's WQM plan and annual work program under sections 106 and 205(j) of the Clean Water Act.

(b) Each such report shall include but is not limited to the following:

(1) A description of the water quality of all waters of the United States and the extent to which the quality of waters provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water.

(2) An estimate of the extent to which CWA control programs have improved water quality or will improve water quality for the purposes of section 1 above and recommendations for future actions necessary and identifications of waters needing action.

(3) An estimate of the environmental, economic and social costs and benefits needed to achieve the objectives of the CWA and an estimate of the date of such achievement.

(4) A description of the nature and extent of nonpoint source pollution and recommendations of programs needed to control each category of nonpoint sources, including an estimate of implementation costs.

(c) States may include a description of the nature and extent of ground-water pollution and recommendations of State plans or programs needed to maintain or improve ground-water quality.

(d) In the years in which it is prepared the biennial section 305(b) report satisfies the requirement for the annual water quality report under section 205(j). In years when the 305(b) report is not required, the State may satisfy the annual section 205(j) report requirement by certifying that the most recently submitted section 305(b) report is current or by supplying an update of the sections of the most recently submitted section 305(b) report which require updating.

§ 130.9 Designation and de-designation.

(a) Designation—Areawide planning agencies may be designated by the Governor in accordance with section 208(a) (2) and (3) of the Act or may self-designate in accordance with section 208(a)(4) of the Act. Such designations shall subject to EPA approval in accordance with section 208(a)(7) of the Act.

(b) De-designation—The Governor may modify or withdraw the planning designation of a designated planning agency other than an Indian tribal organization self-designated § 130.6(c)(2) if:

(1) The areawide agency requests such cancellation; or

(2) the areawide agency fails to meet its planning requirements as specified in grant agreements, contracts or memoranda of understanding; or

(3) the areawide agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(c) Impact of de-designation—Once an areawide planning agency's designation has been withdrawn the State agency shall assume direct responsibility for continued water quality planning and oversight of implementation within the area.

(d) Designated management agencies (DMA)—In accordance with section 208(c)(1) of the Act, management agencies shall be designated by the Governor in consultation with the designated planning agency. EPA shall approve such designations unless the DMA lacks the legal, financial and managerial authority required under section 208(c)(2) of the Act. Designated management agencies shall carry out responsibilities specified in Water Quality Management (WQM) plans. Areawide planning agencies shall monitor DMA activities in their area and recommend necessary plan changes during the WQM plan update. Where there is no designated areawide planning agency, States shall monitor DMA activities and make any necessary changes during the WQM plan update.

§ 130.10 State submittals to EPA.

(a) The following must be submitted regularly by the States to EPA:

(1) The section 305(b) report, in FY 84 and every two years thereafter, and the annual section 205(j) certification or update of the 305(b) water quality report; (Approved by OMB under the control number 2040–0071)

(2) The annual State work program(s) under sections 106 and 205(j) of the Act; and (Approved by OMB under the control number 2010–0004)

(3) Revisions or additions to water quality standards (WQS) (303(c)). (Approved by OMB under 2040–0049)

(b) The Act also requires that each State initially submit to EPA and revise as necessary the following:

(1) Continuing planning process (CPP) (303(e));

(2) Identification and a ranking by priority of water quality limited segments (303(d));

(3) Total maximum daily loads (TMDLs) (303(d)); and

(4) Water quality management (WQM) plan and certified and approved WQM plan updates (208, 303(e)). (Subsection (b)(1)(4) approved by OMB under the control number 2010-0004).

(c) The form and content of required State submittals to EPA may be tailored to reflect the organization and needs of the State, as long as the requirements and purposes of the Act, this Part and, where applicable, 40 CFR Parts 29, 30, 33 and 35, Subparts A and J are met. The need for revision and schedule of submittals shall be agreed to annually with EPA as the States annual work program is developed.

§ 130.11 Program management.

(a) State agencies may apply for grants under sections 106, 205(j) and 205(g) to carry out water quality planning and management activities. Interstate agencies may apply for grants under section 106 to carry out water quality planning and management activities. Local or regional planning organizations may request 106 and 205(j) funds from a State for planning and management activities. Grant administrative requirements for these funds appear in 40 CFR Parts 25, 29, 30, 33 and 35, Subparts A and J.

(b) Grants under section 106 may be used to fund a wide range of activities, including but not limited to assessments of water quality, revision of water quality standards (WQS), development of alternative approaches to control pollution, implementation and enforcement of control measures and development or implementation of ground water programs. Grants under section 205(j) may be used to fund water quality management (WQM) planning activities but may not be used to fund implementation of control measures (see Part 35, Subpart A). Section 205(g) funds are used primarily to manage the wastewater treatment works construction grants program pursuant to the provisions of 40 CFR 35, Subpart J. A State may also use part of the 205(g) funds to administer approved permit programs under sections 402 and 404, to administer a statewide waste treatment management program under section 208(b)(4) and to manage waste treatment construction grants for small communities.

(c) Grant work programs for water quality planning and management shall describe geographic and functional priorities for use of grant funds in a manner which will facilitate EPA review of the grant application and subsequent evaluation of work accomplished with the grant funds. A State's 305(b) Report, WQM plan and other water quality assessments shall identify the State's priority water quality problems and areas. The WQM plan shall contain an analysis of alternative control measures and recommendations to control specific problems. Work programs shall specify the activities to be carried out during the period of the grant; the cost of specific activities; the outputs, for example, permits issued, intensive surveys, wasteload allocations, to be produced by each activity; and where applicable, schedules indicating when activities are to be completed.

(d) State work programs under sections 106, 205(j) and 205(g) shall be coordinated in a manner which indicates the funding from these grants dedicated to major functions, such as permitting, enforcement, monitoring, planning and standards, nonpoint source implementation, management of construction grants, operation and maintenance of treatment works, ground-water, emergency response and program management. States shall also describe how the activities funded by these grants are used in a coordinated manner to address the priority water quality problems identified in the State's water quality assessment under section 305(b).

(e) EPA, States, areawide agencies, interstate agencies, local and Regional governments, and designated management agencies (DMAs) are joint participants in the water pollution control program. States may enter into contractual arrangements or intergovernmental agreements with other agencies concerning the performance of water quality planning and management tasks. Such arrangements shall reflect the capabilities of the respective agencies and shall efficiently utilize available funds and funding eligibilities to meet Federal requirements commensurate with State and local priorities. State work programs under section 205(j) shall be developed jointly with local, Regional and other comprehensive planning organizations.

§ 130.12 Coordination with other programs.

(a) Relationship to the National Pollutant Discharge Elimination System (NPDES) program. In accordance with section 208(e) of the Act, no NPDES permit may be issued which is in conflict with an approved Water Quality Management (WQM) plan. Where a State has assumed responsibility for the administration of the permit program under section 402, it shall assure consistency with the WQM plan.

(b) Relationship to the municipal construction grants program. In accordance with sections 205(j), 216 and 303(e)(3)(H) of the Act, each State shall develop a system for setting priorities for funding construction of municipal wastewater treatment facilities under section 201 of the Act. The State, or the agency to which the State has delegated WQM planning functions, shall review each facility plan in its area for consistency with the approved WQM plan. Under section 208(d) of the Act, after a waste treatment management agency has been designated and a WQM plan approved, section 201 construction grant funds may be awarded only to those agencies for construction of treatment works in conformity with the approved WQM plan.

(c) Relationship to Federal activities—Each department, agency or instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility or engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants shall comply with all Federal, State, interstate and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and extent as any non-governmental entity in accordance with section 313 of the CWA.

[FR Doc. 85-865 Filed 1-10-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
January 11, 1985

Part VII

Department of Commerce

International Trade Administration

Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition); Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Revision of Guidelines.

SUMMARY: This revision of the guidelines is issued under Title III of the Export Trading Company Act of 1982, Pub. L. 97-290. The guidelines discuss the eligibility requirements, certification standards and analytical approach which the Departments of Commerce and Justice will utilize in determining whether to issue an export trade certificate of review. The holder of a certificate and its members will have specific protections from liability under federal and state antitrust laws. Potential applicants can refer to these guidelines for assistance in determining whether to apply for a certificate.

Comments: Interested persons are invited to submit written comments at any time, with five copies, to: Office of the Assistant General Counsel for Export Trading Companies, Department of Commerce, Room 5882, Washington, D.C. 20230.

Comments should refer to this notice by the title "Revision of Guidelines for the Issuance of Export Trade Certificates of Review."

FOR FURTHER INFORMATION CONTACT:

Eleanor Roberts Lewis, Assistant General Counsel for Trade Development, (202) 377-0937;

or

James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131, U.S. Department of Commerce, Washington, D.C. 20230

These are not toll free numbers.

SUPPLEMENTAL INFORMATION: This revision of the guidelines is intended to assist persons who are considering whether to apply for an export trade certificate of review under Title III of the Export Trading Company Act of 1982. Initial guidelines were published in the Federal Register on April 13, 1983 (48 FR 15937). Based on the experience with the certification process since it began on June 9, 1983, the Departments of Commerce and Justice are revising the initial guidelines. They plan to make other revisions and additions to the guidelines (including additional examples) as they gain more experience with the certification process.

Comments on the guidelines are welcome at any time.

Guidelines for the Issuance of Export Trade Certificates of Review

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I. Introduction

The Commerce Department, with the concurrence of the Justice Department, is issuing these guidelines under Title III of the Export Trading Company Act, "Export Trade Certificates of Review" ("Title III"), "[t]o promote greater certainty regarding the application of the antitrust laws to export trade."[1]

These guidelines set forth the factors a firm should consider in deciding whether to apply for a certificate of review, the purpose of the certification procedure, the protection conferred by the certificate of review, and the persons and conduct eligible to receive a certificate. In addition, the guidelines include a discussion of the four certification standards in Title III, the application of those standards to specific kinds of export conduct and advice about the application process.

The Export Trading Company Act of 1982 [2] ("the ETC Act" or "the Act") is intended to increase U.S. exports of goods and services primarily by removing two impediments: (1) Restrictions on bank investment and certain export financing, and (2) the uncertainty regarding the application of U.S. antitrust laws to export activity. To remove these impediments, the ETC Act makes several changes to applicable banking and antitrust laws. These changes are reflected in four titles, which, for the most part, are independent of each other.

Title I establishes in the Department of Commerce an office to promote the formation of export trade associations and export trading companies ("ETCs").[3] No particular structure is required of an ETC. An ETC is an entity that links U.S. producers of goods and services with foreign markets. Under Title I, the Office of Export Trading Company Affairs provides counseling about Title III and the Act generally, and has initiated the Contact Facilitation Service, a program matching

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[1] Pub. L. No. 97-290, Title III section 307, 96 Stat. 1244 (codified at 15 U.S.C. 4017). Section 311(b) of the Act defines "antitrust laws" as "the antitrust laws, as such term is defined in the first section of the Clayton Act (15 U.S.C. 12), and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law." The antitrust laws, properly understood and applied, would prohibit few export activities. Congress, however, concluded that the perception of the uncertain application of U.S. antitrust laws to joint export activities and of the risk of costly, time consuming antitrust litigation could deter lawful export activity. To address this perception, Congress enacted a regulatory certification procedure under Title III and a statutory clarification of two antitrust laws under Title IV of the Act.

For a discussion of the application of U.S. antitrust laws to foreign commerce, see Antitrust Division, U.S. Department of Justice, *Antitrust Guide for International Operations* (1977); J. Atwood & K. Brewster, *Antitrust and American Business Abroad* (2d ed. 1981 and Supp.); W. Fugate, *Foreign Commerce and the Antitrust Laws* (1982); B. Hawk, *United States, Common Market and International Antitrust: A comparative Guide* (1979 and Supp.).

[2] Pub. L. No. 97-290, 96 Stat. 1233-1247.

[3] Export Trading Company Act of 1982, Pub. L. 97-290, Title I, 96 Stat. 1233 (codified at 15 U.S.C. section 4001-4003). To help exporters understand how to use the ETC Act, the U.S. Department of Commerce's International Trade Administration recently published *The Export Trading Company Guidebook* (Mar. 1984). Interested persons can obtain it and other current materials from one of the International Trade Administration's 48 district offices or from the Office of Export Trading Company Affairs, Room 5618, U.S. Dep't of Commerce, Washington, D.C. 20230.

suppliers of products and services with ETCs and other export intermediaries.

Title II permits eligible banking entities to acquire, subject to certain limitations, up to 100 percent of the stock of an ETC.[4] It also improves exporters' access to working capital financing by establishing a loan guarantee program at Eximbank. The program may cover up to 90% of the principal and interest for loans that would not be made commercially without the guarantee and that are for specific export-related activities.[5] Finally, Title II increases exporters' access to acceptance financing by expanding the amount of bankers' acceptances that a federally regulated bank may have outstanding at any one time.[6]

To reduce antitrust uncertainty, Congress enacted a regulatory certification procedure under Title III and a statutory clarification under Title IV. On the one hand, Title III, without amending the antitrust laws, creates a certification process which enables an exporter to receive an advance determination about its specified export conduct and which confers significant protection for such specified conduct from federal and state government antitrust suits.[7] A Title III certificate of review also reduces an exporter's private action liability from treble to single damages for the certified conduct. Title IV, on the other hand, directly amends the Sherman and Federal Trade Commission Acts to clarify how they apply to export commerce.[8]

[4] Bank Export Services Act, Pub. L. 97-290, Title II, sections 201-205 (codified at 12 U.S.C. 1843). Federal Reserve Board regulations implementing this portion of Title II are found at 48 FR 26445, 56933, 56938 (June 8, Dec. 27, 1983) (codified at 12 CFR Parts 211, 265 (1984)).

[5] Pub. L. 97-290, Title II, section 206 (codified at 12 U.S.C. 635a-4). For further information on this and other Eximbank programs contact Eximbank's Small Business Hot Line (800) 424-5201 or Office of Exporter Credits and Guarantees (202) 566-8819 or write to Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, D.C. 20571 for its brochure, *Eximbank Programs and Small Business*.

[6] Pub. L. 97-290, Title II, section 207 (codified at 12 U.S.C. 372 (7)). Federal Reserve Board regulations implementing this portion of Title II are found at 48 FR 5535, 28973, 57107 (Feb. 7, June 24, and Dec. 28, 1983) (codified at 12 CFR Parts 250, 265 (1984)).

[7] Pub. L. 97-290, Title III (codified at 15 U.S.C. 4011-4021). Interim regulations implementing Title III are found at 48 FR 10595-10604 (Mar. 11, 1983) (codified at 15 CFR Part 325 (1984)).

[8] Foreign Trade Antitrust Improvements Act of 1982, Pub. L. 97-290, Title IV (codified at 15 U.S.C. 6a, 45(a)(3)). For some recent, useful analyses of Titles III and IV, *see* Zarin, *The Export Trading Company Act: Reducing Antitrust Uncertainty in Export Trade*, 17 J. Int'l L. & Econ. 297 (1983); Ryan, *The Export Trading Company Act of 1982: antitrust panacea, placebo or pitfall?* [1983] The Antitrust Bull. 501.

II. Factors to Consider in Deciding Whether To Seek a Certificate of Review Under Title III

Persons involved in export trade who are deciding whether to apply for a certificate of review under Title III should first identify and assess the antitrust risks associated with their proposed export conduct. To focus this assessment, it is helpful to consider, for example, whether a competitor, a customer, or a state government might bring a lawsuit asserting that the proposed export conduct violates U.S. antitrust law.

Next, a potential applicant should review the costs and benefits of applying for Title III certification. The two most significant benefits of a certificate of review are virtual immunity from government antitrust suits and procedural advantages in private suits. The certificate holder and the members identified in the certificate, have virtual immunuity from federal and state government civil and criminal antitrust or unfair competition suits.[9] The only exception to this immunity is that the Justice Department may bring an action against the certificate holder to enjoin conduct "threatening clear and irreparable harm to the national interest." [10] This virtual immunity extends to the export conduct specified in the certificate and carried out during the effective period of the certificate in compliance with its terms and conditions. The procedural advantages that a certificate of review provides to the certificate holder and its members in private actions by persons who claim to have been injured by the certified conduct are: (1) A reduction in liability from treble to single damages, (2) a shorter statute of limitations for bringing an action, (3) a rebuttable presumption that the certified conduct is permissible, and (4) the recovery by a prevailing certificate holder of the costs of defending the suit, including a reasonable attorney's fee.

