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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

Irish Potatoes Grown in Washington; Handling Regulations

CFR Correction

In title 7 of the Code of Federal Regulations, parts 900 to 999, revised as of January 1, 1990, on page 516, in § 946.336 paragraph (c)(2) was inadvertently omitted and should be added to read as follows:

§ 946.336 [Corrected]

* * * * *

(c) * * *

(2) *Export.* Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better.

* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 102 and 161

[Docket No. 84N-0249]

Canned Tuna; Amendment of the Standard of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standard of identity for canned tuna to provide for (1) the optional use of vegetable oil or partially hydrogenated vegetable oil as seasoning or flavoring ingredients in canned tuna in water, and (2) the use of any suitable form of emulsifying and suspending agents that has been affirmed as generally recognized as safe (GRAS) or approved as a food additive to aid in dispersion of the oil. The maximum level of use of the oil will be 5 percent of the volume capacity of the can. The action responds to a petition filed by Ralston Purina Co. The agency is also updating the scientific nomenclature for species' names in the common or usual name regulation for bonito and the standard for canned tuna. FDA believes that these amendments will promote honesty and fair dealing in the interest of consumers.

DATES: Effective December 31, 1990; written objections and requests for a hearing by November 30, 1990.

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

FOR FURTHER INFORMATION CONTACT: James F. Lin, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0122.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 14, 1987 (52 FR 30387), FDA proposed to amend the standard of identity for canned tuna in 21 CFR 161.190(a)(6) to permit the use of vegetable oil or partially hydrogenated vegetable oil, with or without safe and suitable emulsifying and suspending agents, as optional seasoning or flavoring ingredients in canned tuna in water in an amount not to exceed 5 percent of the volume capacity of the can. FDA also proposed that § 161.190(a)(8) be amended to provide for the use of the phrase "seasoned with oil" when vegetable oil is used as seasoning or flavoring in tuna in water, and to provide for label declaration of any optional emulsifying and suspending agents used in the food. These proposed amendments were in response to a petition submitted by the Ralston Purina Co.

On its own initiative, FDA proposed that the lists of species in the common or usual name regulation for bonito in 21 CFR 102.47 and in the standard of identity for canned tuna in § 161.190(a)(2) be updated to reflect current scientific nomenclature and corresponding trivial names. The agency also requested information on whether other species should be added to either of the lists. Interested persons were given until October 13, 1987, to submit comments.

I. Comments

The agency received two letters, each containing one or more comments from academia and a Federal agency in response to the proposal. The comments offered suggestions with respect to the proposed update of the lists of bonito and tuna species. A summary of the comments and the agency's responses are discussed below:

1. *Bonito species.* The National Marine Fisheries Service (NMFS) pointed out that the preferred scientific name for striped bonito is *Sarda orientalis* and not *Sarda velox.* NMFS requested that FDA include in its updated list of "bonito" or "bonito fishes" four additional species of the genus *Sarda,* i.e., *Sarda australis,* Australian bonito; *Sarda chiliensis,* Pacific bonito; *Sarda orientalis,* striped bonito; and *Sarda sarda,* Atlantic bonito; which are harvested, processed, and marketed internationally as "bonito" or "bonito fish."

Another comment requested that FDA include seven additional species of the tribe *Sardini,* i.e., *Cybiosarda elegans,* leaping bonito; *Gymnosarda unicolor,* Dogtooth tuna; *Orcynopsis unicolor,* plain bonito; and four species of the genus *Sarda* (cited above) in its updated list of "bonito" or "bonito fishes." The comment pointed out that by expanding the list, all members of the tribe *Sardini,* or bonito species, will be included. This list reflects the most up-to-date understanding of the phylogenetic relationship within the family of Scombridae. In listing the trivial names of the four species of the genus *Sarda,* the comment cited "Eastern Pacific bonito" as the name for *Sarda chiliensis* (Ref. 1).

The agency agrees with the reasons presented in the NMFS comment that the name *Sarda velox* should be replaced by *Sarda orientalis.* FDA accepts the trivial name "Eastern pacific bonito," as suggested in the second comment, because it more accurately defines the species *Sarda chiliensis* (Ref. 1). The agency also believes that it is reasonable to include in the list of "bonito" or "bonito fishes" the seven suggested species of the tribe *Sardini,* i.e., *Cybiosarda elegans,* leaping bonito; *Gymnosarda unicolor,* Dogtooth tuna;

and *Orcynopsis unicolor*, plain bonito; *Sarda australis*, Australian bonito; *Sarda chiliensis*, Eastern Pacific bonito; *Sarda orientalis*, striped bonito; and *Sarda sarda*, Atlantic bonito, and has amended 21 CFR 102.47, accordingly.

2. *Tuna species.* NMFS requested that FDA revise three of the fish names in the listing of scientific and common names of the tuna fishes as follows: (1) *Thunnus thynnus*—bluefin tuna; (2) *Thunnus maccoyi*—southern bluefin tuna; and (3) *Euthynnus pelamis*—skipjack tuna.

The agency believes that the three tuna names, as published in the proposal, are the correct names and therefore, no change is necessary. The trivial name for *Thunnus thynnus* was listed in the proposal as "northern bluefin tuna" wherein the word "northern" was added to differentiate it from "southern bluefin tuna," the trivial name for *Thunnus maccoyii*. The preferred spelling of the scientific name for southern bluefin tuna in 21 CFR 161.190, in both the current and proposed species listing is *Thunnus maccoyii* (Refs. 1 and 5), not *Thunnus maccoyi* as mentioned in the NMFS comment. The scientific name for skipjack tuna is *Katsuwonus pelamis* (Refs. 2, 3, and 5), and not *Euthynnus pelamis* as mentioned in the NMFS comment. The names *Thunnus maccoyii* and *Katsuwonus pelamis* are also used in "The Fish List" (1988), which was developed by FDA in cooperation with NMFS (Ref. 4).

One comment requested that FDA include three additional species, *Allothunnus fallai*—slender tuna, *Auxis rochei*—bullet tuna, and *Auxis thazard*—frigate tuna, in its updated list of tuna fishes. According to the comment, global stocks of slender tuna and the two species of *Auxis* are considerable, but not fully utilized, while the stocks of the principal market species of tunas, with the exception of the skipjack, are either overexploited or fully utilized. The comment further stated that neither *Allothunnus* nor *Auxis* could be rejected because of inferior organoleptic properties. The comment maintained that although the two species of *Auxis* are relatively small and may have to be harvested with fishing gear different from that used for the principal market species, the listing of the species in the canned tuna standard may prompt development of that gear. The comment further noted that no mention is made in the existing canned tuna standard that a given species of tuna has to be a prescribed size; thus, a northern bluefin tuna weighing 2 pounds or 1,000 pounds may be canned as tuna.

The agency believes adequate support for inclusion of the additional species has been provided and is including the three species, i.e., *Allothunnus fallai*—slender tuna, *Auxis rochei*—bullet tuna, and *Auxis thazard*—frigate tuna, in the tuna list of species in 21 CFR 161.190(a)(2).

Another comment suggested that the common name "black skipjack," as listed in the proposal, be replaced with the name "black skipjack tuna" which parallels "skipjack tuna" that is also referred to as "white skipjack" or "white skipjack tuna." The comment also suggested that the trivial name for *Euthynnus alletteratus* be changed from "little tunny," as listed in the proposal, to "spotted tunny." The comment explained that since the names "tuna" and "tunny" are synonymous in English usage, the appellation "little tunny" often proves a source of confusion, being accepted as a description of size and not as a fish name.

The agency concurs with the reasons given in the comment and has replaced black skipjack with "black skipjack tuna" as the trivial name of *Euthynnus lineatus;* and "little tunny" with "spotted tunny" as the trivial name of *Euthynnus alletteratus* in 21 CFR 161.190(a)(2).

3. *Scientific nomenclature.* To avoid ambiguity in the identity of listed species, one comment requested that the agency adhere to the internationally accepted rules of scientific nomenclature, wherein each of the scientific names is accompanied by the author's name to assure that a given species cannot be confused with any other species which has been mistakenly referred to in the literature by the same scientific name. For example, (Cuvier, 1831) following the name *Sarda chiliensis* denotes that Cuvier published the description of the species in the indicated year. The comment included the listing of species' names according to the current scientific nomenclature along with trivial names for both bonito fishes (21 CFR 102.47) and tuna fishes (21 CFR 161.190(a)(2)).

The agency recognizes the necessity in scientific nomenclature for reference to the author of the original description of each species so confusion will not arise as to precise identification. Therefore, the agency concurs with the comment that each of the scientific names be accompanied by the name of the author of the original species description. Furthermore, the agency considers that the lists, as proposed in the comment, are adequate for updating the species' names for bonito fishes (21 CFR 102.47) as well as for tuna fishes (21 CFR 161.190(a)(2)) and is including the cited references in the revised regulations.

For the convenience of the readers, FDA is including a chart comparing the current list (1990 CFR) of tuna species' names with that of the updated list set forth in the document, including a reference to each original author's name.