This virtual immunity and the procedural advantages provided by Title III can reduce antitrust risks and uncertainty by deterring lawsuits of dubious merit. Moreover, a certificate of review can remove the uncertainty and risks associated with "gray-area" conduct by giving an exporter an opportunity to confirm the often qualified conclusions of counsel that particular export conduct is not likely to violate the antitrust laws. The government's determination not to grant a certificate is subject to judicial review and the agencies must give reasons for the denial; therefore, a firm can obtain a definite answer about "gray-area" conduct. If a certificate is not granted, neither the denial nor the reasons for it are admissible in any administrative or judicial proceeding in support of any claim under the antitrust laws. Finally, Title III protections can apply not only to the actual operation of an export entity but also to its planning activities.

The primary costs of applying for a certificate of review are time, money, and disclosure of confidential information. An applicant will spend time and money in: (1) Preparing the application and responses to supplemental questions, if any, (2) discussing the proposed conduct and the form of the certificate with the government after the application has been filed, and (3) carrying out post-certification requirements, such as submission of annual reports. Certain of these costs can be significantly reduced by taking advantage of the pre-application counseling provided by the Office of Export Trading Company Affairs, as described in Part VI.

Another potential cost is the time required to obtain a certificate. The minimum time to obtain a certificate is 30 days from publication of a summary of the application in the **Federal Register**. The more typical time period is 90 days from the date the application is accepted by the Department of Commerce. This 90 day period may be extended (1) if the government requests additional information, or (2) if the applicant and the government agree that more time is needed (up to an additional 30 days). If special business circumstances require prompt decision or change quickly and frequently, Title III certification may not be appropriate; however, it is always worth discussing possible expedited review with the Office of Export Trading Company Affairs in such circumstances.[11]

The possible disclosure of confidential business information to the federal government, to competitors or to foreign enforcement officials is another potential cost of Title III certification. The application form for a certificate of review requires some disclosure to the

[9] Pub. L. 97-290, section 306 (a) and (b) (codified at 15 U.S.C. 4016 (a) and (b).

[10] *Id.* section 306(b)(5).

[11] The Commerce and Justice Departments will consider requests for expedited review in light of an applicant's showing that it has a special need for prompt decision. Such requests should include an explanation of why expedited treatment is needed, including a statement of all relevant facts and circumstances (such as bidding deadlines or other circumstances beyond the control of the applicant) that require the applicant to act in less than 90 days and that have a significant impact on the applicant's export trade. *See* 15 CFR 325.7 (1984).

federal government of information about the applicant's business plans, sales, and markets. In addition, the government may ask supplemental questions about other confidential information, such as an applicant's contracts, suppliers, customers, or joint venture arrangements. Title III and its implementing regulations, however, place significant restrictions on the disclosure of confidential information. Any information submitted in connection with an application is exempt from disclosure under the Freedom of Information Act. Also, the government is prohibited, except in rare instances, from disclosing confidential commercial or financial information that would cause harm to the person that submitted it. Even though summaries of the application and certificate are published in the **Federal Register** and although the entire certificate is available to the public in the Department of Commerce Freedom of Information Act Reading Room, government officials and early applicants have been able to draft these publicly available materials so that no confidential or proprietary information need be disclosed.

While a Title III certificate of review provides significant protections, potential applicants should be aware of its limitations. The certificate provides no protection for persons not identified as an applicant or members in the certificate. Moreover, conduct that falls outside the scope of the certificate or violates its terms remains fully subject to criminal sanctions, as well as both private and governmental civil enforcement suits under U.S. antitrust laws. Furthermore, a certificate obtained by fraud is void from the beginning and, thus, provides no protection. Finally, applicants should be aware that other nations have antitrust or competition laws with which they must comply. The certificate does not confer immunity from these foreign laws.

Persons planning to engage in export activities may also consider other options to Title III certification. Each of the options discussed below differs from Title III in its scope of protection and degree of government scrutiny and should, therefore, be evaluated carefully to ensure that the exporter chooses the option most appropriate to its particular situation.

Title IV of the ETC Act reduces antitrust uncertainty by directly amending the Sherman and Federal Trade Commission Acts to clarify that these statutes apply to export conduct only if it has a "direct, substantial, and reasonably foreseeable" effect on the domestic or import commerce of the United States or on the export commerce of a U.S. person. Thus, if export conduct has an anticompetitive effect only on foreign markets, it is not subject to U.S. antitrust laws. For some persons involved in export trade, reliance on Title IV will provide sufficient antitrust certainty without the need to apply for a Title III certificate of review. Title IV, however, does not provide the advantages of Title III, such as limitations on damages and award of attorney's fees, which should deter frivolous suits. Moreover, a number of export trade fact situations may permit colorable claims of jurisdiction and thus perhaps result in litigation expense. Similarly, a number of export trade fact situations may pass the jurisdictional threshold of Title IV even though no antitrust liability is ultimately found. After weighing the costs and benefits, a binding administrative determination by the government with the protections under Title III may be more appropriate for some exporters than relying solely on the statutory clarification provided by Title IV.

Another option is the antitrust exemption provided by the Webb-Pomerene ActG512 for associations engaged "solely" in export trade. Because one of the main reasons for enacting Title III was the uncertainty of protection under the Webb-Pomerene Act, exporters should be aware of the following differences between the two statutes: (1) The Webb-Pomerene Act covers the export of goods only, while Title III also covers services, including the licensing of technology. (2) The Webb-Pomerene Act requires that the entity registered with the Federal Trade Commission be an association, whereas Title III permits any person or entity to apply, including a single company. (3) Only persons engaged solely in exporting are eligible to become a Webb-Pomerene association. Title III does not limit the domestic or import activities of the certificate holder, although the certificate itself protects only export conduct. (4) Unlike Title III, the Webb-Pomerene Act does not provide an antitrust preclearance process for an exporter's proposed activities. The Webb Act operates only as a defense to an antitrust suit that has been brought—a function that Title III also performs. (5) Unlike Title III, the Webb-Pomerene Act does not limit awards in private suits to single, rather than treble, damages. (6) Unlike Title III, the Webb-Pomerene Act does not allow payment of attorney's fees to a prevailing defendant. Generally, exporters will be able to receive greater protection for their export conduct through Title III certification than they will under the Webb-Pomerene Act.

Another option for reducing antitrust uncertainty is to ask the Justice Department or the Federal Trade Commission for a written statement of its present enforcement intentions concerning proposed conduct, including export plans.[13] Such a statement of intention, unlike Title III certification, is not legally binding; however, the Department of Justice has never brought suit challenging conduct granted a favorable business review.[14] And unlike Title III, the Justice Department's "business review letters" or the FTC's "advisory opinions" do not preclude private suits or state enforcement actions, although conduct granted a favorable business review by the Department of Justice has never been successfully challenged in court in a private action.

A final option to reduce antitrust uncertainty for companies in certain economic sectors, such as agricultural producers, is statutory immunity from antitrust enforcement. But often the extent of this immunity in export trade is not altogether clear.[15] For example, the Capper-Volstead Act,[16] which provides an antitrust exemption to associations of agricultural producers engaged in the joint-marketing of their members' products in "interstate and foreign commerce," may not immunize agreements between those associations and nonmembers, such as foreign distributors.[17]

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[13] 15 U.S.C. 61–65. For a discussion of the Webb-Pomerene exemption, *see, e.g.*, 1 J. Atwood & K. Brewster, *supra* note 1, at section 9.35–.46; 2 *id.* at sections 17.09 and 17.23–17.27.

[13] *See* 28CFR 50.6 (1983) and 16 CFR 1.1–.4 (1983).

[14] *See* 2 J. Atwood & K. Brewster, *supra* note 1 sections 14.04–14.06.

[15] *See e.g.*, 1 *id.* at §§ 3.20–3.28; B. Hawk, *supra* note 1, at 8–15; W. Fugate, *supra* note 1, at §§ 13.6–.12. For a more detailed discussion of antitrust exemptions, *see* U.S. Dep't of Justice, *Report of the Task Group on Antitrust Immunities* (Jan. 1977) *reprinted in Antitrust Exemptions and Immunities: Hearing before Subcomm. on Monopolies and Commercial Law of the House Judiciary Comm.*, 95th Cong., 1st Sess. 1680 (1977). Some of these exemptions have been amended since the publication of this hearing. *See, e.g.*, Airline Deregulation Act of 1978, Pub. L. 95–504, 92 Stat. 1705 (codified at 49 U.S.C. 1301 *et seq.*) Shipping Act of 1984, Pub. L. 98–237, 98 Stat. 67 (to be codified at 46 U.S.C. app. 1701–1720). For a discussion of these amendments, *see* J. von Kalinowski, *Antitrust Laws and Trade Regulation* §§ 44.01–59.08 (1983 and Supp.); P. Areeda & D. Turner, *Antitrust Law* section 2C (1980 and Supp.).

[16] 7 U.S.C. 291–292.

[17] *See e.g.*, United States v. Maryland & Virginia Milk Prod. Ass'n, Inc., 362 U.S. 458 (1960); Pacific Coast Agricultural Export Ass'n v. Sunkist Growers, Inc., 526 F.2d 1196, 1202 (9th Cir. 1975), *cert. denied*, 425 U.S. 959 (1976).

III. Eligibility Criteria

A. Eligible Applicants

Anyone who is a "person" within the meaning of that term in Title III is eligible to apply for a certificate.

[T]he term "person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any state or of the United States; a state or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any state or of the United States; or any association or combination, by contract or other arrangement, between or among such persons.[18]

Under this definition, any individual or legal entity that is either a resident or citizen of the United States can apply for a certificate under Title III.

Unlike Title II, the "Bank Export Services Act," which applies only to bank affiliated ETCs[19] and unlike the Web-Pomerene Act, which applies only to associations engaged solely in export trade, Title III permits any U.S. exporter to apply for and be issued a certificate of review, regardless of its legal form and range of activities. An entity calling itself an ETC, however, is not required to obtain a Title III export trade certificate of review. Early applicants have included export intermediaries, manufacturers of their subsidiaries, combinations of U.S. distributors, an association of agricultural producers, an agricultural cooperative and a state port authority.[20] Under Title III, a single U.S. company can apply for certification, even though it may not qualify as an ETC under Title II and its export trade is only a small part of its total business operations.

A foreign company cannot seek a certificate because it is not a "person." U.S. subsidiaries of foreign companies, however, are eligible. Moreover, foreign companies can receive the protection of a certificate by becoming "members" of eligible applicants.[21]

B. Conduct Eligible For Certification

Under Title III, certificates of review may be issued only with respect to "export trade, export trade activities and methods of operation."[22] Thus, as a threshold matter, the agencies will determine whether the conduct proposed for certification falls within these definitions before considering whether the conduct meets the four certification standards of Section 303(a) of Title III. Conduct that constitutes export trade, export trade activities or methods of operation is eligible for certification and will be reviewed for its consistency with those standards. Conduct that does not constitute export trade, export trade activities or methods of operation is not eligible for certification.

1. *Export Trade.* Title III defines "export trade" to be "trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation."[23] And, unlike Title II of the ETC Act, Title III does not require that the goods or services for export must be produced in the United States.

Even though the goods or services have not yet been exported by the applicant or its members, they may fall within the definition of "export trade," and, therefore, be eligible for certification, if they are "in the course of being exported." For example, the sale of a product within the United States, if the product is to be exported, may in some circumstances constitute "export trade." However, the production in the United States of goods will not ordinarily be considered as "export trade," even if the goods produced are destined for export. Nothing in Title III prevents an export venture from engaging in manufacturing activities or any other activities, such as import or domestic trade. Such activities would not, however, be eligible for certification, and would remain subject to the normal application of the antitrust laws.

In order to qualify as "export trade," goods or services must ultimately be exported "from the United States or any territory thereof to any foreign nation."[24] Although it will not often be an issue, questions could be raised as to when goods and services are exported "from the United States or any territory thereof." For example, fish that are caught by U.S. flag vessels within U.S. waters and sold at sea would be considered to be exported from the United States.[25]

The definition of "export trade" does not require that the goods or services to be exported be produced in the United States. For example, sales abroad of foreign-made products that were imported into the United States and then exported to a foreign country qualify as "export trade," as do the sales abroad of goods assembled in a United States foreign trade zone from imported parts.

In addition to goods and services that are to be exported, the definition of "export trade" as "trade or commerce" in such goods and services includes export trade services. Export trade services are services that are provided exclusively to facilitate the export of goods or services. Examples of export trade services include the sale and shipment of goods or services abroad, advertising in the export market, international market research, product research and design exclusively for export, joint trade promotion, financing, communication and processing of

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[18] 15 U.S.C. 4021(5).

[19] Section 203(3)(F) of the Bank Export Services Act defines "export trading company" as "a company which does business under the laws of the United States or any state, which is exclusively engaged in activities related to international trade, and which is organized and operated principally for purposes of exporting goods or services produced in the United States or for purposes of facilitating the exportation of goods or services produced in the United States by unaffiliated persons by providing one or more export trade services." In addition, the definition of "export trading company" in Title I does not limit who may apply for a Title III certificate of review. *See* 15 U.S.C. 4002(a)(4); H.R. Rep. No. 924, 97th Cong., 2d Sess. 18 (1982).

[20] A list of the applicants that have received certificates and copies of the certificates are available in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001–B, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. In addition, a list of all applications that are currently being processed can be obtained from the Office of Export Trading Company Affairs, Room 5618, U.S. Department of Commerce.

[21] " 'Member' means, with respect to an applicant, a partner, shareholder or participant who is seeking protection under the certificate. This applies to partners in partnerships or joint ventures; shareholders of corporations; or participants in associations, cooperatives, or other forms of profit or nonprofit organizations or combinations, by contract or other arrangement." 15 CFR 325.2(k) (1984).

[22] 15 U.S.C. 4013(a).

[23] 15 U.S.C. 4021(1). "Export trade activities" and "Methods of operation" are, in turn, defined in terms of "Export trade." Section 311(2) of Title III defines "services" as: "intangible economic output, including, but not limited to—

(A) Business, repair and amusement services,

(B) Management, legal, engineering, architectural, and other professional services, and

(C) Financial, insurance, transportation, informational and any other data-based services, and communication services."

Patents, trademarks, know-how and technology are intangible economic outputs. Therefore, licenses of patents, trademarks, know-how and technology to persons for use in foreign countries are within the definition of "export trade" and will be eligible for certification.

[24] 15 U.S.C. 4021(1).

[25] One situation which presented this issue was specifically addressed by the Conference Report: "Specific consideration was given to the status, under this and other definitions in the bill, of fish harvested by U.S. flag vessels within the United States fish conservation zone and sold at sea or in a foreign port without having otherwise been landed or processed in the United States. The committee of conference agreed that fish so harvested and sold should be regarded as . . . constituting export trade within the meaning of this title and other titles of the bill." H.R. Rep. No. 624, 97th Cong., 2d Sess. 18 (1982).

foreign orders, and negotiating export contracts with foreign buyers.[26]

2. *Export Trade Activities and Methods of Operation.* As a matter of practice, the agencies have distinguished between "export trade," which goes to "what" the applicant exports, and "export trade activities and methods of operation," which go to "how" the applicant proposes to conduct its export trade. Title III defines "export trade activities" as "activities or agreements in the course of export trade" [27] and "methods of operation" as "any method by which a person conducts or proposes to conduct export trade." [28] Proposed activities, agreements or methods of conducting business will be eligible for certification if they fall within these definitions. It is not important whether proposed conduct is best characterized as an export trade activity or a method of operation, so long as the proposed conduct constitutes one or the other.

However, since the purpose of a certificate is to remove antitrust uncertainty, the certification of export trade is meaningful only in connection with the certification of some export trade activity or method of operation that raises some colorable antitrust exposure. It is especially important that applicants specify their "export trade activities and methods of operation" since the certificate's protection is limited to the specific conduct that is described in the certificate.

Agreements in the course of export trade ("export trade activities") might include agreements among the members of a joint export entity on the allocation of export shipment, agreements setting prices or other terms and conditions of purchase or sale for or in foreign markets, and distributionship agreements for export.[29] Where an applicant seeks certification of an agreement involving non-members, however, only the applicant and members identified in the certificate may receive the protection from antitrust liability afforded by Title III.