1990 CFR	Revised list
Thunnus thynnus—Bluefin tuna.	*Thunnus thynnus* (Linnaeus, 1758)—Northern bluefin tuna.
Thunnus maccoyii—Southern bluefin tuna.	*Thunnus maccoyii* (Castelnau, 1872)—Southern bluefin tuna.
Thunnus orientalis—Oriental tuna.	(Name deleted—same as *Thunnus* thynnus).
Thunnus germo—Albacore.	*Thunnus alalunga* (Bonnaterre, 1788)—Albacore.
Thunnus atlanticus—Blackfin tuna.	*Thunnus atlanticus* (Lesson, 1830)—Blackfin tuna.
Parathunnus mebachi—*Bigeye tuna.*	*Thunnus obesus* (Lowe, 1839)—Bigeye tuna.
Neothunnus macropterus—Yellowfin tuna.	*Thunnus albacores* (Bonnaterre, 1788)—Yellowfin tuna.
Neothunnus rarus—Northern bluefin tuna.	*Thunnus tonggol* (Bleeker, 1851)—Longtail tuna.
Katsuwonus pelamis—Skipjack.	*Katsuwonus pelamis* (Linnaeus, 1758)—Skipjack tuna.
Euthynnus alletteratus—Little tunny.	*Euthynnus alletteratus* (Rafinesque, 1810)—Spotted tunny.
Euthynnus lineatus—Little tunny.	*Euthynnus lineatus* (Kishinouye, 1920)—Black skipjack tuna.
Euthynnus yaito—Kawakawa.	*Euthynnus affinis* (Cantor, 1849)—Kawakawa.
	Allothunnus fallai (Serventy, 1948)—Slender tuna.
	Auxis rochei (Risso, 1810)—Bullet tuna.
	Auxis thazard (Lacepede, 1800)—Frigate tuna.

II. References

1. Collette, B. B. et al., "Scombroidei: Development and Relationships" in "Ontogeny and Systematics of Fishes," Special Publication No. 1, American Society of Ichthyologists and Herpetologists, pp. 591–620, 1984.

2. Joseph, J., W. L. Klawe, and P. Murphy, "Tuna And Billfish," Inter-American Tropical Tuna Commission, Scripps Institute of Oceanography, La Jolla, CA 92037, 1980.

3. Collette, B.B., and C. E. Nauen, "Scombrids of the World," Food and Agricultural Organization (FAO) Species Catalogue, Vol. 2, in FAO Fisheries Synopsis, No. 125, Vol. 2, 1983.

4. "The Fish List," Anonymous, U.S. Department of Health and Human Services, Food and Drug Administration, Center for Food and Drug Administration, Center for Food Safety and Applied Nutrition, 1988, for sale by the Superintendent of Documents, U.S. Government Printing Office,

Washington, DC 20402, GPO Stock No. 017-012-00341-9.

5. Klawe, W.L., "What Is A Tuna," Paper 1268 from Marine Fisheries Review, No. 11, 39:1-5, November 1977.

Accordingly, after consideration of all of the comments, the agency is revising the standards of identity for canned tuna by amending 21 CFR 161.190(a)(6) to permit the use of vegetable oil, partially hydrogenated vegetable oil, with or without safe and suitable emulsifying agents, as optional seasoning or flavoring ingredients in canned tuna in water; and by amending 21 CFR 161.190(a)(8) to provide for use of the phrase "seasoned with oil" when vegetable oil or partially hydrogenated vegetable oil is used for seasoning or flavoring in canned tuna in water and to require label declaration of any optional oil or emulsifying and suspending agents used in the food.

The agency is also updating the lists of species of bonito and tuna in 21 CFR 102.47 and 161.190(a)(2) to include current scientific nomenclature and corresponding trivial names.

III. Economic Impact

In the preamble to the proposal (52 FR 30387), the impact of the proposed amendments on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601). FDA concluded that this action would not result in a significant economic impact on a substantial number of small entities. No comments were received to alter the review presented. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before November 30, 1990, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection for 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 document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 102

Beverages, Food grades and standards, Food labeling, Frozen foods, Fruit juices, Oils and fats, Onions, Potatoes, Seafood.

21 CFR Part 161

Food grades and standards, Frozen foods, Seafood.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 102 and 161 are amended as follows:

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

1. The authority citation for 21 CFR part 102 continues to read as follows:

Authority: Secs. 201, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 343, 371).

2. Section 102.47 is revised to read as follows:

§ 102.47 Bonito.

"Bonito" or "bonito fish" is the common or usual name of the following food fishes:

Cybiosarda elegans (Whitely, 1935)—Leaping bonito
Gymnosarda unicolor (Ruppell, 1838)—Dogtooth tuna
Orcynopsis unicolor (Geoffroy St. Hilaire, 1817)—Plain bonito
Sarda australis (Macleay, 1880)—Australian bonito
Sarda chiliensis (Cuvier, 1831)—Eastern Pacific bonito
Sarda orientalis (Temminck and Schlegel, 1844)—Striped bonito
Sarda sarda (Bloch, 1793)—Atlantic bonito

PART 161—FISH AND SHELLFISH

3. The authority citation for 21 CFR part 161 continues to read as follows:

Authority: Secs. 201, 401, 403, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 343, 348, 371, 376).

4. Section 161.190 is amended by revising paragraphs (a)(2) and (a)(4)(i), by adding new paragraph (a)(6)(ix), and by revising paragraph (a)(8)(vi) to read as follows:

§ 161.190 Canned tuna.

(a) * * *

(2) The fish included in the class known as tuna fish are:

Thunnus thynnus (Linnaeus, 1758)—Northern bluefin tuna
Thunnus maccoyii (Castelnau, 1872)—Southern bluefin tuna
Thunnus alalunga (Bonnaterre, 1788)—Albacore
Thunnus atlanticus (Lesson, 1830)—Blackfin tuna
Thunnus obesus (Lowe, 1839)—Bigeye tuna
Thunnus albacores (Bonnaterre, 1788)—Yellowfin tuna
Thunnus tonggol (Bleeker, 1851)—Longtail tuna
Katsuwonus pelamis (Linnaeus, 1758)—Skipjack tuna
Euthynnus alletteratus (Rafinesque, 1810)—Spotted tunny
Euthynnus lineatus (Kishinouye, 1920)—Black shipjack tuna
Euthynnus affinis (Cantor, 1849)—Kawakawa
Allothunnus fallai (Serventy, 1948)—Slender tuna
Auxis rochei (Risso, 1810)—Bullet tuna
Auxis thazard (Lacepede, 1800)—Frigate tuna

* * * * *

(4) * * *

(i) *White.* This color designation is limited to the species *Thunnus alalunga* (albacore), and is not darker than Munsell value 6.3.

* * * * *

(6) * * *

(ix) Edible vegetable oil or partially hydrogenated vegetable oil, excluding olive oil, used alone or in combination, in an amount not to exceed 5 percent of the volume capacity of the container, with or without any suitable form of emulsifying and suspending ingredients that has been affirmed as GRAS or approved as a food additive to aid in dispersion of the oil, as seasoning in canned tuna packed in water.

* * * * *

(8) * * *

(vi) Where the canned tuna contains one or more of the ingredients provided for in paragraph (a)(6) of this section, the label shall bear the statement "Seasoned with _____", the blank being filled in with the name or names

of the ingredient or ingredients used, except that if the ingredient designated in paragraph (a)(6)(vi) of this section is used, the blank shall be filled in with the term "vegetable broth", and if the ingredients designated in paragraph (a)(6)(ix) of this section are used, the blank may be filled in with the term "oil", and if the ingredient designated in paragraph (a)(6)(v) of this section is used alone, the label may alternatively bear either the statement "spiced" or the statement "with added spice"; and if salt is the only seasoning ingredient used, the label may alternatively bear any of the statements "salted", "with added salt", or "salt added". If the flavoring ingredients designated in paragraph (a)(6)(viii) of this section are used, the words "lemon flavored" or "with lemon flavoring" shall appear as part of the name on the label; for example, "lemon flavored chunk light tuna". Citric acid and any optional solubilizing and dispersing agent used as specified in paragraph (a)(6)(viii) of this section in connection with lemon flavoring ingredients or emulsifying and suspending ingredients used as specified in paragraph (a)(6)(ix) of this section shall be designated on the label by their common or usual name.

* * * * *

Dated: October 24, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–25705 Filed 10–30–90; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations, at the request of the sponsor, to reflect the change of sponsor name and address for Lypho-Med, Inc.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: Lypho-Med, Inc., has informed FDA of a change of sponsor name and address from Lypho-Med, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160, to Lyphomed, Division of Fujisawa USA, Inc., Deerfield, IL 60015–2548. The agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) to reflect the sponsor name and address change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "Lypho-Med, Inc." and in the table in paragraph (c)(2) in the entry for "000469" by removing "Lypho-Med, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160" and replacing it with "Lyphomed, Division of Fujisawa USA, Inc., Deerfield, IL 60015–2548".

Dated: October 19, 1990.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 90–25703 Filed 10–30–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 334

Naval Restricted Area, Chesapeake Bay off Fort Monroe, VA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending the regulations which establish a restricted area in the waters of the Chesapeake Bay off Fort Monroe, Virginia. The change to the restricted area reduces the size to allow for the construction of a new range light by the Coast Guard and the relocation of the Norfolk Harbor Federal Project Channel.

EFFECTIVE DATE: November 30, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Harrell at (804) 441–7653 or Mr. Ralph Eppard at (202) 272–1783.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is amending the regulations in 33 CFR 334.360 which establishes a restricted area in the waters of the Chesapeake Bay off Fort Monroe, Virginia. The intent of the change is to reduce the size of the restricted area to allow for the construction of a new front and rear range light to be erected by the Coast Guard in its aids-to-navigation improvement program and the relocation of a 1,000-foot wide section of the Norfolk Harbor Federal Project Channel. The regulations which prescribe the use and navigation within the area will not change as a result of these amendments.

We published this change and the amendment of two existing danger zone regulations in the Notice of Proposed Rulemaking Section of the **Federal Register** on June 14, 1990 (55 FR 24115–24116), with the comment period expiring on July 16, 1990. There were no objections received with respect to the restricted area and accordingly, these amendments are published as proposed. Final rules amending the danger zone regulations are being held in abeyance to address a comment which was received regarding the Corps jurisdiction.