The applicant's methods of operation might include such mechanisms as using exclusive or non-exclusive export distributors, selling on consignment, and using a resale price maintenance program for its foreign sales. Methods of operation eligible for certification might also include the organizational and managerial aspects of the export venture, such as the manner in which the overseas prices will be established, the role members will play in the management decisions of the venture, the manner in which business information will be disclosed to or exchanged between members and/or non-members, and restrictions on the activities of members in export markets or on their withdrawal from the export venture.

While, as a general matter, certification is not available for overseas investment activities, investments that are integral to the export of goods or services may in some circumstances be eligible for certification. For example, investment in warehouse facilities overseas to store exported products until transferred to the foreign purchaser would ordinarily be eligible for certification. Similarly, although the production or manufacture of products ordinarily would not be eligible for certification, minor product or packaging modification activities necessary to insure compatibility of the product with the requirements of the foreign market could be considered an export trade activity eligible for certification.

IV. Certification Standards

Proposed export trade, export trade activities and methods of operation may be certified if the applicant establishes that such conduct will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant,

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the goods, wares, merchandise, or services of the class exported by the applicant,

(3) Not constitute unfair methods of competition against competitors engaged in the export of goods, wares, merchandise, or services of the class exported by the applicant, and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

Congress included these specific certification standards in Title III, rather than adopting a standard referring generally to the antitrust laws, as had been proposed in several antitrust certification bills in Congress. This apparently reflects a Congressional decision to have the agencies and the courts interpret Title III in a way consistent with the purpose of the antitrust laws—the maintenance of competition in domestic markets for the benefit of U.S. consumers. It is clear that Congress intended the four certification standards to encompass the full range of U.S. antitrust laws.[30] Thus, the certification standards are intended to ensure that conduct that is likely to have substantial anticompetitive effects within the United States will not be certified. If the only substantial anticompetitive effects of the conduct are in foreign markets, a certificate will be issued.

Title III was intended to eliminate uncertainty concerning the applicability of the antitrust laws to conduct in export trade and thereby to promote exports. Congress did, however, provide for a single-damage remedy against certified conduct by certificate holder that is subsequently determined by a court to be inconsistent with Title III standards. There is no indication that Congress intended to increase the potential liability of exporters who avail themselves of the possibility for increased certainty provided by Title III certification. These considerations suggest that the appropriate interpretation of the Title III standards is one that does not impose liability for export conduct on certificate holders beyond that which they would face in the absence of a certificate. Thus, export conduct should not be found inconsistent with the Title III standards if such conduct would not also be likely to violate an antitrust law otherwise applicable to export trade for which damages may be recovered as a remedy.

A. The First Standard—Substantial Lessening of Competition or Restraint of Trade

Under this standard, conduct will be certified unless it results in a substantial lessening of competition or restraint of

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[26] *See, e.g.*, 15 U.S.C. § 4002(a)(3).

[27] *Id.* section 4021(3).

[28] 15 U.S.C. 4021(4).

[29] Section 206 of S. 734, the Senate version of Title III, contains additional examples of agreements in the course of export trade. S. 734, intended to amend the Webb-Pomerene Act, would have required the applicant to specify:

"[7] The export trade activities in which the association or export trading company intends to engage and the methods by which the association or export trading company conducts or proposes to conduct export trade in the described goods, wares, merchandise, or services, including, but not limited to, any agreements to sell exclusively to our through the association or export trading company, any agreements with foreign persons who may act as joint selling agents, any agreements to acquire a foreign selling agent, any agreements for pooling tangible or intangible property or resources, or any territorial, price-maintenance, membership, or other restrictions to be imposed upon members of the association or export trading company."

[30] *See* H.R. Rep. No. 924, 97th Cong., 2d Sess. 26 (1982) (Conference Report); S. Rep. No. 27, 97th Cong., 1st Sess. 20–21 (1981).

trade in the domestic market or a substantial restraint on the export trade of U.S. export competitors. To determine whether the proposed conduct will result in a substantial lessening of competition or restraint of trade within the United States, the analysis will in most instances look to the overall purpose and effect of the activities on competition in the domestic market. As a practical matter, the kind of export conduct most likely to raise a question of compatibility with this portion of the first standard is joint export activity involving U.S. domestic competitors. In many circumtances, such export conduct will not be inconsistent with this standard. However, if joint export activity is likely to lead to coordination of domestic price or output levels among domestic competitors, the conduct is likely to substantially lessen competition among them in U.S. markets, and thus will not be certified. If the conduct will not substantially lessen competition in a domestic market, it will be certified.

A determination as to whether proposed conduct will substantially lessen competition in domestic markets will often require an analysis of the market structure in the United States for the goods and services to which the proposed conduct will apply. This determination may depend on a number of factors, among the most significant of which are the concentration in the relevant market(s), the ease of new entry and the market power of the applicant and its members. In determining the degree of market power of the applicant and its members, the aggregate market shares of each, as well as market shares of their parents, subsidiaries and affiliates, will be considered along with a number of other factors. Ordinarily, the risk that the proposed conduct will produce a substantial anticompetitive domestic effect is greater when the markets are highly concentrated or when the participants in the proposed conduct have a large market share than when neither of these factors is present.

An evaluation of whether proposed export conduct will be likely to substantially restrain the export trade of a competitor of the applicant will focus on the purpose and effect of the conduct. For example, conduct that is predatory,[31] or that denies an export competitor access to an essential facility and thus prevents it from competing for exports [32] would not be certified. However, instances of conduct that would be violative of this standard are likely to be rare.[33] In particular, it is important to ensure that this standard is not applied to hard, vigorous competition. Such competition would be consistent with this standard even if it improves the competitive position of the applicant as compared to other U.S. export competitors and results in a reduction in their exports. Certification in such circumstances may be possible even if the applicant accounts for a substantial shareof the U.S. supply of a product or service.[34]

B. The Second Standard—Unreasonable Price Effects

The second standard requires the agencies to analyze the purpose and likely effect upon domestic prices of the proposed export conduct. An unreasonable effect on domestic prices is not inherent in the formation or operation of every joint export entity, and, in practice, export activities creating unreasonable domestic price effects are likely to be rare. Under this standard, an effect on domestic prices resulting from export sales that lessen domestic supply and that are a legitimate business response to demand in foreign markets, will in itself not constitute an unreasonable effect on domestic prices. However, an increase in domestic prices that results from anticompetitive behavior directed at the domestic market will be unreasonable. For example, if the purpose of proposed conduct is to manipulate domestic prices, directly or indirectly through the manipulation of domestic supplies, certification will be denied.

C. The Third Standard—Unfair Methods of Competition

Under this standard, proposed conduct that is anticompetitive and likely to substantially restrict the exports of U.S. export competitors will not be certified. Contrary to the suggestion of some commentators,[35] however, this unfair competition standard is not intended to broaden the scope of antitrust liability for a certificate holder. While this language is similar to that contained in section 5 of the Federal Trade Commission Act, it is narrower on its face. Moreover, the policies and purposes underlying Title III are different from those underlying the Federal Trade Commission Act. The Federal Trade Commission Act is primarily applied to protect U.S. consumers from anticompetitive conduct, whereas Title III is an export promotion statute that reduces antitrust uncertainty for export conduct while also protecting U.S. consumers and exporters from anticompetitive conduct. In addition, the Federal Trade Commission Act is enforced by the Federal Trade Commission, and the typical remedy for violations is a cease and desist order. Conduct by a certificate holder that violates one of the Title III standards may subject the holder to a private single damage action. In light of these considerations, any pertinent judicial decisions expanding section 5 of the Federal Trade Commission Act beyond the Sherman and Clayton Acts and applying to conduct only because of its effect on competitors, while illustrative, have no precedential significance.

Conduct that would violate the last part of the first standard—that would substantially restrain the export trade of a competitor—would also be likely to violate this standard.[36] The mere fact that conduct would lead to export sales by the applicant or its members that would displace sales of other U.S. exporters would not be grounds in itself for denying certification. An example of conduct that might not meet this standard is the deliberate and unreasonable restriction of domestic export competitors from sources of supply.

D. The Fourth Standard—Resales in the United States

The fourth standard seeks to ensure that anticompetitive effects, if any, of proposed export conduct are not felt in the United States through subsequent reimport of the exported goods or services into the United States. It is intended to ensure that the antitrust protection afforded by Title III will not be given for conduct which, while

[31] *See, e.g.*, Pacific Engineering & Production Co. v. Kerr-McGee Corp., 551 F.2d 790 (10th Cir.), cert. denied, 434 U.S. 879 (1977); Areeda & Turner, *Predatory Pricing and Related Practices Under Section 2 of the Sherman Act*, 88 Harv. L. Rev. 697 (1975).

[32] *See, e.g.*, U.S. v. Terminal R.R. Ass'n, 224 U.S. 383 (1912).

[33] Because of the relative rarity of such situations and the difficulty of effectively defining them, throughout most of the remainder of these Guidelines we will consider only the "effect on domestic competition" standard, which presents the most common issues under the Act. If issues under the "injury to competitors" standard are presented by a certificate application, they will of course be evaluated.

[34] *See* S. Rep. No. 27, 97th Cong., 1st Sess. 20–21 (1981) *quoting* United States v. Minnesota Mining and Mfg. Co., 92 F. Supp. 947, 965 (D. Mass. 1950).

[35] *See, e.g.*, Bruce & Pierce, *Understanding the Export Trading Company Act and Using (or Avoiding) Its Antitrust Exemptions*, 31 Bus. Law. 975, 1011–12 (1983).

[36] *See supra* Section IV. A.

ostensibly involving exports, has a significant impact in the domestic market.

Under the standard, the agencies will look at whether the applicant reasonably expects the exported goods or services to reenter the United States for sale or consumption within the United States, and if so, whether such sale or consumption within the U.S. may have a substantial domestic impact in the relevant product markets. The fact that exported products or services are incorporated into finished products overseas or are significantly transformed in their character and then exported back into the United States would not be a basis for denial under this standard.

V. Application of Certification Standards to Specific Conduct in Export Trade

A. Vertical Restraints

Vertical restraints are arrangements between firms operating at different levels of the distribution chain (for example, between a manufacturer and a wholesaler or a wholesaler and a retailer) that restrict the conditions under which firms may sell or customers may purchase products. Although vertical restraints can take a variety of forms, most restraints can be placed in one of three categories:

(1) *Territorial and Customer Restraints*—Restrictions on the territories in which, or customers to which, a buyer is permitted to resell goods purchased from the seller, including location clauses, areas of primary responsibility, and profit pass-over arrangements.

(2) *Exclusive Dealing Arrangements*—Requirements that a buyer deal only with a particular seller or that a seller deal only with a particular buyer or group of buyers, including exclusive distributorship and requirements contracts.

(3) *Tying Arrangements*—Requirements that a buyer desiring to purchase one product ("the tying good") from a seller also purchase a second product ("the tied good") offered by the seller.

In domestic commerce, such non-price vertical restraints are judged under a flexible, economically sound evaluation of their purpose and effect.[37] Such vertical restraints generally promote competition by facilitating the efficient distribution of products and by permitting firms to compete on the level of distribution and service in the same way that they compete on product design and price. Accordingly, the legality of a non-price vertical restraints in each case depends on its economic effect, and no particular restraint is presumed to be anticompetitive. In short, non-price vertical restraints generally play an important procompetitive role in the domestic economy by allowing firms to structure their distribution systems efficiently.

Vertical restraints used in export trade are analyzed in the same manner as vertical restraints employed domestically, with one significant difference—restraints used in the international context do not give rise to antitrust scrutiny unless they affect competitive conditions in the United States. Thus, vertical restraints whose competitive effects are felt abroad pose no problems under the United States antitrust laws. An example would be the maintenance of resale prices in foreign markets.[38]

Vertical restraints in the course of export trade can take various forms and arise in various contexts. A U.S. producer might grant exclusive distribution rights to an export intermediary and might impose territorial, customer, price, and other restrictions on such intermediary. The inability of a producer to deal with certain export intermediaries in light of, or because of, supply agreements between itself and other export intermediaries is another kind of vertical restraint. A vertical restraint could also take the form of a requirement by a U.S. exporter that its export intermediaries deal only in the exporter's products for export or a requirement that such intermediaries purchase certain products from it as a condition of access to other products.

Each of these vertical restraints might have some restrictive effect on the ability of particular exporters to export. In most cases, however, these restrictions are legitimately imposed by a supplier of products in order to increase the competitiveness of its products in export markets.

For example, the grant of exclusive distribution rights may be based on the exporter's interest in providing an incentive for a distributor to provide services necessary for the successful marketing of a product without fear that other distributors will be able to take a "free ride" on the first distributor's efforts. In addition, the grant of exclusive distribution rights may be intended to improve the efficiency of exporting by reducing bargaining and other transaction costs and by ensuring that distributors attain a sufficient volume of sales to permit the achievement of scale economies in export distribution. Similar motives could underlie the exporter's imposition of price, quantity, territorial or other restrictions on its distributors in export trade, such as an obligation to pay a commission to the exporter when an export sale is made outside the distributor's exclusive territory.

The imposition of an exclusive dealing obligation on an export intermediary may be intended to protect an exporter's investment in training, equipment or other facilities and services against "free riding" by competing exporters who might, if they were able to sell through the export intermediary, benefit from the first exporter's investment without bearing any cost. If parties could not use an exclusive dealing arrangement to prevent "free riding", the exporter might be discouraged from making investments to improve export efficiency and thereby to increase exports.

Vertical restraints in export trade ordinarily do not have a substantial anticompetitive effect in violation of the Title III standards. The four certification standards embody the policy of the antitrust laws. The antitrust laws protect competition, not competitors.[39] Therefore, unless such restraints will be likely to lead to the achievement or maintenance of market power or to the coordination of price or output levels within the United States, they generally will be consistent with the Title III standards.

Examples of Vertical Restraints

The following examples are intended to give guidance in determining when proposed vertical restraints satisfy the four standards. They are illustrative and not comprehensive.

Example 1: Exclusive Export Intermediary for U.S. Manufacturer

Rubber-King, a U.S. manufacturer of automobile tires accounting for 50 percent of U.S. domestic sales of tires, wishes to appoint ETC, a non-manufacturing U.S.-based export intermediary familiar with European markets, as its exclusive distributor for Europe. For the last five years, Rubber-King has used Blooper, another U.S.-based export intermediary, as its exclusive distributor for Europe. Now Rubber-King has become dissatisfied with Blooper's efforts and has decided

[37] *See* Continental T.V. Inc. v. GTE Sylvania, Inc., 433 U.S. 36, 54–57 (1977)

[38] It is important to note, however, that many foreign countries' antitrust laws prohibit resale price maintenance and non-price vertical restraints.

[39] *Brunswick Corp.* v. *Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977).

not to renew its distributorship agreement with Blooper at the expiration of its term. In its proposed exclusive distributorship agreement with ETC, Rubber-King intends to include provisions (i) preventing ETC from reselling Rubber-King's tires except in Europe; (ii) preventing ETC from selling Rubber-King's tires at a price lower than a specified minimum price in certain European countries; (iii) requiring ETC to purchase a full line of automobile tires for export to Europe; and (iv) requiring ETC not to purchase or deal in automobile tires for sale to Europe except from Rubber-King. Finally, the proposed agreement would obligate Rubber-King to impose restrictions on its other distributors to prevent their shipment of its automobile tires to Europe. Rubber-King and ETC have jointly applied for a certificate of review covering the restrictions described above as well as Rubber-King's refusal to renew its distributorship agreement with Blooper or to supply Blooper with tires.

Discussion

A certificate of review would likely be granted to the applicant in the circumstances outlined above because none of the vertical restraints would be likely to substantially restrain competition in the United States. The use of an exclusive distributor for a particular country or area of the world in the course of export trade normally would be viewed as a reasonable efficiency-creating method of operation. Thus, even though Rubber-King has a significant market share, the grant of exclusive rights to ETC and the refusal to renew Blooper's distributorship agreement or to supply it with tires would be consistent with Title III's standards, since these actions would have no substantial anticompetitive effects within the United States. The refusal to renew Blooper or to sell tires to it might limit Blooper's export of tires. Such a limitation, however, would not be inconsistent with the Title III standards. Rubber-King seems to have a reasonable business justification for replacing Blooper and, more importantly, any resulting damage to Blooper would be unlikely to substantially lessen competition in domestic markets. The restriction that prohibits ETC from selling in the U.S. does not substantially lessen competition in the U.S.; such territorial restrictions are usually unobjectionable vertical restraints. Also, the territorial and price restraints that apply to ETC's sales in foreign markets would not have any anticompetitive effect in the United States.