Economic Assessment and Certification

This rule is being issued with respect to a military function of the Department of Defense and the provisions of E.O. 12291 do not apply. I hereby certify that this rule will have no significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 334

Navigation (water), transportation, danger zones. In consideration of the above, the Corps of Engineers is amending part 334 of title 33 as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3)

2. Section 334.360(a) is revised to read as follows:

§ 334.360 Chesapeake Bay off Fort Monroe, Virginia; restricted area, U.S. Naval Base and Naval Surface Weapon Center.

(a) *The area.* Beginning at latitude 37°00'30"N, longitude 76°18'05"W; thence to latitude 37°00'38"N, longitude 76°17'42"W; thence to latitude 37°00'39"N; longitude 76°16'11"; thence to latitude 36°59'18"N, longitude 76°17'52"W; thence to latitude 37°00'05"N, longitude 76°18'17"W; and thence north along the seawall to the point of beginning.

* * * * *

Dated: October 4, 1990.

Patrick J. Kelly,

Major General, USA, Director of Civil Works.

[FR Doc. 90-25676 Filed 10-30-90; 8:45 am]

BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3855-7]

Preparation, Adoption, and Submittal of State Implementation Plans; Corrections to PM-10 Areas of Concern

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical corrections to the areas of concern for certain Group I and II areas.

SUMMARY: The EPA published national ambient air quality standards (NAAQS) and implementation policies for particulate matter (PM) with an aerodynamic diameter of a nominal 10 microns or less (PM-10) on July 1, 1987 (52 FR 24634 and 52 FR 24672). A notice identifying areas with very high probabilities (Group I) and moderate probabilities (Group II) of violating the PM-10 standards was published on August 7, 1987 (52 FR 29383). A notice that the grouping of three of these areas had been modified was published on March 28, 1989 (54 FR 12620). Work to develop State implementation plans (SIP's) to attain the PM-10 NAAQS began immediately for the Group I areas. Ambient PM-10 concentrations have been monitored in the Group II areas since 1987.

The EPA is, by this notice, clarifying the descriptions of certain Group I and Group II areas of concern listed in the August 7, 1987 notice. This action is being taken because the areas were only generally described in 1987 as cities, counties, or planning areas. The States were given guidance in the PM-10 SIP Development Guideline (EPA-450/2-86-002, June 1987) on how to further define the extent of areas violating the PM-10 standards in the process of developing PM-10 SIP's. Therefore, some States have provided EPA with more detailed descriptions of certain Group I and Group II areas of concern.

DATES: These corrections are effective October 31, 1990.

ADDRESSES: Information supporting the Group I and Group II area descriptions can be obtained from the respective EPA Regional Office which services that particular State. The addresses of the Regional Offices are:

- State Air Programs Branch, EPA Region I, J.F.K. Federal Building, Boston, MA 02203-2211.
- Air Programs Branch, EPA Region II, 26 Federal Plaza, New York, NY 10278.
- Air Programs Branch, EPA Region III, 841 Chestnut Building, Philadelphia, PA 19107.
- Air Programs Branch, EPA Region IV, 345 Courtland Street, NE., Atlanta, GA 30365.
- Air and Radiation Branch, EPA Region V, 230 South Dearborn Street, Chicago, IL 60604.
- Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202-2733.
- Air Branch, EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101.
- Air Programs Branch, EPA Region VIII, 999 18th Street, Denver Place—suite 500, Denver, CO 80202-2405.
- Air Programs Branch, EPA Region IX, 1235 Mission Street, San Francisco, CA 94103.
- Air Programs Branch, EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Woodard, Particulate Matter Programs Section, Air Quality Management Division (MD-15), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

1. Background

On July 1, 1987, the EPA promulgated revised NAAQS for PM (52 FR 24634). The standards incorporate a new indicator of PM that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 microns.

Simultaneously, EPA published revised requirements for SIP's to attain and maintain the standards (52 FR 24672). In order to focus Federal and State resources on implementing the PM-10 NAAQS first in those areas of the country believed to be violating the standards, EPA classified all areas of the Nation into one of three groups. Group I areas were those having a very high probability of violating the PM-10 standards based on ambient air quality data available for 1984 through 1987 for PM-10 and total suspended PM. Group II areas had a moderate probability of violating the standards, and Group III areas were those believed to be currently attaining the standards.

A list of Group I and II areas in each State was published in the **Federal Register** on August 7, 1987 (52 FR 29383). The remaining portion of any State not listed as Group I or II in the August 7 notice was classified in Group III.

A subsequent notice, published on March 28, 1989 (54 FR 12620), announced that three revisions had been made to the list of Group I and II areas. Sandpoint, Idaho, was changed from Group I to Group II, effective August 31, 1987 following a determination that the area lacked sufficient ambient data to justify a Group I classification. Porter County, Indiana, was changed from Group I to Group II, effective November 29, 1988 as a result of a settlement agreement negotiated with Bethlehem Steel Corporation (see *Bethlehem Steel Corporation* v. *Thomas*), 87-2476 (7th Cir.). Mono Basin, California, was changed from Group III to Group II, effective June 8, 1988 following review of the information used for the initial classification.

2. Today's Action

The EPA is, by this notice, providing technical corrections to clarify the descriptions of several Group I and II areas of concern. The EPA described the areas of concern generally as cities, towns, counties, or planning areas in the August 7, 1987 notice and stated that these descriptions were only initial definitions of the areas to be investigated in the PM-10 SIP development process. The EPA had previously provided guidance on procedures for determining the boundaries of areas not attaining the standards in section 2.5 of the PM-10 SIP Development Guideline and in section 6.3 of Procedures for Estimating Probability of Nonattainment of a PM-10 NAAQS Using Total Suspended Particulate or PM-10 Data, EPA-450/4-86-017, December 1986.

State air pollution control agencies, in developing SIP's for Group I and certain Group II areas over the past 3 years, have been collecting data on source emissions and ambient PM-10 concentrations, identifying control measures, and predicting future PM-10 concentrations using dispersion models. Consequently, EPA can now more clearly define the extent of certain

Group I and II areas. However, many of the area descriptions published in the August 7, 1987 notice remain unchanged.

3. Group I Area Descriptions

The list of Group I areas of concern published in the August 7, 1987 **Federal Register** notice is revised to read as follows:

GROUP I AREAS [1,2,3]

State and counties	Area of concern
Alaska:	
Anchorage	Community of Eagle River.
Juneau	City of Juneau: Mendenhall Valley area.
Arizona	
Cochise	Paul Spur/Douglas planning area: Township 23 south, Range 25 east (T23S, R25E) T23S, R26E; T23S, R27E; T23S, R28E; T24S, R25E; T24S, R26E; T24S, R27E; T24S, R28E.
Pima	Rillito planning area: Townships: T11S, R9E; T11S, R10E; T11S, R11E; T11S, R12E; T12S, R8E; T12S, R9E; T12S, R10E; T12S, R11E; T12S, R12E;
Maricopa and Pinal	Phoenix planning area: The rectangle determined by, and including, T6N, R3W; T6N, R7E; T2S, R3W; T2S, R7E; T1N, R8E.
Yuma	Yuma planning area: Townships: T7S–R21W, R22W; T8S–R21W, R22W, R23W, R24W; T9S–R21W, R22W, R23W, R24W, R25W; T10S–R21W, R22W, R23W, R24W, R25W.
Pinal and Gila	Hayden/Miami planning area: Townships: T4S, R16E; T5S, R16E, T6S, R16E; plus the portion of Township T3S, R16E, that does not lie on the San Carlos Indian Reservation, and the rectangle formed by, and including, Townships T1N, R13E; T6S, R13E; T1N, R15E; T6S, R15E.
California:	
Inyo	Owens Valley planning area: Hydrologic Unit #18090103.
San Bernardino, Inyo, and Kern	Searles Valley planning area: Hydrologic Unit #18090205.
Mono	Mammoth Lake planning area: Includes the following sections: a. Sections 1–12, 17, and 18 of Township T4S, R28E; b. sections 25–36 of Township T3S, R28E; c. Sections 25–36 of Township T3S, R27E; d. Sections 1–18 of Township T4S, R27E; and e. Sections 25 and 36 of Township T3S, R26E.
Fresno, Kern, Kings, and Tulare	San Joaquin Valley planning area.
Riverside, Los Angeles, Orange and San Bernardino	South Coast Air Basin.
Riverside	Coachella Valley planning area.
Imperial	Imperial Valley planning area.
Colorado:	
Archuleta	Pagosa Springs.
Adams, Denver, Arapahoe, Jefferson, Douglas and Boulder	Denver Metropolitan area: All of Denver, Jefferson, and Douglas Counties, Boulder County (excluding the Rocky Mountain National Park) and the Colorado automobile inspection and readjustment program portions of Adams and Arapahoe Counties.
San Miguel	Telluride.
Prowers	Lamar.
Pitkin	Aspen.
Fremont	Canon City.
Connecticut:	
New Haven	City of New Haven.
Idaho:	
Ada	Boise: Northern Boundary—Beginning at a point in the center of the channel of the Boise River, where the line between sections 15 and 16 in township 3 north (T3N), range 4 east (R4E), crosses said Boise River; thence west down the center of the channel of the Boise River to a point opposite the mouth of More's Creek; thence, in a straight line north 44 degrees and 38 minutes west until the said line intersects the north line of T5N (12 Ter. Ses. 67); thence west to the northwest corner T5N, R1W; Western Boundary—Thence, south to the northwest corner of T3N, R1W; thence east to the northwest corner of section 4 of T3N, R1W; thence south to the southeast corner of section 32 of T2N, R1W; thence west to the northwest corner of T1N, R1W; thence, south to the southwest corner of section 32 of T2N, R1W, thence, west to the northwest corner of T1N, R1W; thence south to the southwest corner of T1N, R1W; Southern Boundary—Thence, east to the southwest corner of section 33 of T1N, R4E; Eastern Boundary—Thence, north along the north and south center line of Townships T1N, R4E, T2N, R4E, and T3N, R4E, Boise Meridian to the beginning point in the center of the channel of the Boise River.
Shoshone	City of Pinehurst.
Bannock and Power	City of Pocatello.
Illinois:	
Cook	a. Lyons Township; b. The area bounded on the north by 79th Street, on the west by Route 57, on the south by Sibley Boulevard and on the east by the Illinois/Indiana State line.
Madison	Granite City Township and Nameoki Township.
Indiana: Lake	Cities of East Chicago, Hammond, Whiting, and Gary.
Maine: Aroostook	City of Presque Isle.
Michigan: Wayne	The area bounded by Michigan Avenue from its intersection with I–75 west to I–94, I–94 southwest to Greenfield Road, Greenfield Road south to Schaefer Road, Schaefer Road south and east to Jefferson Avenue, Jefferson Avenue south (Biddle Avenue through the city of Wyandotte) to Sibley Avenue, Sibley Avenue west to Fort Street, Fort Street south to King Road, King Road east to Jefferson Avenue, Jefferson Avenue south to Helen Road, Helen Road east extended to Trenton Channel, Trenton Channel north to the Detroit River, the Detroit River north to the Ambassador Bridge, Ambassador Bridge to I–75, I–75 to Michigan Avenue.
Minnesota: Ramsey	The area bound by the Mississippi River from Lafayette to Route 494, Route 494 east to Route 61, Route 61 north to I–94, I–94 west to Lafayette, and Lafayette south to the Mississippi River.