Finally, the exclusive dealing and full-line purchase obligations imposed on ETC would not be inconsistent with Title III's standards. These obligations would have the effect of preventing U.S. tire manufacturers other than Rubber-King from using ETC as a European distributor. Nevertheless, the fact that the proposed conduct might result in such a limitation would not violate the Title III standards if, as would be true normally in the case of exclusive dealing obligations, the conduct would not be expected to result in a substantial restraint on competition within the United States. It is unlikely that the restriction in this case would significantly limit the ability of Rubber-King's competitors to export. It is likely that there are numerous U.S. and European entities that would be qualified to act as a distributor of tires in Europe. Furthermore, if exports to Europe did not constitute a large percentage of the total sales opportunities available to U.S. manufacturers of tires, it seems unlikely that even a significant foreclosure affecting potential export sales in Europe could be inconsistent with the Title III standards. Such a foreclosure would be unlikely to affect seriously the competitiveness of such other manufacturers in the domestic market and thereby substantially restrain competition in the United States.

Example 2: Export Intermediary Handling the Products of Competing U.S. Exporters

IPORT is a newly-formed export trading company that intends to export a variety of products purchased from a number of suppliers, including competing suppliers. IPORT does not at present know who its U.S. suppliers or foreign distributors will be. Nonetheless, it would like to obtain a certificate of review covering its entering into agreements under which it would be an exclusive distributor for any supplier and would agree not to deal in export trade in the products of that supplier's competitors unless authorized by the supplier. In addition, it would enter into agreements under which it would grant exclusive distributorships to foreign entities and oblige such entities not to deal in goods competing with those supplied by IPORT.

Discussion

Exclusive arrangements such as those described above involving a company such as IPORT would not normally have a substantial anticompetitive impact in any U.S. market. In light of the fact that IPORT is a small, new export intermediary, it seems unlikely that its entering into exclusive arrangements with any individual supplier or with any export distributor would substantially restrain U.S. competition through effects on competing suppliers.

The certification of IPORT to represent a number of suppliers, however, raises the possibility that IPORT could become the exclusive export distributor for competing U.S. manufacturers. To clarify that IPORT is not certified to engage in joint discussions with competing producers, the certificate will be limited to only individual negotiations and agreements between IPORT and its suppliers unless IPORT can demonstrate that in particular product markets broader certification would be appropriate. In addition, in order to avoid the possibility that IPORT could disclose competitively sensitive information obtained from one supplier to competing suppliers, the certificate would normally contain a condition stating that IPORT will not intentionally make such disclosures. If IPORT needed to exchange certain sensitive business information in order to engaged in export trade, it might be possible to grant a certificate of review for such exchanges if IPORT specifically described the products or suppliers involved and if the domestic market for the product were competitive and had structural features indicating that successful price or output coordination would not be likely to occur. In such cases, the agencies may place in the certificate limitations on the nature of information to be disclosed and the manner in which it would be exchanged.

Example 3: Manufacturer Acting as Export Intermediary for Competitors

Erektor is a U.S. manufacturer of electric motors that accounts for 5% of sales of such motors in the U.S. market. Erektor is capable of producing the entire range of such motors currently used but has concentrated on sales of smaller sizes of motors. Erektor is currently exporting motors but is hampered in its export sales by its lack of a complete line of sizes; therefore, it wishes to enter into exclusuve or non-exclusive agreements with other U.S. manufacturers of motors under which it would distribute their motors in foreign markets. Without identifying particular suppliers, Erektor has asked that a certificate of review covering such conduct be issued. The electric motor markets in the United States are not particularly suspectible to coordination of domestic prices or output. Entry barriers are not significant and manufacturing economies of scale can

be achieved at a production level of one percent of current industry output. The industry is relatively unconcentrated; in any relevant product market, the largest firm accounts for 10% of sales, two other firms each account for 8%, four firms each account for 5% and 30 other firms account for the remainder of sales.

Discussion

In these circumstances, a certificate of review would likely be granted to Erektor for its individual export distribution agreements with other suppliers of electric motors. It is conceivable that the existence of exclusive export distribution agreements between producers accounting for a large percentage of industry sales and one of their competitors could adversely affect domestic competition in certain product markets. However, entry into the relevant product markets in this example is easy, and the markets are unconcentrated and appear to be competitive. These factors make it unlikely that coordination among the firms could effectively raise U.S. prices. Thus, these factors minimize the risk that the exclusive arrangements in this case will have a substantial anticompetitive effect. Furthermore, if Erektor considered that the disclosure to its suppliers of specific types of information (e.g., information relating to bid requirements or purchase specifications) obtained by Erektor from any of them to be reasonably necessary to success in distribution, it could request that it be certified to make such specific disclosures. If the exchange of the specified information would be unlikely to risk anticompetitive domestic effects, certification could be granted. In order to ensure that competitively sensitive information (for example, U.S. production and sales information), would not be exchanged among competitors, the certificate would contain a condition stating that a competing supplier will not intentionally disclose such information to Erektor and that Erektor will not disclose such information to any competing supplier.

Erektor conceivably could enter into individual exclusive distribution agreements with manufacturers accounting for a large percentage of industry sales of electric motors. In such a case an issue would be raised as to whether the exclusive arrangements, which would deny other export intermediaries handling exports of electric motors access to one possible source of supply, would violate the standards of the statute by producing a substantial anticompetitive effect in the United States. Since these standards encompass the antitrust laws and those laws protect competition, not competitors, the mere fact that some exporters would be disadvantaged would not be sufficient to demonstate an inconsistency with the standards. These exclusive export agreements appear unlikely to affect competition in the sale of electric motors within the United States. Accordingly, they likely would be certified.[40]

Because only Erektor sought certification, the protections of the certificate would extend only to Erektor. Erektor would be protected for its agreements with others as specified in the certificate, but the other parties to such agreements would not be protected, unless they ask for protection as an applicant or member.

Example 4: Vertical Aspects of Competing Manufacturers Exporting through a Joint Export Association

A, B, C and D are manufacturers of a particular chemical, accounting for 45 percent of U.S. domestic sales of the product, who wish to enter into an agreement to form an export association, Chem-X. One of the provisions of the proposed agreement would require A, B, C and D to sell the chemical for export only through Chem-X and would prevent them from independently exporting the chemical either directly or indirectly through other U.S. export intermediaries. Exports of the chemical have been minimal because of strong competition in the consumer countries from non-U.S. firms. Joint export marketing is expected to provide significant transportation and distribution cost savings. A, B, C, D and Chem-X have applied for a certificate of review covering their agreement to export exclusively through Chem-X and to refrain from directly or indirectly exporting the chemical independently.

Discussion

It seems likely that a certificate of review could be granted covering the proposed restriction.[41] The grants of exclusivity to Chem-X, in themselves, would not be likely to have any anticompetitive effects in the U.S. market. It would seem that the exclusivity granted to Chem-X would be reasonably necessary for Chem-X to prevent the firms from individually obtaining a free ride from Chem-X's marketing efforts.[42]

B. Horizontal Restraints

The analysis under Title III's certification standards of joint export activity among competitors will focus on whether the conduct is likely to have a substantial anticompetitive effect in a U.S. market. This is essentially a two-part test. First, the agencies will analyze whether the joint activity is likely to have any anticompetitive effect on U.S. commerce. If it is incapable of having any anticompetitive impact in the United States, the collective export activity will be certified. Examples of such conduct include the joint setting of prices and quantities at which products are sold in export markets if the products by law cannot be sold in the United States and the exchange among competing U.S. sellers of information relating exclusively to exporting or export markets (e.g., identification of customers in any export market). Second, if there is potential for anticompetitive spillover affecting U.S. markets, then the agencies will analyze whether the formation or contemplated operation of the joint entity is likely to substantially restrain or lessen competition within U.S. commerce. Generally, anticompetitive spillover may occur if competitors, in the process of engaging in export trade, share price or other sensitive business information relating to their respective U.S. sales or if competitors manipulate domestic prices through the manipulation of domestic supply.

The framework for analyzing whether there is likely to be a substantial anticompetitive effect in the United States is similar to that for analyzing joint ventures or mergers.[43] In analyzing the export conduct sought to be certified, the agencies will evaluate the economic characteristics of the domestic market in order to assess whether a market is likely to be conducive to domestic price or output coordination.

In evaluating the domestic market structure, the agencies will first undertake to define the relevant product and geographic markets in which to assess the anticompetitive effects of the joint export activity. The definition of a relevant product market typically begins by tentatively considering as a market each product for which certification is sought and each product in which the

[40] For a discussion of the issues raised by the horizontal aspects of the operation of Erektor, *see* Section V.B. below.

[41] The horizontal aspects of the formation and operation of Chem-X by domestic competitors raise other issues concerning potential anticompetitive effects in U.S. markets. These issues are discussed in Section V.B. below.

[42] For a discussion of the foreclosure of distribution channels and foreclosure of supply issues, see Examples 1 and 3 *supra*.

[43] *See* U.S. Dep't of Justice, Antitrust Division, *Merger Guidelines*, 49 FR 26823 (June 29, 1984).

joint venture partners compete in the United States. This preliminary market definition, however, may be broadened if there are close substitutes in demand or supply that effectively limit the exercise of market power by the participants in the joint venture. Substitutes in demand exist when there are other products to which consumers could readily shift in response to a price increase. Substitutes in supply exist when producers of other products are able to enter into the production of the product by modifying existing facilities or constructing new facilities within a relatively short period. For example, woodworking shops that employ their lathes to manufacture rolling pins would be included in the baseball bat market if those shops could quickly and easily shift into the production of bats—even though bats and rolling pins are not substitutes in demand.

In addition to defining the relevant product market, the agencies may have to determine the geographic market. The purpose of this determination is to establish a geographic boundary that roughly separates firms that are important factors in the competitive analysis from those that are not. Depending on the nature of the product and the competitive circumstances, the geographic market may be as small as a city or as large as the entire world. In determining the geographic market, the agencies will consider all relevant evidence. For example, transportation costs may restrict the geographic market where those costs are high relative to the value of the product, as is often the case for raw materials and unprocessed agricultural products; however, transportation costs are unlikely to affect the geographic market determination for most finished goods because those costs do not play a significant role in restricting the alternatives available to buyers. Furthermore, the definition of a relevant market may be affected by import competition. If foreign firms sell competing products in the relevant market, they may be included. The competitive significance of foreign firms will be affected by such factors as trade restraints and their excess capacity.

After determining the relevant market, the agencies will examine the market's structure in order to assess whether its economic characteristics are conducive to developing and maintaining a consensus on domestic price levels and output rates. As a first step, the agencies will assume that the competitors merged and focus on the post-merger market concentration—a function of the number of firms in a market and their respective market shares. Treating the participants in a joint export venture as a merged entity is a useful threshhold test, because for joint ventures with small market shares in markets with a low degree of market concentration (*e.g.*, 20 approximately equal-sized firms in the market and the four joint venture participants have a total market share of 20%), the agencies will be able to determine without a detailed examination of other economic characteristics that the joint venture poses no substantial threat to competition in the United States. In other cases, however, the agencies will proceed to examine a variety of other economic characteristics relevant to determining whether the market is predisposed to effective coordination of domestic price levels and output rates and, therefore, whether the joint export entity is likely to be a substantial restraint on domestic competition. Such characteristics include: (1) The ease of entry into the market by other firms, (2) the ease with which firms in an industry can expand supply; (3) the homogeneity of a product across producers; (4) the existence of large buyers; (5) whether the participants have in the past effectively coordinated domestic price levels or output rates; and (6) whether domestic demand is stable or variable.[44]

If an assessment of domestic market concentration in light of these other structural characteristics leads the agencies to conclude that the joint export entity is likely to have substantial restraining effects in domestic competition, the agencies may find it necessary either to limit significantly the activities that may be certified or to impose safeguards on certified activities, such as an information exchange limitation. However, even in a concentrated market, the absence of certain other characteristics listed above may lead to the conclusion that successful price and output coordination would be unlikely and that, therefore, certification would be possible for joint export activities with few or no limitations. Particularly where competitors intend to cooperate only on a single contract or where contacts among them are to be infrequent, the likelihood of a substantial anticompetitive impact is reduced because there would be no continuing opportunity for coordinating domestic price levels or output rates.

An issue of particular concern for applications involving domestic competitors is the possibility of sharing price and other sensitive business information in connection with export conduct. In some situations, such exchanges are likely to have anticompetitive effects because the information can be used for coordinating domestic price levels or output rates. In other situations, however, sharing such information is not conducive to coordination of domestic prices or output and, thus, is likely not to have an anticompetitive effect.

In determining whether to certify exchanges of such information among domestic competitors, the agencies will carefully scrutinize the application in a manner similar to other joint activities. The agencies will ordinarily place a condition in the certificate stating that the certified parties will not intentionally make exchanges of competitively sensitive information except as explicitly certified. The agencies would certify such exchanges if it can be shown that the sharing of information is in the course of export trade and is unlikely to have a substantial anticompetitive effect in U.S. markets either because the nature of the information is incapable of affecting U.S. competition or because the economic characteristics of the relevant markets indicate that the exchange is likely to have a procompetitive or competitively neutral effect. If they have insufficient information about the proposed conduct or about the specific product markets or domestic competitors to make a determination about whether the exchange is likely to have a procompetitive, competitively neutral or anticompetitive effect, the agencies will not certify the exchange. If they determine that such an exchange is likely to substantially restrain or lessen domestic competition, the agencies will not certify the exchange. In some instances, however, safeguards on the nature of information shared and the manner in which it is exchanged may eliminate the likely effect on domestic competition, thus permitting the agencies to certify it. Such safeguards would be placed in the certificate as a condition. Different levels of safeguards may be necessary depending on the facts of a particular case. The more

[44] For a more detailed discussion of these and other economic characteristics and of how they may relate to concentration levels and to each other, *see id.*, R. Posner, *Antitrust Law: An Economic Perspective* 55–72, 135–147 (1976; Posner *Information and Antitrust: Reflections on the Gypsum and Engineers Decisions*, 67 Geo. L.J. 1187 (1979) Clark, *Price-Fixing Without Collusion: An Antitrust Analysis of Facilitating Practices After* Ethyl Corp., [1983] Wisc. L. Rev. 887; Hay, *Oligopoly, Shared Monopoly and Antitrust Law*, 67 Corn. L. Rev. 439 (1982); E. I. DuPont de Nemours & Co. v. FTC, 1984–1 Trade Cas. ¶65,881 (2d Cir. 1984) vacating *In re* Ethyl Corp., [1979–1983 Transfer Binder] Trade Reg. Rep. ¶22,003 (F.T.C. 1983).

likely that the exchange would effectuate coordination of U.S. price levels and output rates then the stricter the safeguards that would have to be imposed. Among the safeguards that will be considered may be a requirement that certain information only be disclosed to a neutral third party, a requirement that such meetings be monitored by knowledgeable counsel and that accurate and complete written records of such discussions be maintained and be subjected to inspection by the Commerce and Justice Departments at their request.[45] Issuance of certificates with such safeguards permits efficient operation of joint export ventures and reduces antitrust uncertainty in export trade, thereby promoting exports in accord with the purpose of the Title III, while, at the same time, ensuring that any anticompetitive impact on domestic price and output levels will not be substantial.

The agencies will also consider whether restraints ancillary to the joint export activities are likely to substantially restrain or lessen competition in the United States. For example, the applicant would have to demonstrate that restrictions placed on withdrawal from membership would not substantially lessen domestic competition as a result of their adverse effect on withdrawing members. Finally, the agencies will consider whether the failure of a domestic competitor to have access to a joint export venture that is essential to export trade would be likely to substantially lessen domestic competition. While such circumstances are likely to be extremely rare, the agencies will assess whether the limitation of the export opportunities of competitors by excluding them from the venture would affect their competitiveness in domestic markets.

Examples of Horizontal Restraints

The following examples are intended to give guidance in determining when proposed export conduct among domestic competitors satisfies the four certification standards. They are illustrative and not comprehensive.

Example 1: Joint Export Marketing and Sales Association

Companies A, B, C, D and E joined together to apply for certification as the Farm-Raised Fish Export Association ("Trout-About"). Trout-About proposes to market and sell farm-raised trout in export markets. As the exclusive export intermediary for its members, Trout-About would establish the price at which it would purchase and sell the trout for export. It would also allocate among its members the quantities of fish sold for export.

In order to produce farm-raised trout, a farmer would need to have land that could be flooded to make a fish pond and to buy trout fingerlings and feed. The cost is modest and it would take less than six months to produce marketable trout. To become a trout processor, a company would have to invest approximately $1,000,000 for the building and equipment, but could begin processing in approximately six months. Most trout processors currently operate one eight-hour shift per day but could readily move to multiple shifts.

A and B are Fortune 200 corporations that process and sell a variety of foods for wholesale, including processed farm-raised trout. C and D are small U.S. corporations that process and sell wholesale farm-raised trout. Together A, B, C, and D account for 57% of the farm-raised trout processed in the United States in the past year. However, the processed trout market is growing and several new entrants recently started production. E is an association that represents 60% of the trout farmers in the United States. E holds the majority of shares in Trout-About.

Discussion

Even though the members of Trout-About produce and process a large percentage of U.S. farm-raised trout, it is likely that the agencies would certify Trout-About to establish, by agreement among its members, the price at which trout is purchased and sold for export and to allocate among its members the quantities of fish sold for export by Trout-About. Even if the members tried to effect a supracompetitive domestic price by attempting to manipulate domestic supply of trout, other persons could quickly and easily enter into production or processing of farm-raised trout. The trout producers and processors outside the association readily could expand current output substantially. Moreover, consumers could readily switch to alternative foods, including other fish. Furthermore, there is no indication that the trout producers or processors intend to manipulate supply to raise U.S. prices.

To ensure against possible coordination of domestic price levels and output rates, the certificate would normally contain a condition stating that a member will not intentionally disclose, directly or indirectly, to Trout-About or to any other member information about its own costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale or U.S. business plans, strategies or methods that is not already generally available to the trade or public. If firms seek to exchange such information in the course of exporting, such exchanges will be certified only if the agencies determine that the disclosure is not likely to have a substantial anticompetitive impact in the U.S. market.

Example 2: Planning for Joint Export Marketing and Sales

The only eight U.S. producers of kryptonite seek certification for joint discussions and meetings on the possible formation of a business plan to operate an export entity to jointly market and sell kryptonite for export. The producers are interested particularly in exporting to Japan and Western Europe where nontariff barriers and antidumping suits make it more difficult to penetrate the export market. In the formation phase of the joint export entity, the eight producers propose to meet together to discuss the sales opportunities for kryptonite in any export market, the export marketing practices of any producer, the expenses exclusive to export sales (*e.g.*, ocean freight rates), the storage and distribution capabilities of producers of kryptonite exports, the quantities of kryptonite that each producer would have available for export and each producer's ability to respond to purchase orders for export. Based on these discussions, the producers propose to meet together to develop an export joint venture business plan that would authorize the joint export entity to purchase kryptonite for a common stockpile and to sell it in any export market. The business plan would also include other arrangements between that entity and the producers necessary to carry out the venture, such as authorizing the entity to act as the exclusive export sales and marketing agent for the producers. Among the issues the producers would consider in formulating a business plan would be whether and how to (1) coordinate the common stockpile and consolidate transportation costs, (2) establish quantity and profit allocations among producers and procedures for adjusting quantity and profit allocations, (3) establish procedures for setting the prices at which kryptonite would be bought and sold for export and (4) allocate among producers territories or customers in any export market. After

[45] *See, e.g.*, General Motors Corp. and Toyota Motor Corp.: Proposed Consent Agreement With Analysis to Aid Public Comment, *reprinted in* 46 Antitrust & Trade Reg. Rep. (BNA) 42, 43 (Jan. 5, 1984).

they formulate a business plan, the producers intend to submit it for certification.

Kryptonite is a homogeneous product. Five of the eight producers are located close to each other on natural deposit sites in Utah, and thus have similar production and transportation costs. The two largest firms each have about 30% of domestic sales. There is negligible competition in the U.S. market from imports because U.S.-origin kryptonite mined from natural deposits is less expensive than most foreign kryptonite which is produced synthetically. The price of kryptonite customarily is negotiated at the time of purchase, and is heavily dependent on local market conditions; consequently, domestic prices are poorly correlated with export prices. The growth of the U.S. market has been declining in the past five years, although the export market has been growing at the rate of 20% per year. The cost of commencing production is approximately $300 million in capital and equipment and it takes at least three years before production can begin. U.S. buyers of kryptonite are primarily glass and chemical producers, all of which are large, aggressive and sophisticated purchasers. While these customers are not numerous, they frequently purchase large quantities of kryptonite.

Discussion

The agencies likely would certify joint meetings and discussions on the subject of forming the kryptonite joint venture; however, safeguards on certain exchanges of information would be necessary because the U.S. kryptonite market possesses many economic characteristics that make it relatively conducive to the coordination of domestic pricing and output strategies. They are (1) high concentration on the selling side with only eight producers; (2) high barriers to entry; (3) a homogenous product; and (4) insignificant differences in cost functions among producers because of the close proximity of kryptonite mines. Exchanges among producers of nonsensitive information for planning purposes, such as sales opportunities in export markets, expenses exclusive to export sales, and any producers' marketing practices in export markets, would likely be certified without safeguards because such discussions could not be used to coordinate an effective consensus on restricting domestic price or output levels. Nevertheless, given the economic characteristics of the kryptonite market, discussions about each producer's storage and distribution capabilities, quantity of kryptonite availble for export and ability to respond to purchase orders for export as well as the procedures for allocating quantities and profits and for setting prices at which kryptonite would be bought and sold for export might be used to effectively coordinate domestic price level and output rates. Therefore, in determining whether to certify meetings among producers for such discussions, the agencies would have to consider what information was likely to be conducive to effective collusion on domestic price and output levels. The agencies then would require that exchanges involving such information not be specific to a particular firm or be given by each producer to an independent third party for distribution to producers in a form that was not competitively sensitive, for example, in aggregated form. In addition, the certificate would likely require that each meeting or telephone conversation among producers on the formation of the joint export venture be monitored by knowledgeable counsel, that accurate and complete written records of such discussions be kept, that those records be subject to inspection by the Commerce and Justice Departments at their request, and that, to the extent that any firm operates separate domestic and export sales or marketing units, only personnel from the export unit participate in the discussions. Furthermore, because of the possibility of effective coordination of domestic price levels in an extended planning phase, the certificate may be limited in duration to a period reasonably necessary to develop a business plan, such as six months.

Finally, it is important to note that while the planning activities described here probably could be certified, that fact does not necessarily mean that the implementation of the plan would be certified. Such certification would depend on a full evaluation of both the economic factors in the kryptonite market and the proposed plan. Because of the possibility that the procedures for establishing prices and for allocating quantities, profits, territories or customers among producers could be used to effectively coordinate domestic price levels and output rates, the business plan would have to describe these procedures in sufficient detail to permit the agencies to determine whether such coordination is likely to occur.

Example 3: Joint Buying

In order to consolidate their purchasing and warehousing operations to reduce the amount of inventory each store must carry and thus reduce finance charges and other expenses, seven of the ten U.S. firms that operate Customs-regulated duty-free shops selling tobacco products along the United States-Mexico land border joined together to form an association, "Smoke Stack", to be their exclusive purchasing agent for export sales. The firms would agree to purchase tobacco products for export only from Smoke Stack. They then would resell the purchased tobacco products exclusively for export.

Smoke Stack's members have 98% of all tobacco export sales by duty-free shops along the Mexico border. The member firms are not licensed to engage in wholesale or retail domestic sales. Domestic tobacco wholesale and retail sales in the Southwest are made by hundreds of independent distributors, none of which have dominant market power in any geographic area. Smoke Stack purchases approximately 1% of the total amount of tobacco products sold by value in the southwestern United States.

Discussion

The agencies would likely certify Smoke Stack at a joint buying arrangement. Sales in duty-free shops are made only to persons leaving the United States to enter Mexico. The tobacco cannot be re-imported legally into the U.S.; it can only be consumed outside the U.S. Thus, if Smoke Stack had the effect of raising the prices at which its members sell, the effect would not be felt in the U.S. market. Furthermore, the member firms acting separately would be unable to attain economies of scale offered by joint buying. More importantly, however, Smoke Stack does not account for a significant percentage of tobacco products purchased in the southwestern United States. Therefore, it does not have the market power as a buyer to significantly and anticompetitively restrain the domestic trade of sellers or of other domestic buyers of tobacco products. Nevertheless, concern about Smoke Stack's joint buying activities becoming a substantial restraint of trade in the United States could rise if the buying power of its members increases. In order to monitor such a development, the agencies are likely to require answers to specific questions in the annual report in order to measure the increase by quantity and value of Smoke Stack's purchases of tobacco products in the United States.

Example 4: Joint Export of Services.

Four consulting engineering firms, a bank holding company, an accounting

firm, and a large construction management firm have established a consortium for the purpose of submitting a bid on an extremely large project in a Mid-east nation to expand that nation's ports and harbors. The U.S. consulting engineering firms in the consortium are the second, fifth, sixth and tenth largest in U.S. sales. Firm A will work on the dredging, firm B on the piers, firm C on the warehouses, and firm D on the transportation. Membership in the consortium is restricted to these firms. Other U.S. consulting engineering firms have the capability to put together a similar type of venture. The consortium believes that it will be competing against similar consortia supported by the Japanese, Korean, British, French and German governments. The consortium has invited two host country firms to participate in the venture in order to comply with that country's requirements for the project.

The companies have formed the consortium because the project is so large that a smaller group would not have the technical capabilities to carry out the project. Most of the engineering firms are already reasonably busy due to domestic demand as well as to contracts for sales and construction work in other countries. The project will take almost ten years to complete; therefore, the participants are also concerned about the long-run political situation in the host country.

The consulting engineering industry has over 2,500 firms, the largest 12 of which have combined annual billings of over $50,000,000 of total industry billings of $500,000,000. The smaller firms specialize in one primary area, which the larger firms specialize in several diverse areas. In each of the specialties involved in the consortium, there are large numbers of firms engaged in effective competition with one another. Firms typically are selected for foreign projects on the basis of personnel with the relevant education and project-related experience, and the firm's experience and reputation. Price is considered only in negotiations with a few "finalist" firms selected by the purchaser.

The consortium seeks certification to submit the bid and, if selected, to export the engineering and architectural services and technical assistance and know-how required in order to complete the project. To coordinate the preparation of the bid and the completion of the project, if awarded, the consortium has established a separate corporation with a small staff consisting of employees from each of the participants as well as non-employees with specific management, financial or consulting engineering expertise.

Discussion

The agencies would likely certify the consortium's proposed export conduct. The consortium involves complementary skills; the project is large, and there appear to be some political risks. While these considerations do not necessarily make the consortium certifiable, they do tend to indicate the reasonableness of its business purpose.

In this case, there is no reason to suspect that the consortium would substantially restrain or lessen competition in the domestic consulting engineering industry. The U.S. markets for the types of consulting engineering services offered by the firms involved in the consortium can be characterized as having a fragmented, unconcentrated structure. As such, they do not appear to be an industry that is conducive to the coordination of price or output in the domestic market. Moreover, the establishment of an independent entity to coordinate submission of the bid and completion of the project reduces day-to-day contact among officials of the participants, who are also competitors. In addition, the consortium, although important, does not appear to be essential for non-participating firms. It appears to be possible for the non-participating firms to form or become part of other consortia. In any event, it seems unlikely that a failure of competitors to have access to this consortium would affect them in such a way as to substantially lessen domestic competition. Such circumstances make it likely that the consortium will not be required, as part of the certification process, to be open to any firm on reasonable and nondiscriminatory terms.

C. Technology Licensing

It is generally accepted that technological progress is a major contributor to the economic welfare of the United States. In order to ensure technological advance, research and development must be encouraged by providing adequate economic incentive for the creation and development of new technologies. A certain degree of incentive is provided by laws, such as the patent laws, which grant innovators exclusive rights in their inventions and by laws that protect secret know-how. However, the establishment of licensing arrangements is often the best way for developers of technology—either patented or unpatented—to efficiently exploit their technological advance. For example, the owner of a patent may not have the capability or be in the best position to manufacture patented products in all fields of use to which a patent could be applied and may, therefore, wish to license the patent to others. Consequently, technology licensing should, in general, be encouraged in order to permit innovators to receive appropriate compensation for their developments and to further the dissemination of such developments to manufacturers in all fields in which an innovation can be used.

In order to ensure the most efficient development of technology it is sometimes necessary for an owner of technology to impose restrictions on licensees or on its own use of the technology. Before licensed technology can be transformed into marketable products, substantial investments often must be made by the licensee. In order to provide a licensee with the proper incentive to make these investments, it may be necessary for a licensor to grant the licensee exclusive rights within a particular territory or a particular field of use and to restrict other licensees and itself from use of the technology in such territory or field. Similarly, a licensor often will wish to impose restrictions on its licensees in order to protect itself from competition in territories or fields of use in which it is using the technology.

These general considerations also apply to the licensing by U.S. owners of foreign patents and of the right to use secret know-how abroad. Such foreign licensing, by increasing the rewards to licensors from their research expenditures, could increase their incentive to conduct research and thereby produce procompetitive innovations in U.S. markets, as well as improve the trade balance of the United States. In addition, the varied competitive conditions, including costs, that licensees of technology face in other countries often create a greater need than in domestic licensing to maintain licensing incentives for both the licensor and licensee through the use of restrictive licensing provisions.

Even licenses that include restrictions on the foreign licensee's foreign patents or know-how often will be consistent with Title III's standards, because they would not have substantial anticompetitive effects in any U.S. market. For example, a territorial restriction in a foreign patent limiting the licensee to selling the patented product in a particular foreign country would have the effect of prohibiting the sale of that product in the United States. Without a license under the foreign patent, however, the licensee could not

have manufactured the product in that foreign country. Moreover, if the licensor owned a U.S. patent covering the same invention as the foreign patent, the licensor lawfully could have stopped the importation of such products into the United States even without the restriction in the foreign license.

It may be that in certain cases the grant of a license by a U.S. manufacturer of a product to a foreign licensee could have the practical effect of eliminating the licensee as a competitor in the U.S. market. For example, this would be the case if, as a result of the license, the licensee were to abandon its former technology and use the licensed technology for all production. Even in such a case, however, the restraint would not necessarily run afoul of Title III's standards. A factual inquiry would be require to determine whether the foreign firm otherwise was an actual or potential competition in the appropriately defined relevant market and, if so, whether the structure or performance in that market suggested that the elimination of that additional competitor might substantially restrain domestic competition.

Similarly, it is unlikely that a licensing restriction will be found to constitute a substantial restraint on the export trade of a competitor of the applicant or an unfair method of competition against such competitor. The mere fact that a licensing arrangement with a foreign licensee may result in the sale of the licensee's products displacing U.S. exports of competing products likely would not be contrary to Title III's standards. Even the use of typing obligations requiring the licensee to purchase products from the licensor in connection with the licensing of technology often will not restrict the exports of competing exporters of the products in such a way as to substantially restrain U.S. domestic competition in the tied product. A tying arrangement may be a reasonable way of encouraging a licensee to accept a license of technology of uncertain utility. For example, a licensee might be encouraged to accept a license of process technology. The major part of the "royalties" it would have to pay to the licensor might be in the form of purchases of a tied input. The quantity of such purchases would vary depending on the ultimate usefulness of the licensed technology.

Finally, the use by a licensor of a restriction preventing a licensee from using technology competitive with the licensed technology or from selling goods that compete with licensed products might limit the export opportunities of competing licensors or sellers of competing goods. Again, however, such a restriction might be justified in view of the licensor's interest in ensuring that a licensee devote its efforts to the development and use of the licensed technology. In any event, the restriction of competitors from the export sales or licensing opportunities represented by a licensee or group of licensees would not in most cases have a substantial anticompetitive effect in U.S. domestic markets.

Example of Technology Licensing

The following example is intended to give guidance in determining when proposed export conduct involving technology licensing satisfies the four certification standards. It is illustrative and not comprehensive.