GROUP I AREAS [1,2,3]—Continued

State and counties	Area of concern
Montana:	
Flathead	The area bounded by lines from Universal Transmercator (UTM) coordinate 700000mE, 5347000mN, east to 704000mE, 5347000mN, south to 704000mE, 5341000mN, west to 703000mE, 5341000mN, south to 703000mE, 5340000mN, west to 702000mE, 5340000mN, south to 702000mE, 5339000mN, east to 703000mE, 5339000mN, south to 703000mE, 5338000mN, east to 704000mE, 5338000mN, south to 704000mE, 5336000mN, west to 702000mE, 5336000mN, south to 702000mE, 5335000mN, west to 700000mE, 5335000mN, north to 70000mE, 5340000mN, west to 695000mE, 5340000mN, north to 695000mE, 5345000mN, east to 700000mE, 5345000mN, north to 700000mE, 5347000mN.
Lincoln	Libby.
Lake	Ronan, Polson.
Missoula	Township T13N, R19W, sections 2, 8, 11, 14, 15, 16, 17, East 19, 20, 21, 22, 23, 24, 27, 28, 29, East 1/2 30, East 1/2 31, 32, 33, 34, and T12N, R19W, section 4, 5, 6, 7.
Rosebud	Lame Deer.
Silver Bow	Butte
Nevada:	
Washoe	Reno planning area: Hydrographic area 87.
Clark	Las Vegas planning area: Hydrographic Area 212.
New Mexico: Dona Ana	The area bounded by Anthony Quadrangle, Anthony, New Mexico—Texas, SE/4 La Mesa 15 [1] Quadrangle, N3200—W10630/7.5, Township 26S, Range 3E, Sections 35 and 36 as limited by the Nex Mexico—Texas State line on the south.
Ohio:	
Cuyahoga	County.
Jefferson	The portion of the City of Steubenville south to Market Street, plus the area bounded on the north by the southern boundary of the City of Steubenville, on the west by Ohio Route #7, on the south by the southern border of Steubenville Township, and on the east by the Ohio/West Virginia border.
Oregon:	
Jackson	Medford-Ashland air quality maintenance area (including White City)
Josephine	Grants Pass: The area within the urban growth boundary.
Lane	Eugene/Springfield: The area within the urban growth boundary.
Klamath	Klamath Falls: The area within the urban growth boundary.
Texas: El Paso	City of El Paso.
Utah:	
Salt Lake	County.
Utah	County.
West Virginia: Brooke	Follansbee area bounded on the north by the Market Street Bridge, on the east by West Virginia Route #2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/West Virginia border.
Washington:	
King	The portion of the City of Seattle bounded on the east by I-5/East Duwamish Greenbelt, on the south by 104th Street, on the west by the West Duwamish Greenbelt north to Fairmont Avenue, SW., north on Fairmont to Elliott Bay, and Dearborn Street from Elliott Bay to I-5; The city of Kent and a portion of the Green River valley bounded on east and west by the 100-foot contour, on the north by South 212th Street, and on the south by Highway 516.
Pierce	Tacoma metropolitan area bounded on the north by Marine View Drive from Commencement Bay east to the 100-foot contour, southeast along the 100-foot contour to 64th Avenue East, south along 64th Avenue East extended to I-5, I-5 west to the 100-foot contour near Pacific Avenue, and north along the 100-foot contour to Commencement Bay.
Spokane	The area bounded on the south by a line from Universal Transmercator (UTM) coordinate 489000mE, 5271000mN, west to 458000mE, 5271000mN, thence north along a line to coordinate 458000mE, 5288000mN, thence east to 463000mE, 5288000mN, thence north to 463000mE, 5292000mN, thence east to 481000mE, 5292000mN, thence south to 481000mE, 5288000mN, thence east to 489000mE, 5288000, thence south to the beginning coordinate 489000mE, 5271000mN.
Yakima	The area bounded on the south by a line from Universal Transmercator (UTM) coordinate 694000mW, 5157000mN, west to 681000mW, 5157000mN, thence north along a line to coordinate 681000mN, 5172000mN, thence east to 694000mW, 5172000mN, thence south to the beginning coordinate 694000mW, 5157000mN.
Thurston	Cities of Olympia, Tumwater, and Lacey.
Walla Walla	Wallula.
Wyoming: Sheridan	City of Sheridan.

[1] For convenience, the entire list of Group I areas, as revised is published above.
[2] When cities or towns are shown, the area of concern is defined by the municipal boundary limits as of the date of this notice.
[3] When a planning area is shown, the area of concern includes the entire planning area unless the area is further defined (e.g., by township, range, and/or section).

4. Group II Area Descriptions

As a result of additional information acquired by the States the descriptions of certain areas of concern published in the August 7, 1987 **Federal Register** notice are revised to read as follows:

GROUP II AREAS [1, 2, 3]

State and counties	Area of concern
Alabama: Jefferson	North Birmingham and Leeds.
Alaska: Fairbanks	Fairbanks.
Arizona:	
Coconino	Flagstaff planning area.
Graham	Safford planning area.
Navajo	Show Low and Joseph City planning areas.
Apache	Show Low planning area.
Santa Cruz	Nogales planning area: [4] The portions of the following Townships which are within the State of Arizona and lie east of 111° longitude: T23S, R13E; T23S, R14E; T24S, R13E; T24S, R14E.
Pima	Ajo planning area: [4] Township T12S, R6W, and the following sections of Township T12S, R5W: a. Sections 6–8, b. Sections 17–20, and c. Sections 29–32.
Pima	Tuscon planning area.
Cochise	Tuscon planning area.
Pinal	Casa Grande planning area.
California:	
Santa Clara	County.
San Joaquin and Stanislaus	San Joaquin Valley planning area.[4].
Kern	Southeast Desert Air Basin.
Los Angeles	Southest Desert Air Basin.
Mono	Mono Basin.
Colorado:	
Adams	Brighton.
Boulder	Longmont.
Delta	Delta.
Eagle	Vail.
El Paso	Colorado Springs.
Garfield	Glenwood Springs, Rifle.
Gunnison	Crested Butte.
Routt	Steamboat Springs.
Mesa	Grand Junction, Fruita.
Weld	Greeley.
Guam: Piti	County.
Idaho:	
Bonner	County.[4].
Caribou	Conda.
Illinois:	
LaSalle	Oglesby [4] including the following townships, ranges, and sections: T32N, R1E, S1; T32N, R2E, S6; T33N, R1E, S24; T33N, R1E, S25; T33N, R2E, S31; and T33N, R1E, S36.
Randolph	Baldwin.
Macon	Decatur.
Rock Island	Rock Island, Moline.
Will	Joliet.
St. Clair	East St. Louis.
DuPage	Addison.
Indiana:	
Marion	Subpart of Indianapolis.
Vigo	Terre Haute.
Porter	County.
Iowa:	
Cerro Gordo	Mason City.
Linn	Cedar Rapids.
Polk	Des Moines.
Kansas: Wyandotte	Kansas City.
Kentucky: Boyd	Cattletsburg and Ashland.
Maryland: Baltimore	Baltimore.
Michigan:	
Saginaw	Carrollton.
Monroe	Monroe.
Minnesota:	
Hennepin	Minneapolis.
St. Louis	Duluth and Iron Range.
Itasca	Iron Range.
Lake	Two Harbors Township.
Stearns	St. Cloud Township.
Montana:	
Blaine	Hays.
Flathead	Columbia Falls: [4] Township T30N, R20W, Sections 7, 8, 9, 16, and 17.
Deer Lodge	Anaconda.
Lewis & Clark	Helena.
Sanders	Thompson Falls.
Lincoln	Eureka.
Nebraska:	
Cass	Weeping Water.
Douglas	Omaha.
Nevada:	
Lander, Humbolt, Elko, & Eureka	Battle Mountain area.
New Jersey:	
Hudson	Jersey City.
Camden	Camden.
New York: Onondaga	Solvay.

GROUP II AREAS [1, 2, 3]—Continued

State and counties	Area of concern
New Mexico:	
Bernalillo	County.[5]
Grant	County.
Santa Fe	County.
Sandoval	County.
Taos	County
Ohio:	
Wyandot	Carey.
Scioto	New Boston.
Trumbull	Warren, Howland Township.
Lorain	Sheffield Township.
Butler	Middletown.
Seneca	Thompson Township.
Sandusky	Jackson Township.
Belmont	Martins Ferry.
Columbianna	East Liverpool.
Franklin	Columbus.
Hamilton	Cincinnati.
Mahoning	Youngstown.
Montgomery	Dayton.
Richland	Mansfield.
Stark	Canton.
Summit	Akron.
Oklahoma: Comanche	County.
Oregon:	
Deschutes	Bend.
Multinomah	Portland.
Union	LaGrande: [4] the area within the urban growth boundary.
Lane	Oakridge: [5] the area within the urban growth boundary.
Pennsylvania:	
Allegheny	a. The triangular area bounded on the north by an east-west line passing through the North Braddock monitor (at 600 Anderson Street) and intersecting the center line of the Monogahela River, and on the east by a north-south line passing through the East Pittsburgh monitor (at the intersection of Cliff Street and Draper Street) and intersecting the center line of the Monongahela River; b. The area including Liberty, Lincoln, Port Vue, and Glassport Boroughs and the City of Clairton.[4]
Philadelphia	Bridesburg—Port Richmond.
Erie	County.
Lawrence	County.
Mercer	County.
Puerto Rico: San Juan	San Juan.
South Dakota: Pennington	Rapid City.
Texas:	
Dallas	That portion of the City of Dallas enclosed by Loop 12 highway.
Harris	The area bounded on the north side by a line extending eastward from Bennet Street starting at the Southern Pacific Railroad tracks at the intersection of Bennet Street and Clinton Drive and ending at the intersection of Bennet and Legget Streets, on the east side, along Legget Street southward to Clinton Drive, thence eastward to the intersection of Mayo Shell Road, and thence southward again to the Ship Channel, on the south side, westward along the south edge of the Ship Channel, including Brady Island, to East Erath Street and connecting with the Southern Pacific railroad, on the west side, northward along the southern Pacific Railroad to the intersection of Clinton Drive and Bennet Street.
Lubbock	That portion of the City of Lubbock [4] enclosed by Loop 289 highway.
Nueces	That portion of the City of Corpus Christi, bounded by Nueces Bay on the north, Ocean Drive on the east, Highway 44 on the south, and a line due north from Highway 44 at the intersection of Highway 358 to Nueces Bay on the west.
Virginia: Buchanan	County.
Washington:	
Benton	County.[5]
King	Bellevue.
West Virginia:	
Hancock	City of Wierton.[5]
Brooke	Remainder of county.
Wisconsin:	
Brown	DePere.
Milwaukee	Milwaukee.
Waukesha	Waukesha.
Douglas	Superior.
Dane	Madison.
Wyoming: Fremont	Lander.

[1] For convenience, the entire list of Group II areas, as revised, is published above.
[2] When cities or towns are shown, the area of concern is defined by the municipal boundary limits as of the date of this notice.
[3] When a planning area is shown, the area of concern includes the entire planning area unless the area is further defined (e.g., by township, range, and/or section).
[4] The State has recorded violations of the PM-10 NAAQS based upon air quality data through December 31, 1988.
[5] The State has recorded violations of the PM-10 NAAQS based upon air quality data through December 31, 1989.

Authority: Sections 110 and 301 of the Clean Air Act give the Administrator authority to adopt policies necessary to implement NAAQS.

Dated: October 22, 1990.

William G. Rosenberg,

Assistant Administrator for Air and Radiation.

[FR Doc. 90–25518 Filed 10–30–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 61

[AD–FRL–3856–4]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document clarifies the applicability of § 61.300(a) of the National Emission Standard for Benzene Transfer Operations which was promulgated in the **Federal Register** on Wednesday, March 7, 1990 (55 FR 8341). This action is necessary to clarify that the benzene transfer rule does not apply to the loading of crude oil, natural gas liquids or petroleum distillates such as fuel oil, diesel or kerosene. It was never EPA's intent that the benzene transfer rule apply to crude oil, natural gas liquids or petroleum distillates. The benzene content of these materials is well below the 70 percent cutoff in the regulation and will never approach this cutoff.

This notice also changes the applicability date of § 61.300(e) of the regulation as it applies to the loading of benzene into marine vessels. This change is necessary to allow facilities adequate time to design, purchase and install vapor control systems that comply with the U.S. Coast Guard standards that were issued June 21, 1990 (55 FR 25396) and that are effective July 23, 1990. This correction is consistent with EPA's intent to provide an industry-wide waiver of 1 year so that facilities can take into consideration the Coast Guard standards that address safe design, installation and operation of marine vessel vapor control systems.

EFFECTIVE DATE: March 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Bell at (919) 541–5568 or Ms. Laura Butler, (919) 541–5267, Standards Development Branch, ESD (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Dated: October 23, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

For reasons set out in the preamble, title 40, chapter I, part 61 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

2. Section 61.300 is amended by revising paragraphs (a) and (e) to read as follows:

§ 61.300 Applicability.

(a) The affected facility to which this subpart applies is the total of all loading racks at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. However, specifically exempted from this regulation are loading racks at which only the following are loaded: Benzene-laden waste (covered under subpart FF of this part), gasoline, crude oil, natural gas liquids, petroleum distillates (e.g., fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants.

* * * * *

(e) The owner or operator of an affected facility, as defined in § 61.300(a) that loads a marine vessel shall be in compliance with the provisions of this subpart on and after July 23, 1991. If an affected facility that loads a marine vessel also loads a tank truck or railcar, the marine vessel loading racks shall be in compliance with the provisions of this subpart on and after July 23, 1991, while the tank truck loading racks and the railcar loading racks shall be in compliance as required by § 61.12.

[FR Doc. 90–25731 Filed 10–30–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 761

[OPTS–62035J; FRL 3801–2]

Polychlorinated Biphenyls in ElectricalTransformers; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a final rule on polychlorinated biphenyls (PCBs) in electrical transformers published in the **Federal Register** issue of July 19, 1988 (53 FR 27322). In the codified text of § 761.30(a)(1)(v), EPA inadvertently omitted subparagraphs (A), (B), and (C). This document corrects that error by reinserting these subparagraphs.

EFFECTIVE DATE: This correction is effective October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

EPA issued a final rule on PCBs in electrical transformers published in the **Federal Register** issue of July 19, 1988 (53 FR 27322), in which § 761.30(a)(1)(v) was revised. It was not EPA's intent to delete subparagraphs (A), (B), and (C) from paragraph (a)(1)(v) when the **Federal Register** notice was published. EPA intended only to revise the introductory text of paragraph (a)(1)(v). This document corrects § 761.30(a)(1)(v) by reinserting subparagraphs (A), (B), and (C).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: September 10, 1990.

Charles L. Elkins,

Director, Office of Toxic Substances.

Therefore, 40 CFR part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.30 by correctly revising paragraph (a)(1)(v) to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *

(1) * * *

(v) As of October 1, 1990, all radial PCB Transformers with higher secondary voltages (480 volts and above, including 480/277 volt systems)

in use in or near commercial buildings must, in addition to the requirements of paragraph (a)(1)(iv)(A) of this section, be equipped with protection to avoid transformer ruptures caused by sustained low current faults.

(A) Pressure and temperature sensors (or other equivalent technology which has been demonstrated to be effective in early detection of sustained low current faults) must be used in these transformers to detect sustained low current faults.

(B) Disconnect equipment must be provided to insure complete deenergization of the transformer in the event of a sensed abnormal condition (e.g., an overpressure or overtemperature condition in the transformer), caused by a sustained low current fault. The disconnect equipment must be configured to operate automatically within 30 seconds to 1 minute of the receipt of a signal indicating an abnormal condition from a sustained low current fault, or can be configured to allow for manual deenergization from a manned on-site control center upon the receipt of an audio or visual signal indicating an abnormal condition caused by a sustained low current fault. Manual deenergization from a manned on-site control center must occur within 1 minute of the receipt of the audio or visual signal indicating an abnormal condition caused by a sustained low current fault. If automatic operation is selected and a circuit breaker is utilized for disconnection, it must also have the capability to be manually opened if necessary.

(C) The enhanced electrical protective system required for the detection of sustained low current faults and the complete and rapid deenergization of transformers must be properly installed, maintained, and set sensitive enough (in accordance with good engineering practices) to detect sustained low current faults and allow for rapid and total deenergization prior to PCB Transformer rupture (either violent or non violent rupture) and release of PCBs.