Example: Exclusive Foreign Patent License

Short Wave, a manufacturer of radios accounting for 5 percent of U.S. sales, holds patents in the United States and in a number of other countries for a new type of transistor that can be used in various electronic products. Short Wave, which has made an independent decision to concentrate on the U.S. market and not to export its radios, wishes to license Langwelle, a German manufacturer of radios with 10 percent of the German market and no substantial sales in the United States. The license gives Langwelle the exclusive right under Short Wave's German patent to manufacture, use and sell the patented transistor in Germany for the radio field. The patented transistor provides improved performance in radios but is not a revolutionary development, and many other types of transistors can be used for the same purpose in radios. In order to induce Langwelle to use its patent, Short Wave is charging Langwelle a relatively low royalty. However, Short Wave also wishes to require Langwelle to purchase certain radio components for use in all radios manufactured by Langwelle that incorporate the licensed transistor. Finally, Short Wave wishes to impose a restriction on Langwelle preventing it from directly or indirectly exporting radios incorporating Short Wave's transistor to the United States. The U.S. market for radios is composed of 20 companies none of which has a market share in excess of 10 percent.

Discussion

It seems likely that the contemplated licensing arrangement would be consistent with Title III's standards. Short Wave's unilateral decision to export its technology by licensing other radio manufacturers in export markets seems to be an appropriate way to exploit its foreign patents. It seems unlikely that a substantial risk of a significant anticompetitive effect would result from Short Wave licensing a potential exporter of radios to the U.S. market and restricting the licensee's exports to the United States of radios incorporating the licensed technology. First, the license restriction prohibiting Langwelle from exporting from Germany radios containing the patented transistor would not be expected to have any effect on competition in the U.S. in the sale of radios containing that transistor. The U.S. patent covering the transistor gives Short Wave the power, through patent infringement or unfair trade practice proceedings, to exclude the importation into the U.S. of any radios using the patented transistor. Therefore, assuming the U.S. patent is valid, even absent the license restriction Langwelle could not have sold radios embodying the transistor in the U.S. Second, the license restriction does not affect Langwelle's ability to use transistors not embodying Short Wave's patent in radios for export to the United States. To the extent Langwelle found it economically beneficial to use the licensed transistors in all of its radios, it would be, as a practical matter, excluded from the U.S. market. However, even assuming that absent the license Langwelle would have imported radios employing other transistors into the U.S., in light of the unconcentrated nature of the U.S. market for radios, it seems unlikely that the exclusion of such a potential competitor would constitute a substantial restraint of trade within the United States.

The tying arrangement in the license seems to be consistent with the standards pertaining to restraints on the export trade of a competitor of the applicant or unfair methods of competition against such a competitor. The tie could have the effect of inducing Langwelle's use of the licensed technology by more closely tailoring Langwelle's cost of such use to its level of use. The tie should not raise significant competitive concerns because Short Wave does not appear to have market power in the tying product since there appear to be many alternatives available to the patented technology.

D. Sales to or Financed by U.S. Government

Early certificates of review have been issued with the following disclaimer: "This certificate does not apply to sales to the United States Government or to

any sale more than half the cost of which is borne by the United States Government." This disclaimer has been intended to prevent the grant of the benefits of a certificate of review to conduct in export transactions that might harm the United States Government when it is bearing most of the cost of such transactions. The agencies have decided that such a broad exclusion from certification is not necessary, so long as the guidelines spell out in more detail when conduct in sales made to, or financed by, the U.S. Government is included in or excluded from the coverage of export trade certificates.

Conduct that is otherwise covered by a certificate will be covered in the case of the U.S. Government financed transactions when either of two conditions are met. First, such conduct will be covered by the certificate where the net effect of any U.S. Government payment or financing involved in an export transaction is that not more than half the cost is borne by the U.S. Government. Second, even where more than half the cost is borne by the U.S. Government, the conduct will still be covered by the certificate where, because of the nature of the conduct or the existence of substantial competition from unaffiliated persons, the arrangement does not eliminate or substantially reduce competition in the transaction.

1. *More than Half the Cost Borne by U.S. Government.* For these purposes, more than half the cost of an export transaction will be considered to have been borne by the U.S. Government when:

a. The U.S. Government buys the goods for shipment abroad (*e.g.*, "Food for Peace" transactions);

b. The United States is paying for a sale of goods to a foreign government through a grant that is specifically earmarked for the purchase of the goods in question; or

c. The transaction is financed by a loan to a foreign government that has such terms that the loan constitutes a grant because the United States effectively bears most of the cost. Most Agency for International Development and many U.S. Department of Agriculture foreign aid loans fall into this category.[46]

When U.S. Government financing for a U.S. export transaction is not a grant or a heavily subsidized loan, but rather a loan at approximately market rates, then even conduct that would raise the price of goods exported would not have the effect of primarily harming U.S. taxpayers. Therefore, the special risk of harm to the U.S. Government that is the subject of this section of the Guidelines would not be present. Transactions that involve payments or financing by the U.S. Government, but in which the U.S. Government will not be considered to have borne more than half the cost, include:

a. Transactions in which any U.S. Government financing is at or near market rates. Examples of government programs that involve financing at or near market rates include most Eximbank, Overseas Private Investment Corporation, and Small Business Administration programs. (Where there is a question as to the share of the cost of a transaction borne by the government in situations where below-market rate financing is involved, the government's share will ordinarily be calculated in the manner described in footnote 46.)

b. Transactions funded by international agencies to which the U.S. Government contributes but does not supply a major portion of the funds for those agencies' financial assistance programs. Programs funded by the Asian Development Bank, for example, would normally fall in this category.

c. Transactions in which the purchaser is a foreign government that receives funds from the United States as part of a general government-to-government aid program, where the aid is unrestricted and not earmarked for particular programs. Transactions of this nature do not raise the special risk discussed in this section of the Guidelines, because it is not possible to determine the extent to which they are financed by the U.S. Government.

2. *Conduct that does not Eliminate or Substantially Reduce Competition.* If the U.S. Government financing of an export transaction is such that the U.S. Government bears more than half the cost, the transaction will nonetheless be covered by a certificate (assuming it is otherwise within the scope of the certificate) if it is not likely to have anticompetitive effects that will harm U.S. taxpayers. For these purposes, U.S. Government financed export transactions will be considered not to have such anticompetitive effects when either of the following is true:

a. Where the conduct involved is purely vertical and does not involve a horizontal combination among competitors; or

b. Where there is substantial competition from persons who are not participants with the certificate holder in the transaction. This condition will be considered as having been met when there are at least three other suppliers competing for the transaction, and those suppliers are qualified and able to supply the goods being sought on substantially competitive terms.

3. *Certification of Specific U.S. Government Financed Export Arrangements.* The preceding discussion is intended to provide guidance on the coverage of certificates of review for U.S. Government financed transactions in situation where the applicant has not specifically expressed an intention to participate in such transactions, and where the certificate makes no explicit provision for them. In these situations, certificates of review will include standard language stating that the certificate's application to conduct in U.S. financed transactions will be subject to the limitations set forth in these Guidelines.

These Guidelines are not, however, intended to preclude case-by-case analysis by the agencies of applicants' requests for explicit coverage of particular U.S. Government financed transactions, or particular types of government financed transactions. The agencies will consider, if requested, express certification of participation in programs financed by the U.S. Government and will provide such explicit coverage where the facts demonstrate an absence of likely anticompetitive harm to the U.S. Government. For example, in proposed transactions in which the U.S. Government would bear more than half the cost, the conduct is not strictly vertical, and there are fewer than three other competing suppliers, the applicant may nonetheless show that the specific arrangements contemplated would not result in anticompetitive harm to the U.S. Government and may obtain explicit coverage for these arrangements in its certificate.

[46] We distinguish loans that are so generous that more than half the cost is borne by the U.S. Government from other loans by looking at the interest rates and the repayment terms, and comparing them to commercial rates and terms. If the present value of the expected future repayment is less than half the value of the transaction, then it is one in which more than half the cost is borne by the U.S. Government. For example, in the case of a 40-year loan at 3% interest, with no payments due for the first ten years, the future repayments of principal and interest (to be made in the eleventh through fortieth years) are only worth about 10% of the face value of the loan, when the commercial rate at the time of the loan is about 14%. In a transaction financed by such a loan, more than half the cost (i.e. 90%) is borne by the U.S. Government. In the text, we discuss which loan programs fall into which category. If an applicant has questions about how a particular loan program is viewed, he should specify it in the application or in conversations with the agencies, so that an analysis can be done, and the certificate can specifically address the situation.

VI. Helpful Hints About the Application Process

A. Pre-Application Counseling

The Office of Export Trading Company Affairs offers preapplication counseling at no cost to potential applicants. Conducted in complete confidence by a team consisting of an attorney from the Office of General Counsel, a market analyst and an antitrust economist, this counseling offers potential applicant specific guidance on completing an application form. Such guidance may reduce the time it takes to obtain a certificate and may reduce or eliminate supplemental information requests. This office also provides counseling on forming, structuring and operating an export entity and on financing exports and on other referrals for export assistance.

Prior to arranging preapplication counseling, potential applicants are encouraged to seek general export counseling from a local ITA District Office. Such counseling includes answering potential applicants' preliminary questions about the ETC Act as well as discussing their overall export business plans.

B. Supplemental Information Requests

After the application has been accepted for processing, the Commerce or Justice Department may find it necessary to request additional information in order to make a determination under the four certification standards. The regulations permit Commerce to request such information in writing if either agency finds it necessary and thereby suspend the 90 day processing period. The 90 day period begins again when Commerce receives the requested information, and the agencies deem it sufficient to continue the analysis. Normally, however, such a suspension of the time period can be avoided through a telephone conference call or a meeting with the two agencies. A cooperative, rather than an adversarial, attitude facilitates these negotiations as does having someone available who is intimately familiar with the business that is the subject of the application.

Dated: January 8, 1985.

Malcom Baldrige,

Secretary of Commerce.

[FR Doc. 85-927 Filed 1-10-1985; 8:45 am]

BILLING CODE 3510-DR-M

federal register

Friday
January 11, 1985

Part VIII

Department of Commerce

International Trade Administration

15 CFR Part 325
Export Trade Certificates of Review;
Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 325

[Docket No. 40793-4093]

Export Trade Certificates of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements Title III of the Export Trading Company Act, Pub. L. 97-290. These regulations establish the procedures by which businesses may apply for and by which the Secretary of Commerce will issue export trade certificates or review. A holder of a certificate of review and the members identified in it will have specific protections from liability under Federal and State antitrust laws for the export trade, export trade activities, and methods of operation described in the certificate and conducted during its effective period in accordance with its terms and conditions.

EFFECTIVE DATE: January 11, 1985.

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SUPPLEMENTARY INFORMATION: On October 1, 1982, Congress passed the Export Trading Company Act (Pub. L. 97-290, 96 Stat. 1233) which the President signed into law on October 8, 1982. In order to increase United States exports of products and services, Title III of the Act (15 U.S.C. 4011-4021) authorizes the Secretary of Commerce to issue export trade certificates of review. The holder of a certificate of review and the members identified in it will have specific protections from civil and criminal liability under Federal and State antitrust laws for the export trade, export trade activities and methods of operation specified in the certificate, except that private parties may bring actions for injunctive relief or actual damages for a violation of the eligibility standards found in section 303 of the Act.

Section 310 of the Act gives the Secretary the authority to issue, with the concurrence of the Attorney General, rules and regulations to carry out the purposes of Title III. On December 21, 1982, the Secretary issued proposed regulations (47 FR 56972 and corrected by 48 FR 31). On March 11, 1983, the Secretary issued an interim rule (48 FR 10596). The interim rule explained how to apply for a certificate of review and the kinds of information that the application should contain so that the Secretary and Attorney General can determine whether they should issue the certificate. The regulations also explained how the Secretary and Attorney General will review applications and how a certificate can be amended, modified or revoked. Finally, the regulations discussed how the Secretary proposed to implement section 305 of the Export Trading Company Act which governs the judicial review of the Secretary's decisions to grant, deny, amend, modify, or revoke a certificate. A more detailed discussion of these provisions follows.

The Department provided sixty days for public comment on the interim rule. The Department received and considered ten comments. The Department has adopted a number of the commenters' suggestions in the final regulations. Based on its experience with over sixty applications to date, the Department has made a number of other changes from the interim rule to simplify and clarify the process of reviewing applications. The final rule also includes many editorial changes to make the regulations easier to read and understand. A discussion of the public comments and changes follows.

Scope

One commenter requested an expanded discussion of the scope of a certificate of review and a statement that applying for a certificate of review is voluntary. The Secretary and the Attorney General decided that the description of the scope of the regulations serves as an adequate introduction to the regulations.

Definitions

1. A definition of "export conduct" has been added to clarify that a certificate of review protects specified export trade activities or methods of operation, for specified products or services, and specified export markets.

2. The definition of "member" has been clarified. Ordinarily an entity seeking protection under a certificate of review along with the applicant may apply as a "member" of the applicant or simply as a co-applicant. However, an entity which is not a "person" as defined in Section 311(5) of the Act and § 325.2(n) of the regulations (such as a foreign company) must apply as a "member" of the applicant.

Applying for a Certificate

1. In § 325.3(b)(4) and (5), the chart or table describing the applicant's and each member's business has been made optional.

2. One commenter asked whether the term "by all companies" in § 325.3(b) was intended to relate only to corporate entities. The information desired concerns *all* sales in the United States by *all* entities for the last two years.

3. Section 325.3(b)(7)(iii) now asks for the foreign markets into which the applicant and its members intend to export goods and services. This information will help the Secretary and the Attorney General to analyze the proposed conduct under the four standards in Section 303(a) of the Act.

4. Section 325.3(b)(10) has been rewritten to clarify that the list of kinds of export conduct an applicant may wish to have certified is given solely as illustrative examples. Not all the examples apply to each applicant, and the list is not intended to be exhaustive. This section also requests that the applicant state the antitrust concerns raised by its proposed export conduct. This is intended to focus the applicant's inquiry into the specific protections it seeks under Title III.

5. Section 325.3(b)(11) has been rewritten to clarify that an applicant must state whether its proposed export conduct will involve exchange of information among competitors. However, the fact that such exchanges may take place does not mean that a certificate will not be issued. The exchange of information itself may be certifiable export conduct.

6. Section 325.3(b)(13) has been rewritten to clarify that the information requested is whether the goods and services to be exported are to be supplied by persons other than the applicant and its members.

7. In § 325.3(b)(16), the draft proposed certificate has been made optional.

8. Section 325.3(c) has been added to clarify that an applicant must sign an application for a certificate of review and certify that each member has authorized the applicant to submit the application.

9. Section 325.3(g) has been rewritten to clarify that the Secretary and the Attorney General will make two decisions when they receive supplemental information from an applicant. First, they will decide whether the supplemental information is complete. If the information is complete, they will restart the ninety-day clock and complete processing the application. If information is incomplete, the

Secretary and the Attorney General will then decide if the information already in their possession is sufficient to make a determination on the application.

Calculating Time Periods

Section 325.4 has been added to show how the Secretary and the Attorney General calculate time periods and deadlines under the Act and regulations. The Secretary and the Attorney General adopted the rule common in civil procedure which extends deadlines from a non-working day to the next working day.

Issuing the Certificate

1. Section 325.5(c)(2) has been changed to require the Secretary to deliver a proposed certificate to the Attorney General not later than thirty days, instead of twenty days, before a determination on the application is due.

2. One commenter stated that the requirement that a certificate shall specify all persons protected from liability (§ 325.5(d)) is inconsistent with the statement in the preamble to the Interim Rule that certificates need not identify each officer and director by name (48 FR 10596, March 11, 1983). Each certificate issued to date contains a statement that its protections extend to the applicant and to its officers and directors acting on its behalf. Some applicants have specifically asked for protection of named officers and directors, but there is no requirement that they do so.

Publishing Notices in the Federal Register

1. Section 325.6(b) now describes the existing practice of making certificate publicly available in the International Trade Administration Freedom of Information Records Inspection Facility.

2. Sections 325.6(c) and (d) have been added to require publication in the **Federal Register** of determinations on revocation or modification of a certificate, and determinations after an applicant has requested reconsideration of a denial of a certificate. These sections are intended to conform with §325.11(b) and to establish clearly the time period within which any aggrieved party may seek judicial review.

3. One commenter recommended a formal procedure by which applicants could respond to public comments on their application. The Secretary and the Attorney General intend to inform applicants of the substance of public comments only in those instances (expected to be rare) when such disclosure is necessary for the Secretary to make a determination on the application. In other situations information submitted in connection with an application will remain confidential.