* * * * *

[FR Doc. 90-25720 Filed 10-30-90; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6812

[AZ-930-4214-10; A-22647]

Withdrawal of National Forest System Land for the Smithsonian Institution—Fred Lawrence Whipple Observatory; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of National Forest System land from entry and location under the mining laws for a period of 20 years for use by the Smithsonian Institution as a base camp site for its Fred Lawrence Whipple Observatory. The area described in this order is located entirely within the boundaries of the Coronado National Forest. The land has been and will remain open to land laws applicable to National Forest System land and to mineral leasing.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602-640-5509.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from entry and location under the mining laws (30 U.S.C. ch. 2), and reserved for use by the Smithsonian Institution to protect the Fred Lawrence Whipple Observatory Base Camp Site:

Gila and Salt River Meridian

Coronado National Forest

T. 20 S., R. 14 E.,
Sec. 19, S½N½NE¼SW¼,S½NE¼SW¼,N½N½SE¼SW¼.

The area described contains 40 acres in Santa Cruz County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: October 23, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-25708 Filed 10-30-90; 8:45 am]
BILLING CODE 4310-32-M

43 CFR Public Land Order 6813

[AK-932-00-4214-10; AA-6994]

Partial Revocation of Public Land Order No. 829, as Amended; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 100 acres of National Forest System land which had been withdrawn for the Ward Cove Water Supply System. The land is no longer needed for the purpose for which it was withdrawn. The land has either been conveyed out of Federal ownership or is within an overlapping withdrawal. The land within the overlapping withdrawal will continue to be closed to mining, but has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-3342.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988) it is ordered as follows:

1. Public Land Order No. 829, as amended, which withdrew land in the Tongass National Forest is hereby revoked insofar as it affects the following described land:

Copper River Meridian (Partially Surveyed)

T. 74 S., R. 90 E.
That portion within secs. 26, 27, 34, and 35 which overlaps Public Land Order No. 3795 and U.S. Survey No. 3400.

The area described, including both public and non-public land, contains a total of approximately 100 acres.

2. The land described in paragraph 1 which is within Public Land Order No. 3795 remains withdrawn from appropriation under the mining laws and is subject to any other withdrawals of record.

Dated: October 23, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–25707 Filed 10–30–90; 8:45 am]

BILLING CODE 4310–JA–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–461; RM–6881]

Radio Broadcasting Services; Lafayette, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Brian Mitchell Rowland, substitutes Channel 260C2 for Channel 260A at Lafayette, Florida, and modifies the construction permit for Station WQHI–FM to specify operation on the higher powered channel. See 54 FR 45772, October 31, 1989. Channel 260C2 can be allotted to Lafayette in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.8 kilometers (12.9 miles) southeast to accommodate petitioner's desired transmitter site, and in order to avoid a short-spacing to Station WOOF(FM), Channel 259C1, Dothan, Alabama. The coordinates for this allotment are North Latitude 30–18–21 and West Longitude 84–03–09. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–461, adopted September 11, 1990, and released October 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by removing Channel 260A and adding Channel 260C2 at Lafayette, Florida.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25775 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–199; RM–7098]

Radio Broadcasting Services; Beattyville, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 271A for Channel 272A at Beattyville, Kentucky, and modifies the license of Station WLJC(FM) to specify operation on the alternate Class A channel, at the request of Hour of Harvest, Inc. See 55 FR 17463, April 25, 1990. Channel 271A can be allotted to Beattyville in compliance with the Commission's minimum distance separation requirements at Station WLJC's currently licensed site, with a site restriction of 3.9 kilometers (2.4 miles) northwest of the community. The coordinates for Channel 271A at Beattyville are North Latitude 37–36–23 and West Longitude 83–41–16. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–199, adopted September 27, 1990, and released October 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 272A and adding Channel 271A at Beattyville.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25776 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–528; RM–7045]

Radio Broadcasting Services; Hatteras, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Heart of Dixie Broadcasting, Inc., allots Channel 232A to Hatteras, North Carolina, as the community's second local FM service. See 54 FR 50005, December 4, 1989. Channel 232A can be allotted to Hatteras in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 232A at Hatteras are North Latitude 35–12–54 and West Longitude 75–41–30. With this action, this proceeding is terminated.

DATES: Effective December 10, 1990. The window period for filing applications will open on December 11, 1990, and close on January 10, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–528, adopted September 28, 1990, and released October 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under North Carolina, is amended by adding Channel 232A at Hatteras.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25777 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–484; RM–6972]

Radio Broadcasting Services; Edinboro, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WinCapp Broadcasting, Inc., substitutes Channel 250B1 for Channel 250A at Edinboro, Pennsylvania, and modifies its license for Station WXTA to specify operation on the higher powered channel. See 54 FR 48285, November 22, 1989. Channel 250B1 can be allotted to Edinboro in compliance with the Commission's minimum distance separation requirements and can be used at Station WXTA's presently licensed transmitter site. The coordinates for Channel 250B1 at Edinboro are North Latitude 41–57–59 and West Longitude 80–06–40. Canadian concurrence has been received. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–484, adopted September 28, 1990, and released October 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Pennsylvania, is amended by removing Channel 250A and adding Channel 250B1 at Edinboro.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25779 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–489; RM–6955]

Radio Broadcasting Services; Barnwell, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Radio WBAW, Inc., substitutes Channel 256C3 for Channel 256A at Barnwell, South Carolina, and modifies its license for Station WBAW–FM to specify operation on the higher powered channel. See 54 FR 47688, November 16, 1989. Channel 256C3 can be allotted to Barnwell in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station WBAW–FM. The coordinates for Channel 256C3 are North Latitude 33–13–25 and West Longitude 81–21–35. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 10, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–489, adopted September 28, 1990, and released October 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under South Carolina, is amended by removing Channel 256A and adding Channel 256C3 at Barnwell.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25778 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

Incorporation by Reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule gives notice of current revisions to the May 1989 Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) that have been published and forwarded to all holders of the manual. The revisions cover the changes in various government policies relating to the United States Government use of the radio frequency spectrum. These changes have been adopted by the Interdepartment Radio Advisory Committee (IRAC) and approved by the National Telecommunications and Information Administration.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Edwin E. Dinkle, National Telecommunications and Information Administration, Department of Commerce, room H1605, 14th and Constitution Avenue, NW., Washington, DC 20230; (202) 377–0599.

SUPPLEMENTARY INFORMATION: The President by Reorganization Plan No. 1

of 1977 and Executive Order 12046 of March 27, 1978 delegated to the Secretary of Commerce authority to act for the President or under the President's authority in the discharge of certain Presidential telecommunication functions under the Communications Act of 1934, as amended, and the Communications Satellite Act of 1962.

The Secretary of Commerce has delegated this Presidential authority to the Assistant Secretary of Commerce for Communications and Information (the Assistant Secretary). The Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) is issued by the Assistant Secretary and is specifically designed to detail the Assistant Secretary's frequency management responsibilities.

List of Subjects in 47 CFR Part 300

Incorporation by reference, Radio.

For the reasons set out in the preamble, title 47, chapter III, part 300 of the Code of Federal Regulations is amended as set forth below.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: E.O. 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., P. 158.

2. Section 300. 1(b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall meet the requirements set forth in the May 1989 edition of the NTIA Manual, as amended by revisions dated May 1990, which is incorporated by reference with the approval of the Director, Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Richard D. Parlow,

Associate Administrator, Office of Spectrum Management.

[FR Doc. 90–25680 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 4, 9, 14, 15, 37, 52, and 53

Federal Acquisition Regulation (FAR); Procurement Integrity

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule; extension of comment period.

SUMMARY: Federal Acquisition Circular (FAC) 84–60 which amended the FAR with respect to Procurement Integrity, was published as an interim rule with request for comment on September 6, 1990 (55 FR 36782). The original date for submission of comments was November 6, 1990. The Councils have decided to extend the period for public comments on the FAR coverage for Procurement Integrity to accommodate the requests of interested parties.

DATES: Comments on the interim FAR coverage for Procurement Integrity should be submitted to the FAR Secretariat by November 21, 1990, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, Washington, DC 20405. Please cite FAC 84–60 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon A. Kiser, FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 84–60.

Dated: October 25, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 90–25679 Filed 10–30–90; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Parts 9, 52, and 53

[Federal Acquisition Circular 90–1]

Federal Acquisition Regulation (FAR); Consultants—Conflict of Interest; Optional Form 333, Procurement Integrity Certification for Procurement Officials

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: This document corrects Federal Acquisition Circular (FAC) 90–1 published in the **Federal Register** on Monday, October 22, 1990 (55 FR 42684).

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill, Office of Federal Acquisition Policy, GS Building, Washington, DC 20405, (202) 501–3856. Please cite FAC 90–1 correction.

SUPPLEMENTARY INFORMATION: In FR Doc. 90–24969, the background statement for Item I and the interim rule were inconsistent. The second sentence of the background statement incorrectly states that apparent successful offerors on all advisory and assistance contracts over $200,000, who employ marketing consultants, must provide a certification * * *. The sentence should be deleted in part and revised to read as follows: Under the regulation, apparent successful offerors to all solicitations expected to exceed $200,000 (other than by sealed bids) who employ marketing consultants, must provide a certification * * *.

This correction provides consistency between the background statement and the regulation at 9.507–1(b).

Dated: October 26, 1990.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 90–25697 Filed 10–30–90; 8:45 am]

BILLING CODE 6820–34–M

Proposed Rules

Federal Register
Vol. 55, No. 211
Wednesday, October 31, 1990

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 731, 732, 736

Intent To Revise Suitability, Personnel Security and Related Programs, and Investigations Regulations

AGENCY: Office of Personnel Management.

ACTION: Intent to revise regulations.

SUMMARY: The Office of Personnel Management (OPM), under its authorities in 5 U.S.C. 3301; E.O. 10450, Security Requirements for Government Employment; E.O. 10577 (codified at 5 CFR part 5), Office of Management and Budget Circular No. A–130, Management of Federal Information Resources, and its appendix III, Security of Federal Automated Information Systems, etc., intends to revise 5 CFR parts 731, 732, and 736, and related guidance. The changes and adjustments will more clearly delineate the distinctions among suitability, computer/ADP security, and national security. Procedural requirements will also be changed, where appropriate. The changes will affect suitability screening procedures, position sensitivity designation procedures, and investigation requirements, including the use of investigative forms. Part 731, Suitability, will focus on positions having no national security aspect and will deal with general suitability, public trust and computer/ADP aspects of positions. OPM will provide requirements for such positions with defined risk levels. The investigative forms will include the SF 85, Questionnaire for Non-Sensitive Positions, for low risk positions, and a new form, SF 85P, Questionnaire for Public Trust Positions, for higher risk positions. Questions will be appropriate to the risk levels involved. The SF 85P will be established as a new information collection; respondents would have heretofore completed the SF 86.