4. One commenter questioned whether § 325.6(a), which provides that the Secretary will notify the applicant if he does not intend to publish the notice proposed by the applicant, differs in meaning from § 325.5(d), which provides that the Secretary shall first consult with the applicant if he intends to issue a draft certificate different from a draft certificate submitted by the applicant. The intention of both sections is the same. In each instance the Secretary will seek the applicant's input before publishing or issuing.

5. One commenter stated that the Secretary should consult with the applicant before publishing a summary of a certificate in the **Federal Register** (§ 325.6(b)). The Secretary and the Attorney General have found that consultation with the applicant over the form of the certificate eliminates the need for input on the form of the **Federal Register** notice, especially since certificates are publicly available.

Amending the Certificate

One commenter stated that expedited treatment should be available for amendments to certificates. The intention of § 325.7, which provides that applications for amendments will be treated in the same manner as original applications, is that expedited treatment is available on the same terms as for original applications.

Expediting the Certification Process

Section 325.8(a) has been rewritten to clarify the circumstances under which the Secretary and the Attorney General may grant expedited review. Section 325.8(b) now allows expedited review within any time period between forty-five and ninety days, rather than solely within forty-five days.

Modifying or Revoking a Certificate

1. Section 325.10(a) has been rewritten to list clearly the circumstances which may result in revocation or modification. In particular, failure to file a complete annual report may result in revocation or modification. The Secretary will publish a notice in the **Federal Register** of determinations to modify or revoke, or, after such proceedings have been initiated, of determinations not to modify or revoke.

2. One commenter stated that § 325.10(c)(2), which provides that failure to respond to a notification letter within thirty days will be considered an admission of the statements in the letter, is too servere a penalty. The Secretary and the Attorney General have decided to retain this provision. A certificate holder that can demonstrate that it requires more than thirty days to respond to a notification letter can request a waiver of the thirty-day limit under § 325.17.

3. One commenter requested that reconsideration procedures be available after revocation or modification. The Secretary and the Attorney General believe that judicial review should be the sole remedy after revocation or modification because of the government's need to promptly remove protection from conduct which has been determined to violate the standards set forth in Section 303(a) of the Act.

4. One commenter requested that the certificate holder receive a copy of the Secretary's proposed factual findings § 325.10(c)(3)). The Secretary and the Attorney General believe that the notification letter to the certificate holder § 325.10(c)(4) will contain an adequate description of the factual basis for the revocation or modification.

Judicial Review

1. Section 325.11(a) has been revised to clarify that when a certificate is denied, the applicant is not forced to choose between seeking judicial review and requesting reconsideration. The applicant may seek judicial review immediately upon denial or after seeking reconsideration. In each case a **Federal Register** notice will begin a thirty day period in which suit may be brought.

2. Section 325.11(c) has been revised to clarify what the Secretary and the Attorney General consider to constitute the record for judicial review.

Submitting Reports

1. Section 325.14(a) has been revised to require the Secretary to notify the certificate holder of the information required in the annual report. The notification is required not later than the anniversary date of the certificate's effective date.

2. The date the annual report is due had been changed from the anniversary date of the certificate effective date to forty-five days after the anniversary date. This change is intended to conform more closely to standard corporate and accounting practice.

Relinquishing a Certificate

Section 325.15 has been added to allow a certificate holder to relinquish its certificate at any time through written notice to the Secretary. This section conforms with § 325.3(f), which allows an applicant to withdraw its application at any time before the

Secretary has made his determination on the application.

Waiver

Section 325.17 has been added to allow waiver of the regulations in appropriate circumstances. The requirement that waiver be in writing is intended to eliminate potential confusion over whether a waiver of the regulations actually occurred.

Protecting Confidentiality of Information

1. One commenter requested a more tightly drawn confidentiality section in order to encourage applicants to take advantage of Title III. The Secretary and the Attorney General believe that the current confidentiality provisions conform to the Act and adequately protect confidential information. Over sixty applications have been submitted to date, and the Secretary and the Attorney General believe that no confidential business information has been released to the public.

2. One commenter stated that certificates of review should not be made publicly available in the International Trade Administration Freedom of Information Records Inspection Facility. Another commenter asked that publicly available certificates not contain confidential information. The experience of the Secretary and the Attorney General with the first certificates issued has been that certificates can be drafted so as not to reveal confidential information. However, the Secretary and the Attorney General believe that making certificates publicly available is useful to the public as a whole and necessary to give potentially aggrieved parties adequate notice of the conduct protected by the certificate.

3. One commenter stated that the Secretary should release confidential information to parties contesting the issuance of a certificate on the ground that such disclosure is necessary to determine whether to issue the certificate. The Secretary and the Attorney General believe that § 325.16(b)(3)(iv) gives ample authority for such disclosure in appropriate circumstances.

4. Two commenters stated that the Secretary should be required to notify a certificate holder of any request for information concerning the certificate in order to allow the certificate holder to relinquish its certificate and obtain return of all its submissions. The Secretary intends to notify every applicant and certificate holder of requests for information. Since there may be situations in which notification is impossible, the Secretary is unable to adopt the suggestion that notification always occur prior to disclosure.

5. One commenter requested that the Secretary and the Attorney General make confidential information available to antitrust enforcement agencies pursuant to section 309(b)(2)(F) of the Act. The Secretary believes that the purposes of the Act would not be served, and potential applicants would be discouraged from utilizing Title III, if this suggestion were adopted.

All changes from the Interim Rule not specifically discussed above are intended to be stylistic or editorial.

The public record concerning these regulations will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. The public may inspect and copy records in this facility, including written public comments and memoranda summarizing the substance of oral communications, according to the regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about inspecting and copying records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. The regulations are procedural in nature and will not have an annual effect on the economy of $100 million or more. Analysis of the regulations also indicates that they will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a Regulatory Impact Analysis of this rule is not required.

The only potential costs of the regulations are the costs to businesses of applying for certification and the costs to the government for processing applications. The recordkeeping, administrative burdens, and direct financial costs to a business to prepare an application under the regulations are expected to be minimal. Furthermore, the certification process is voluntary. A firm that wants to conduct an export venture is not required to get a certificate of review. The costs to the Federal government of reviewing applications are not expected to be significant.

The final rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. Accordingly, no assessment of environmental impact statement has been or will be prepared.

The final rule is exempt from the Regulatory Flexibility Analysis requirements of Section 603 of the Regulatory Flexibility Act since the Department is not required by Section 553 of Title V, United States Code, or any other law, to publish general notice of proposed rulemaking for interpretative rules, general statements of policy, and rules of procedure or practice. However, even if the final rule were not exempt, preparation of an initial Regulatory Flexibility Analysis would not be required because the record keeping, administrative burdens, and other costs on any individual entity applying for a certificate of review under the regulations would be minimal and those costs would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

The Office of Management and Budget has approved the information collection requirement contained in these regulations under the provisions of the Paperwork Reduction Act of 1980 (Pub L. 96-511). OMB Control Number 0625-0125.

List of Subjects in 15 CFR Part 325

Exports, antitrust, administrative practice and procedure, reporting requirements, and freedom of information.

For the reasons set out in the preamble, 15 CFR Chapter III, Subchapter A, is amended by adding a new Part 325 to read as follows:

PART 325—EXPORT TRADE CERTIFICATES OF REVIEW

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325.4 Calculating time periods
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325.16 Protecting confidentiality of information.
325.17 Waiver.

Authority: Title III of the Export Trading Company Act, Pub. L. 97-290 (96 Stat. 1240-1245, 15 U.S.C. 4011-4021).

§ 325.1 Scope.

This part contains regulations for issuing export trade certificates of review under Title III of the Export Trading Company Act, Pub. L. 97-290. A holder of a certificate of review and the members named in the certificate will have specific protections from private treble damage actions and government criminal and civil suits under U.S. Federal and State antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions.

§ 325.2 Definitions.

As used in this part:

(a) "Act" means Title III of Pub. L. 97-290, Export Trade Certificates of Review.

(b) "Antitrust laws" means the antitrust laws, as the term is defined in the first section of the Clayton Act (15 U.S.C. 12), section 5 of the Federal Trade Commission Act (15 U.S.C. 45) (to the extent that section 5 prohibits unfair methods of competition), and any State antitrust or unfair competition law.

(c) "Applicant" means the person or persons who submit an application for a certificate.

(d) "Application" means an application for a certificate to be issued under the Act.

(e) "Attorney General" means the Attorney General of the United States or his designee.

(f) "Certificate" means a certificate of review issued pursuant to the Act.

(g) "Control" means either (1) holding 50 percent or more of the outstanding voting securities of an issuer; or (2) having the contractual power presently to designate a majority of the directors of a corporation, or in the case of an unincorporated entity, a majority of the individuals who exercise similar functions.

(h) "Controlling entity" means an entity which directly or indirectly controls a member or applicant, and is not controlled by any other entity.

(i) "Export conduct" means specified export trade activities and methods of operation carried out in specified export trade and export markets.

(j) "Export trade" means trade or commerce in goods, wares, merchandise, or services that are exported, or are in the course of being exported, from the United States or any territory of the United States to any foreign nation.

(k) "Export trade activities" means activities or agreements in the course of export trade.

(l) "Member" means an entity (U.S. or foreign) or a person which is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement.

(m) "Method of operation" means any method by which an applicant or member conducts or proposes to conduct export trade.

(n) "Person" means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether it is organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons.

(o) "Secretary" means the Secretary of Commerce or his designee.

(p) "Services" means intangible economic output, including, but not limited to—

(1) business, repair, and amusement services,

(2) management, legal, engineering, architectural, and other professional services, and

(3) financial, insurance, transportation, informational and any other data-based services, and communication services.

(q) "United States" means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

§ 325.3 Applying for a certificate of review.

(a) *Place of filing.* The applicant shall submit an original and two copies of a completed application form (ITA 4093-P, OMB Control Number 0625-0125) by personal delivery during normal business hours or by first class mail to the Office of Export Trading Company Affairs, Room 5618, International Trade Administration, Department of Commerce, Washington, D.C. 20230. Although not required, the applicant should consider using registered mail or some other delivery method that provides evidence of receipt.

(b) *Contents of application.* Any person may submit an application for certification. The application shall contain, where applicable, the information listed below. Some information, in particular the identification of goods or services that the applicant exports or proposes to export, is requested in a certain form (Standard Industrial Classification [SIC] numbers) if reasonably available. Where information does not exist in this form, the applicant may satisfy the request for information by providing it in some other convenient form. If the applicant is unable to provide any of the information requested or if the applicant believes that any of the information requested would be both burdensome to obtain and unnecessary for a determination on the application, the applicant should state that the information is not being provided or is being provided in lesser detail, and explain why.

(1) Name and principal address of the applicant and of its controlling entity, if any. Include the name, title, address, telephone number, and relationship to the applicant of each individual to whom the Secretary should address correspondence.

(2) The name and principal address of each member, and of each member's controlling entity, if any.

(3) A copy of any legal instrument under which the applicant is organized or will operate. Include copies, as applicable, of its corporate charter, bylaws, partnership, joint venture, membership or other agreements or contracts under which the applicant is organized.

(4) A copy of the applicant's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in the annual report, or other documents submitted in connection with the application, a description of the applicant's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(5) A copy of each member's most recent annual report, if any, and that of its controlling entity, if any. To the extent the information is not included in

the annual report, or other documents submitted in connection with the application, a description of each member's domestic (including import) and export operations, including the nature of its business, the types of products or services in which it deals, and the places where it does business. This description may be supplemented by a chart or table.

(6) The names, titles, and responsibilities of the applicant's directors, officers, partners and managing officials, and their business affiliations with other members or other businesses that produce or sell any of the types of goods or services described in paragraph (b)(7) of this section.

(7)(i) A description of the goods or services which the applicant exports or proposes to export under the certificate of review. This description should reflect the industry's customary definitions of the products and services.

(ii) If it is reasonably available, an identification of the goods or services according to the Standard Industrial Classification (SIC) number. Goods should normally be identified according to the 7-digit level. Services should normally be identified at the most detailed SIC level available.

(iii) The foreign geographic areas to which the applicant and each member export or intend to export their goods and services.

(8) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section:

(i) The principal geographic area or areas in the United States in which the applicant and each member sell their goods and services.

(ii) For their previous two fiscal years, the dollar value of the applicant's and each member's (A) total domestic sales, if any; and (B) total export sales, if any. Include the value of the sales of any controlling entities and all entities under their control.

(9) For each class of the goods, wares, merchandise or services described in paragraph (b)(7) of this section, the best information or estimate accessible to the applicant of the total value of sales in the United States by all companies for the last two years. Identify the source of the information or the basis of the estimate.

(10) A description of the specific export conduct which the applicant seeks to have certified. Only the specific export conduct described in the application will be eligible for certification. For each item, the applicant should state the antitrust concern, if any, raised by that export conduct. (Examples of export conduct which applicants may seek to have certified include the manner in which goods and services will be obtained or provided; the manner in which prices or quantities will be set; exclusive agreements with U.S. suppliers or export intermediaries; territorial, quantity, or price agreements with U.S. suppliers or export intermediaries; and restrictions on membership or membership withdrawal. These examples are given only to illustrate the type of export conduct which might be of concern. The specific activities which the applicant may wish to have certified will depend on its particular circumstances or business plans.)

(11) If the export trade, export trade activities, or methods of operation for which certification is sought will involve any agreement or any exchange of information among suppliers of the same or similar products or services with respect to domestic prices, production, sales, or other competitively sensitive business information, specify the nature of the agreement or exchange of information. Such information exchanges are not necessarily impermissible and may be eligible for certification. Whether or not certification is sought for such exchanges, this information is necessary to evaluate whether the conduct for which certification is sought meets the standards of the Act.

(12) A statement of whether the applicant intends or reasonably expects that any exported goods or services covered by the proposed certificate will re-enter the United States, either in their original or modified form. If so, identify the goods or services and the manner in which they may re-enter the U.S.

(13) The names and addresses of the suppliers of the goods and services to be exported (and the goods and services to be supplied by each) unless the goods and services to be exported are to be supplied by the applicant and/or its members.

(14) A proposed non-confidential summary of the export conduct for which certification is sought. This summary may be used as the basis for publication in the Federal Register.

(15) Any other information that the applicant believes will be necessary or helpful to a determination of whether to issue a certificate under the standards of the Act.

(16) (Optional) A draft proposed certificate.

(c) The applicant must sign the application and certify that (1) each member has authorized the applicant to submit the application, and (2) to the best of its belief the information in the application is true, correct, and fully responsive.

(d) *Conformity with regulations.* No application shall be deemed submitted unless it complies with these regulations. Applicants are encouraged to seek guidance and assistance from the Department of Commerce in preparing and documenting their applications.

(e) *Review and acceptance.* The Secretary will stamp the application on the day that it is received in the Office of Export Trading Company Affairs. From that date, the Secretary will have five working days to decide whether the application is complete and can be deemed submitted under the Act. On the date on which the application is deemed submitted, the Secretary will stamp it with that date and notify the applicant that the application has been accepted for review. If the application is not accepted for review, the Secretary shall advise the applicant that it may file the application again after correcting the deficiencies that the Secretary has specified. If the Secretary does not take action on the application within the five-day period, the application shall be deemed submitted as of the sixth day.

(f) *Withdrawal of application.* The applicant may withdraw an application by written request at any time before the Secretary has determined whether to issue a certificate. An applicant who withdraws an application may submit a new application at any time.

(g) *Supplemental Information.* After an application has been deemed submitted, if the Secretary or the Attorney General finds that additional information is necessary to make a determination on the application, the Secretary will ask the applicant in writing to supply the supplemental information. The running of the time period for a determination on the application will be suspended from the date on which the request is sent until the supplemental information is received and is considered complete. The Secretary shall promptly decide whether the supplemental information is complete, and shall notify the applicant of his decision. If the information is being sought by the Attorney General, the supplemental information may be deemed complete only if the Attorney General concurs. If the applicant does not agree to provide the additional information, or supplies information which the Secretary or the Attorney General considers incomplete, the Secretary and the Attorney General will decide whether the information in their possession is sufficient to make a determination on the application. If either the Secretary or the Attorney General considers the information in

their possession insufficient, the Secretary may make an additional request or shall deny the application. If they consider the information in their possession sufficient to make a determination on the application, the Secretary shall notify the applicant that the time period for a determination has resumed running.

(Information collection requirements in paragraph (a) approved by the Office of Management and Budget under control number 0625–0125)

§ 325.4 Calculating time periods.

(a) When these regulations require action to be taken within a fixed time period, and the last day of the time period falls on a non-working day, the time period shall be extended to the next working day.

(b) The day after an application is deemed submitted shall be deemed the first of the days within which the Secretary must make a determination on the application.

§ 325.5 Issuing the certificate.

(a) *Time period.* The Secretary shall determine whether to issue a certificate within ninety days after the application is deemed submitted (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). If the Secretary or the Attorney General considers it necessary, and the applicant agrees, the Secretary may take up to an additional thirty days to determine whether to issue a certificate.

(b) *Determination.* The Secretary shall issue a certificate to the applicant if he determines, and the Attorney General concurs, that the proposed export trade, export trade activities and methods of operation will—

(1) Result in neither a substantial lessening of competition or restraint of trade within the United States nor a substantial restraint of the export trade of any competitor of the applicant;

(2) Not unreasonably enhance, stabilize, or depress prices within the United States of the class of the goods, wares, merchandise or services exported by the applicant;

(3) Not constitute unfair methods of competition against competitors who are engaged in the export of goods, wares, merchandise or services of the class exported by the applicant; and

(4) Not include any act that may reasonably be expected to result in the sale for consumption or resale within the United States of the goods, wares, merchandise, or services exported by the applicant.

(c) *Concurrence of the Attorney General.* (1) Not later than seven days after an application is deemed submitted, the Secretary shall deliver to the Attorney General a copy of the application, any information submitted in connection with the application, and any other relevant information in his possession. The Secretary and the Attorney General shall make available to each other copies of other relevant information that was obtained in connection with the application, unless otherwise prohibited by law.

(2) Not later than thirty days before the day a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than ten days before the day a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary with the concurrence of the Attorney General, may modify or revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(3) If the Attorney General receives the proposed certification by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(d) *Content of certificate.* The certificate shall specify the export conduct and all persons or entities which are protected from liability under the antitrust laws. The Secretary may certify the proposed export conduct contained in the application, in whole or in part, with such changes, modifications, terms, or conditions as are appropriate. If the Secretary intends to issue a certificate different from a draft certificate submitted by the applicant, the Secretary shall first consult with the applicant.

(e) *Certificate obtained by fraud.* A certificate shall be void *ab initio* with respect to any export conduct for which a certificate was obtained by fraud.

(f) *Minimum thirty-day period.* The Secretary may not issue a certificate until thirty days after the summary of the application is published in the **Federal Register**.

§ 325.6 Publishing notices in the Federal Register.

(a) Within ten days after an application is deemed submitted, the Secretary shall deliver to the **Federal Register** a notice summarizing the application. The notice shall identify the applicant and each member and shall include a summary of the export conduct for which certification is sought. If the Secretary does not intene to publish the summary proposed by the applicant, he shall notify the applicant. Within twenty days after the date the notice is published in the **Federal Register**, interested parties may submit written comments to the Secretary on the application. The Secretary shall provide a copy of such comments to the Attorney General.

(b) If a certificate is issued, the Secretary shall publish a summary of the certification in the **Federal Register**. If an application is denied, the Secretary shall publish a notice of denial. Certificates will be available for inspection and copying in the International Trade Administration Freedom of Information Records Inspection Facility.

(c) If the Secretary initiates proceedings to revoke or modify a certificate, he shall publish a notice of his final determination in the **Federal Register**.

(d) If the applicant requests reconsideration of a determination to deny an application, in whole or in part, the Secretary shall publish notice of his final determination in the **Federal Register**.

§ 325.7 Amending the certificate.

An application for an amendment to a certificate shall be treated in the same manner as an original application. The application for an amendment shall set forth the proposed amendment(s) and the reasons for them. It shall contain any information specified in § 325.3(b) that is relevant to the determination on the application for an amendment. The effective date of an amendment will be the date on which the application for the amendment was deemed submitted.

§ 325.8 Expediting the certification process.

(a) *Request for expedited action.* (1) An applicant may be granted expedited action on its application in the discretion of the Secretary and the Attorney General. The Secretary and the Attorney General will consider such requests in light of an applicant's showing that it has a special need for a prompt decision. A request for expedited action should include an explanation of why expedited action is needed, including a statement of all relevant facts and circumstances, such as bidding deadlines or other circumstances beyond the control of the applicant, that require the applicant to act in less than ninety days and that have a significant impact on the applicant's export trade.

(2) The Secretary shall advise the applicant within ten days after the application is deemed submitted whether it will receive expedited action. The Secretary may grant the request in whole or in part and process the remainder of the application through the normal procedures. Expedited action may be granted only if the Attorney General concurs.

(b) *Time period.* The Secretary shall determine whether to issue a certificate to the applicant within forty-five days after the Secretary granted the request for expedited action, or within a longer period if agreed to by the applicant (excluding any suspension pursuant to § 325.3(f) of the time period for making a determination). The Secretary may not issue a certificate until thirty days after the summary of the application is published in the **Federal Register.**

(c) *Concurrence of the Attorney General.* (1) Not later than ten working days before the date on which a determination on the application is due, the Secretary shall deliver a proposed certificate to the Attorney General for discussion and comment. If the Attorney General does not agree that the proposed certificate may be issued, he shall, not later than five working days before the date on which a determination on the application is due, so advise the Secretary and state the reasons for the disagreement. The Secretary, with the concurrence of the Attorney General, may revise the proposed certificate to resolve the objections and problems raised by the Attorney General, or deny the application.

(2) If the Attorney General receives the proposed certificate by the date specified in the preceding paragraph and does not respond within the time period specified in that paragraph, he shall be deemed to concur in the proposed certificate.

(Information collection requirements in paragraph (a)(1) approved by the Office of Management and Budget under control number 0625–0125)

§ 325.9 Reconsidering an application that has been denied.

(a) If the Secretary determines to deny an application in whole or in part, he shall notify the applicant in writing of his decision and the reasons for his determination.

(b) Within thirty days after receiving a notice of denial, the applicant may request the Secretary to reconsider his determination.

(1) The request for reconsideration shall include a written statement setting forth the reasons why the applicant believes the decision should be reconsidered, and any additional information that the applicant considers relevant.

(2) Upon the request of the applicant, the Secretary and the Attorney General will meet informally with the applicant and/or his representative to discuss the applicant's reasons why the determination on the application should be changed.

(c) The Secretary shall consult with the Attorney General with regard to reconsidering an application. The Secretary may modify his original determination only if the Attorney General concurs.

(d) The Secretary shall notify the applicant in writing of his final determination after reconsideration and of his reasons for the determination within thirty days after the request for reconsideration has been received.

§ 325.10 Modifying or revoking a certificate.

(a) *Action subject to modification or revocation.* The Secretary shall revoke a certificate, in whole or in part, or modify it, as the Secretary or the Attorney General considers necessary, if:

(1) The export conduct of a person or entity protected by the certificate no longer complies with the requirements set forth in § 325.4(b);

(2) A person or entity protected by the certificate fails to comply with a request for information under paragraph (b) of this section; or

(3) The certificate holder fails to file a complete annual report.

(b) *Request for information.* If the Secretary or the Attorney General has reason to believe that the export trade, export trade activities, or methods of operation of a person or entity protected by a certificate no longer comply with the requirements set forth in § 325.4(b), the Secretary shall request any information that he or the Attorney General considers to be necessary to resolve the matter.

(c) *Proceedings for the revocation or modification of a certificate—*

(1) *Notification letter.* If, after reviewing the relevent information in their possession, it appears to the Secretary or the Attorney General that a certificate should be revoked or modified for any of the reasons set forth in paragraph (a) above, the Secretary shall so notify the certificate holder in writing. The notification shall be sent by registered or certified mail to the address specified in the certificate. The notification shall include a detailed statement of the facts, conduct, or circumstances which may warrant the revocation or modification of the certificate.

(2) *Answer.* The certificate holder shall respond to the notification letter within thirty days after receiving it, unless the Secretary, in his discretion, grants a thirty day extension for good cause shown. The certificate holder shall respond specifically to the statement included with the notification letter and state in detail why the facts, conduct or circumstances described in the notification letter are not true, or if they are true, why they do not warrant the revoking or modifying of the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter.

(3) *Resolution of factual disputes.* Where material facts are in dispute, the Secretary and the Attorney General shall, upon request, meet informally with the certificate holder. The Secretary or the Attorney General may require the certificate holder to provide any documents or information that are necessary to support its contentions. After reviewing the statements of the certificate holder and the documents or information that the certificate holder has submitted, and upon considering other relevant documents or information in his possession, the Secretary shall make proposed findings of the factual matters in dispute. The Attorney General is not bound by the proposed findings.

(4) *Final determination.* The Secretary and the Attorney General shall review the notification letter and the certificate holder's answer to it, the proposed factual findings made under paragraph (c)(3) of this section, and any other relevant documents or information in their possession. If, after review, the Secretary or the Attorney General determines that the export conduct of a person or entity protected by the certificate no longer complies with the standards set forth in § 325.4(b), the Secretary shall revoke or modify the certificate as appropriate. If the Secretary or the Attorney General determines that the certificate holder has failed to comply with the request for information under paragraph (b) of this section, or has failed to file a complete annual report, and that the failure to comply or file should result in revocation of modification, the Secretary shall revoke or modify the certificate as appropriate. The determination will be final and will be issued to the certificate holder in writing. The notice to the certificate holder shall include a statement of the circumstances underlying and the reasons in support of the determination.

If the Secretary determines to revoke or modify the certificate, the decision shall specify the effective date of the revocation or modification; this date must be at least thirty days but not more than ninety days after the Secretary notifies the certificate holder of his determination. The Secretary shall publish notice in the **Federal Register** of a revocation or modification or a decision not to revoke or modify.

(d) *Investigative information.* In proceedings under this section, the Attorney General shall make available to the Secretary any information that has been obtained in response to Civil Investigative Demands issued under Section 304(b)(3) of the Act. Unless prohibited by law, the Attorney General and the Secretary shall also make available to each other any other information which each is relying upon under these proceedings.

§ 325.11 Judicial review.

(a) *Review of certain determinations.* (1) Any person aggrieved by a final determination of the Secretary under §§ 325.5, 325.7, 325.9, or 325.10 of these regulations may, within thirty days of the determination, bring an action in an appropriate district court of the United States to set aside the determination on the ground that it is erroneous. If a certificate is denied, the applicant may bring suit within thirty days after the notice of denial is published in the **Federal Register**, or, if the applicant seeks reconsideration, within thirty days after the Secretary publishes in the **Federal Register** notice of his determination after reconsideration.

(b) For purposes of judicial review, determinations of the Secretary are final when notice is published in the **Federal Register**.

(c) *Record for judicial review.* For purposes of judicial review, the record shall include all information presented to or obtained by the Secretary which had a bearing on the determination, the determination itself, the supporting statement setting forth the reasons for the determination, and the Attorney General's response to the Secretary indicating concurrence or nonconcurrence.

(d) *Limitation of judicial review.* Except as provided in paragraph (a) of this section, no agency action taken under the Act shall be subject to judicial review.

§ 325.12 Returning the applicant's documents.

(a) Upon the denial or withdrawal of an application for a certificate in its entirety, the applicant may request the return of all copies of the documents submitted by the applicant in connection with the application to the Department of Commerce or the Department of Justice. The applicant shall submit this request in writing to both the Secretary and the Attorney General.

(b) The Secretary and the Attorney General shall return the documents to the applicant within thirty days after they receive the applicant's request.

§ 325.13 Nonadmissibility in evidence.

If the Secretary denies, in whole or in part, an application for a certificate or for an amendment to a certificate, or revokes or amends a certificate, neither the negative determination nor the statement of reasons therefor shall be admissible in evidence in any administrative or judicial proceeding in support of any claim under the antitrust laws.

§ 325.14 Submitting reports.

(a) Not later than each anniversary of a certificate's effective date, the Secretary shall notify the certificate holder of the information to be included in the annual report. This report shall contain any changes relevant to the matters specified in the certificate, an update of the information contained in the application brought current to the anniversary date, and any other information the Secretary considers appropriate, after consultation with the Attorney General.

(b) Not later than forty-five days after each anniversary of a certificate's effective date, a certificate holder shall submit its annual report to the Secretary. The Secretary shall deliver a copy of the annual report to the Attorney General.

(c) Failure to submit a complete annual report may be the basis for modification or revocation of a certificate.

§ 325.15 Relinquishing a certificate.

A certificate holder may relinquish a certificate at any time through written notice to the Secretary. The certificate will cease to be effective on the day the Secretary receives the notice.

§ 325.16 Protecting confidentiality of information.

(a) Any information that is submitted by any person under the Act is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552).

(b)(1) Except as authorized under paragraph (b)(3) of this section, no officer or employee of the United States shall disclose commercial or financial information submitted under this Act if the information is privileged or confidential, and if disclosing the information would cause harm to the person who submitted it.

(2) A person submitting information shall designate the documents or information which it considers privileged or confidential and the disclosure of which would cause harm to the person submitting it. The Secretary shall endeavor to notify these persons of any requests or demands before disclosing any of this information.

(3) An officer or employee of the United States may disclose information covered under paragraph (b)(1) of this section only under the following circumstances—

(i) Upon a request made by either House of Congress or a Committee of the Congress,

(ii) In a judicial or administrative proceeding subject to issuance of an appropriate protective order,

(iii) With the written consent of the person who submitted the information,

(iv) When the Secretary considers disclosure of the information to be necessary for determining whether or not to issue, amend, or revoke a certificate, if—

(A) The Secretary determines that a non-confidential summary of the information is inadequate; and

(B) The person who submitted the information is informed of the intent to disclose the information, and has an opportunity to advise the Secretary of the potential harm which disclosure may cause,

(v) In accordance with any requirement imposed by a statute of the United States.

(c) In any judicial or administrative proceeding in which disclosure is sought from the Secretary or the Attorney General of any confidential or privileged documents or information submitted under this Act, the Secretary or Attorney General shall attempt to notify the party who submitted the information of the request or demand for disclosure. In appropriate circumstances the Secretary or Attorney General may seek or support an appropriate protective order on behalf of the party who submitted the documents or information.

§ 325.17 Waiver.

The Secretary may waive any of the provisions of this part in writing for good cause shown, if the Attorney General concurs and if permitted by law.

Dated: January 8, 1985.

Malcolm Baldrige,

Secretary of Commerce.

[FR Doc. 85-826 Filed 1-10-85; 8:45 am]

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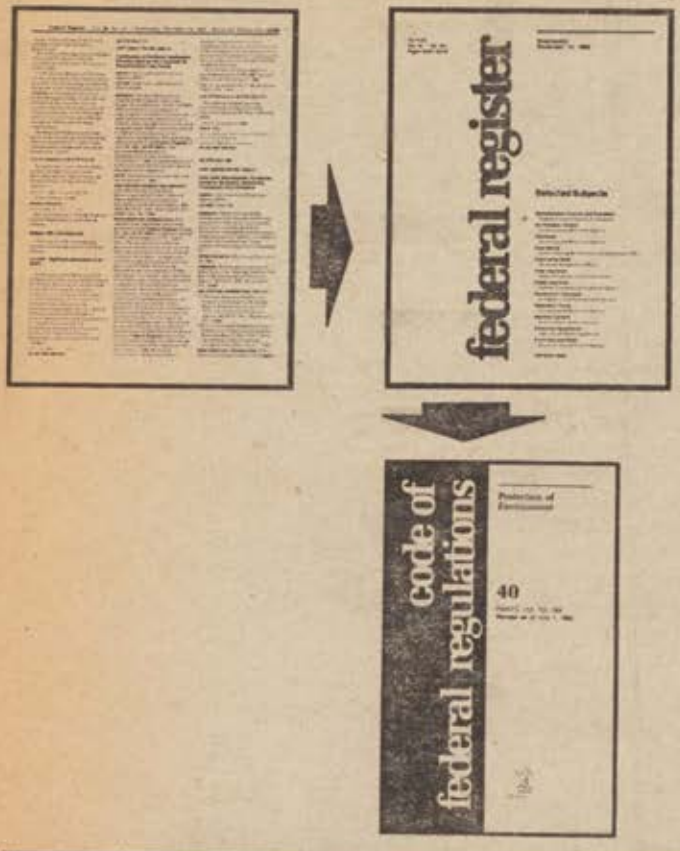
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