Part 732, retitled National Security Positions, will focus on positions with national security duties and classified information access requirements. It will retain the present four security sensitivity levels (non-sensitive, noncritical sensitive, critical sensitive, and special sensitive). The investigative forms will continue to be SF 85, Questionnaire for Non-Sensitive Positions, and SF 86, Questionnaire for Sensitive Positions.

Part 736, Personnel Investigations, will continue to cover processing of personnel investigations and will supplement the requirements in both parts 731 and 732.

The investigative forms, SF 85, SF 85P, and SF 86, are subject to OMB clearance under the Paperwork Reduction Act and were the subject of a separate notice in the **Federal Register** (55 FR 39533, September 27, 1990).

FOR FURTHER INFORMATION, CONTACT: Vernon B. Parker, Counselor to the Director, U.S. Office of Personnel Management, 1900 E. Street NW., Room 5524, Washington, DC 20045, (202) 606–1000.

Constance Berry Newman,

Director.

[FR Doc. 90–25284 Filed 10–30–90; 8:45 am]

BILLING CODE 6325–01–M

FEDERAL ELECTION COMMISSION

[Notice 1990–18]

11 CFR Parts 109 and 114

Corporate and Labor Organization Expenditures

AGENCY: Federal Election Commission.

ACTION: Extension of comment period

SUMMARY: On October 3, 1990, the Federal Election Commission published an additional request for comments on what changes to its regulations are warranted following the Supreme Court opinions in *Austin* v. *Michigan Chamber of Commerce*, ___ U.S. ___, 110 S. Ct. 1391 (1990) ("*Austin*"), and other recent judicial decisions regarding section 441b of the Federal Election Campaign Act. 2 U.S.C. 441b. The Commission has now decided to extend the comment period until November 30, 1990.

DATE: Comments must be received on or before November 30, 1990.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376–5690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission has initiated a rulemaking to determine what changes, if any, should be to made its regulations at 11 CFR parts 109 and 114 following the Supreme Court's decisions in *Federal Election Commission* v. *Massachusetts Citizens for Life*, 479 U.S. 238 (1986) ("*MCFL*"). *See* 53 FR 40070, 53 FR 416 and 52 FR 16275. On October 3, 1990 the Commission sought additional comments in light of the Supreme Court's more recent opinion in *Austin* v. *Michigan Chamber of Commerce*, ___ U.S. ___, 110 S. Ct. 1391 (1990) ("*Austin*"). *See* 55 FR 40397 (Oct. 3, 1990). This additional comment period was scheduled to end on November 2, 1990, which is four days before the 1990 general elections. The Commission notes that commenters who are engaged in 1990 election activities may find it difficult to submit timely comments. Accordingly, the Commission has now concluded that it would be appropriate to extend the comment period until November 30, 1990 to allow commenters sufficient time after the elections to prepare their comments and suggestions.

Dated: October 26, 1990.

Lee Ann Elliott,

Chairman, Federal Election Commission.

[FR Doc. 90–25740 Filed 10–30–90; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 46 to the Ohio

permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments are intended to revise three Ohio administrative rules and one section of the Ohio Revised Code to be consistent with the corresponding Federal regulations regarding the extraction of coal incidental to the extraction of other minerals.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on November 30, 1990. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on November 26, 1990. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on November 15, 1990.

ADDRESSES: Written comments and requestes to testify at the hearing should be mailed or hand-delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus Ohio 43232, Telephone: (614) 866–0578

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated February 7, 1990 (Administrative Record No. OH–1383), the Director of OSM notified the Ohio Department of Natural Resources, Division of Reclamation (Ohio) that OSM had recently promulgated new Federal regulations concerning exemptions for coal extraction incidental to the extraction of other minerals. The Director required Ohio to modify its regulatory program to remain consistent with the new Federal requirements.

By letter dated April 5, 1990 (Administrative Record No. OH–1384), Ohio responded with questions concerning the Director's February 7, 1990 letter. OSM provided responses to Ohio's questions by letter dated May 1, 1990 (Administrative Record No. OH–1385).

By letter dated May 31, 1990 (Administrative Record No. OH–1386), Ohio requested an extension until August 1, 1990 to submit an amendment to the Ohio program concerning incidental coal extraction. By letter dated August 2, 1990 (Administrative Record No. OH–1387), Ohio submitted additional questions concerning OSM's new regulations on incidental coal extraction. OSM responded to Ohio's second set of questions by letter dated September 6, 1990 (Administrative Record No. OH–1390).

By letter dated October 12, 1990 (Administrative Record No. OH–1393), Ohio submitted formal Program Amendment No. 46. The amendment proposes changes to three Ohio administrative rules and one section of the Ohio Revised Code regarding the extraction of coal incidental to the extraction of other minerals.

Numerous nonsubstantive changes are proposed throughout the revised rules to correct paragraph letter notations and to make other minor revisions. The substantive changes proposed by Ohio in the Ohio Administrative Code (OAC) and in the Ohio Revised Code (ORC) are discussed briefly below:

1. *OAC 1501:13–4–16.* Ohio is adding this new rule to establish the requirements for the exemption of incidental coal extraction from the normal requirements for coal mining and reclamation operations under the Ohio regulatory program. This new rule would contain sections dealing with the following topics:

(A) Applicability of the rule.
(B) Definitions.
(C) Application requirements and procedures.
(D) Contents of requests for exemption.
(E) Public availability of information.
(F) Requirements for exemption.
(G) Conditions of exemption.
(H) Stockpiling of minerals.
(I) Reporting requirements.

2. *OAC 1501:13–5–03.* Ohio is adding this new rule to establish the procedures for revocation of exemption for incidental coal extraction. The Chief of the Ohio Department of Natural Resources, Division of Reclamation (the Chief) shall conduct an annual review of operators' compliance with each approved exemption. If the Chief has reason to believe that a specific mining area was not exempt, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the Chief shall notify the operator that the exemption may be revoked and the reason(s) therefore. The Chief will provide the operator with 30 days to demonstrate that the mining area in question should continue to be exempt. Upon revocation of an exemption, an operator shall stop conducting coal mining operations until Ohio issues a permit to conduct those mining operations. The operator shall also comply with the reclamation standards of the Ohio regulatory program with regard to the areas affected at the time of the Chief's revocation of the exemption.

3. *OAC 1501:13–14–01(H).* Ohio is adding this paragraph to authorize representatives of the Chief to conduct inspections of operations claiming the exemption for incidental coal extraction.

4. *ORC 1513.01(G)(1)(a).* Under the definition of "operation" or "coal mining operation," Ohio is revising the provision excluding incidental coal extraction from the activities included under that definition. Under the definition, the weight of incidental coal must be less than one-sixth of the total weight of all minerals removed. Ohio is deleting the provision in the definition that the Chief may require a license and a permit before the removal of minerals whenever those minerals are removed for use as fill.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking

comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by 4 p.m. on November 15, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."** All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: October 22, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90-25718 Filed 10-30-90; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 946

Virginia Regulatory Program; Regulatory Reform Review III and Incidental Coal Extraction Exemption

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Virginia permanent regulatory program (hereinafter, referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Virginia proposes to amend its rules to meet OSM's Regulatory Reform Review III and the regulations concerning the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale. Virginia also is proposing changes to its program pertaining to prime farmlands and coal preparation plants not located within the permit area of a mine.

This notice sets forth the times and locations that the Virginia program and proposed amendment to the program are available for public inspection, the comment period during which interested parties may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is required.

DATES: Written comments must be received on or before 4 p.m. on November 30, 1990. If requested, a public hearing on the proposed amendment will be held on November 26, 1990; requests to present testimony at the hearing must be received on or before 4 p.m. November 15, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Douglas E. Stone, Acting Director, Big Stone Gap Field Office at the first address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Virginia program, proposed amendments and all written comments received in response to this notice will be available for review at the locations listed below during normal business hours Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Drawer 1216, Powell Valley Square Shopping Center, Room 220, Route 23, Big Stone Gap, Virginia 24219, Telephone (703) 523-4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer U, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone (703) 523-8100.

FOR FURTHER INFORMATION CONTACT: Douglas E. Stone, Acting Director, Big Stone Gap Field Office, Telephone (703) 523-4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Virginia program on December 15, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085-61115). Subsequent actions concerning the conditions of approval and proposed amendments are identified at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of Amendments

By letter dated October 1, 1990, Virginia submitted a proposed amendment to its program pursuant to SMCRA (Administrative Record No. VA-768). This proposed amendment includes Virginia's response to two 30 CFR 732.17(f)(1) notifications and other changes to its program (Administrative Record Nos. VA-743 and VA-749). Virginia proposes to revise its program pertaining to OSM's Regulatory Reform Review III that includes regulation changes concerning revegetation standards for success, siltation structures and impoundments, termination of jurisdiction, roads and support facilities, coal exploration, probable hydrologic consequences determination, and permitting obligations relative to reclamation. Also changed are regulations concerning the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, and regulations concerning prime farmland and coal preparation plants that are not located within the permit area of a mine. A brief description of the proposed changes is outlined below.

A. Revegetation Standards for Success

Sections 480–03–19.816.116(b)(3)(i) and 480–03–19.816.117(b)(3)(i): Virginia proposes to amend its regulations to require that minimum stocking and planting arrangements for areas developed for fish and wildlife habitat, recreation, shelterbelts, or forest products be specified by the Division after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs. Consultation and approval may occur either on a programmatic or a permit-specific basis.

Sections 480–03–19.816.116(b)(3)(ii) and 480–03–19.816.117(b)(3)(ii): Virginia proposes to amend its regulations to require that, at the time of final bond release, at least 80 percent of all trees and shrubs used to determine revegetation success have been in place for at least 60 percent of the applicable minimum period of responsibility.

Sections 480–03–19.816.116(b)(3)(iv)(C) and 480–03–19.816.117(b)(3)(iv)(C): Virginia proposes to add new regulations to specify stocking rates and planting arrangements for wildlife enhancement.

Sections 480–03–19.816.116(b)(3)(v)(A) and 480–03–19.816.117(b)(3)(v)(A): Virginia proposes to amend its regulations to remove the reference area requirement for determining tree and shrub stocking success.

Sections 480–03–19.816.116(b)(3)(v)(C) and 480–03–19.816.117(b)(3)(v)(C): Virginia proposes to amend its regulations to specify stocking rates and planting arrangements for wildlife enhancement.

Sections 480–03–19.816.116(c)(2) and 480–03–19.817.116(c)(2): Virginia proposes to amend its regulations to require revegetation success standards for cropland and grazing or pastureland be met during at least 2 years of the responsibility period. These measurements may be taken during any 2 years of the responsibility period except the first year. For all other land uses the revised rules require that revegetation success standards be met during at least the last year of the responsibility period.

Sections 480–03–19.816.116(c)(3) and 480–03–19.817.116(c)(3): Virginia proposes to amend its regulations to require that all normal husbandry practices be approved.

B. Permanent and Temporary Impoundments

Sections 480–03–19.780.25(c) and 480–03–19.784.16(c): Virginia proposes to amend its regulations to require that each plan for an impoundment meeting the criteria of 30 CFR 77.216(a) comply with the requirements of 30 CFR 77.216–1 and 77.216–2. The plan submitted to the MSHA District Manager shall be the same plan submitted as part of the permit application.

Sections 480–03–19.816.46(c)(2) and 480–03–19.817.46(c)(2): Virginia proposes to amend its regulations to provide that sedimentation ponds must include either a combination of principal and emergency spillways or a single spillway constructed according to certain specifications.

Sections 480–03–19.816.49(a)(1) and 480–03–19.817.49(a)(1): Virginia proposes to amend its regulations to remove the permitting requirements for impoundment plans meeting the size and other criteria of 30 CFR 77.216(a) from the performance standards.

Sections 480–03–19.816.49(a)(3), (a)(5) and 480–03–19.817.49(a)(3), (a)(5): Virginia proposes to amend its regulations to provide minimum stability standards for impoundments located where failure would be expected to cause loss life or serious property damage. These regulations also provide stability requirements for small, low-hazard impoundments. In lieu of stability calculations, specific engineering design and construction standards to ensure comparable stability are to be included.

Sections 480–03–19.816.49(a)(8), and 480–03–19.817.49(a)(8): Virginia proposes to amend its regulations to revise the spillway design event standards to be consistent with the Federal rules and the standards for sedimentation ponds.

Sections 480–03–19.816.49(a)(9), and 480–03–19.817.49(a)(9): Virginia proposes to amend its regulations to more closely track the Federal general requirements for inspections of impoundments.

Sections 480–03–19.816.49(c)(2), and 480–03–19.817.49(c)(2): Virginia proposes to amend its regulations to revise the spillway design event standards to be consistent with the Federal rules and the standards for sedimentation ponds.

Sections 480–03–19.816.84(b)(2), (f) and 480–03–19.817.84(b)(2), (f): Virginia proposes to amend its regulations to require that structures meeting the criteria of 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour or greater precipitation event.

Sections 480–03–19.816.84(f), and 480–03–19.817.84(f): Virginia proposes to amend its regulations to require that, for impounding structures constructed of or impounding coal mine waste, at least 90 percent of the water stored during a design precipitation event must be removed within a 10-day period following that event.

C. Termination of Jurisdiction

Sections 480–03–19.700(d): Virginia proposes to add a new regulation establishing procedures and clarifying the conditions under which the Division may terminate its jurisdiction over sites mined and reclaimed under an initial or permanent regulatory program permit for surface coal mining and reclamation operations and coal exploration activities. Under this new rule, the Division must make a written determination that all applicable reclamation requirements have been met before jurisdiction over initial program and coal exploration sites may be terminated. Also, before terminating jurisdiction over permitted and bonded permanent program sites, the Division must issue a final decision fully releasing the performance bond. In addition, this new rule requires that, in either case, jurisdiction must be reasserted if it is demonstrated that the written findings or bond release were based upon fraud, collusion, or misrepresenation of a material fact.

D. Roads

Sections 480–03–19.700.5: Virginia proposes to amend its regulations to change the definition of road to mean a surface right-of-way constructed, used, reconstructed, improved, or maintained for travel by land vehicles, including mining equipment, used in surface coal mining and reclamation operations or coal exploration. The term encompasses all appurtenant structures used or built within the right-of-way and includes rights-of-way by coal-hauling vehicles to reach transfer, processing, and storage areas. However, the definition does not include ramps and routes of travel within the immediate mining area or excess spoil or coal mine waste disposal areas. Pioneer roads (roads constructed for the purpose of providing the access needed to construct a primary or ancillary road) are not included since they are merely part of the process of constructing a primary or ancillary road; however, such activities are subject to the performance standards applicable to completed primary or ancillary roads.

Sections 480–03–19.780.37 and 480–03–19.784.24: Virginia proposes to amend its regulations to require that the permit application include plans and drawings containing certain specific information for each road to be constructed, used, or maintained within the proposed permit area.

Sections 480–03–19.780.37(b) and 480–03–19.784.24(b): Virginia proposes to add new regulations to require that the plans and drawings for each primary road be prepared by, or under the direction of, and certified by a qualified registered professional engineer with experience in the design and construction of roads as meeting the requirements of this chapter, current prudent engineering practices, and any design criteria established by the Division.

Sections 480–03–19–816.150(a) and 480–03–19–817.150(a): Virginia proposes to amend its regulations to establish classification criteria for mine roads. Primary roads are defined as any roads: (1) Used for transporting coal or spoil, (2) frequently used for access or other purposes for a period in excess of six months, or (3) to be retained as part of an approved postmining land use. An ancillary road is any road not classified as a primary road.

Sections 480–03–19–816.150(b) and 480–03–19–817.150(b): Virginia proposes to amend its regulations to clarify that road dust created by vehicular traffic and dust occurring on other exposed surfaces must be classified and regulated as air pollution attendant to erosion.

Sections 480–03–19–816.150(c) and 480–03–19–817.150(c): Virginia proposes to amend its regulations to require, among other things, that roads be designed and cosntructed or reconstructed in accordance with current, prudent engineering practices.

Sections 480–03–19–816.150(d) and Section 480–03–19–817.150(d): Virginia proposes to amend its regulations to prohibit the placement of any part of a road in the channel of an intermittent or perennial stream unless the Division specifically approves such an action in accordance with applicable Sections 480–03–19.816.41 through 480–03–19.816.43 and 480–03–19.816.57.

Sections 480–03–19–816.150(e) and 480–03–19–817.150(e): Virginia proposes to amend its regulations to provide that roads shall be maintained to meet performance standards.

Sections 480–03–19–816.150(f) and 480–03–19–817.150(f): Virginia proposes to amend its regulations to require that a road which is not to be retained as part of the postmining land use be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. The required reclamation activities include removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and the revegetation plan. Also, the roadbed is required to be scarified or ripped.

Sections 480–03–19–816.151 and 480–03–19–817.151: Virginia proposes to amend its regulations to require that the construction or reconstruction of primary roads be certified in a report to the regulatory authority by a qualified registered professional engineer with experience in the design and construction of roads. The report shall certify that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan. These rules also require that each primary road be constructed (or reconstructed) and maintained to provide adequate control of surface water drainage. This drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour or greater precipitation event.

Sections 480–03–19–816.152 and 480–03–19–817.152: Virginia proposes to amend its regulations to revise the waiver for design requirements for existing roads.

E. Support Facilities

Sections 480–03–19–780.38 and 480–03–19–784.30: Virginia proposes to amend its regulations to require each applicant for a surface or underground coal mining and reclamation permit to submit a description of (and plans and drawings for) each support facility to be constructed, used, or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate how each facility will comply with the applicable performance standards.

Section 480–03–19–700.5: Virginia proposes to amend its regulations to remove the definition for support facilities.

F. Coal Exploration

Section 480–03–19.815.15(b): Virginia proposes to amend its regulations to change the sections referenced by this rule.

Section 480–03–19.772.11(a): Virginia proposes to amend its regulations to require any person who intends to conduct coal exploration operations removing 250 or fewer tons of coal to file a notice of intent to explore and require an exploration notice for collecting environmental data.

Section 480–03–19.772.11(b): Virginia proposes to amend its regulations to require additional information for obtaining a coal exploration notice.

Section 480–03–19.772.12: Virginia proposes to amend its regulations to more closely track the Federal requirements for permit requirements for exploration.

Section 480–03–19.772.14(a): Virginia proposes to amend its regulations to expand the requirements to obtain a surface coal mining permit for both the commercial use and sale of coal. Thus, except as provided under 30 CFR 772.14(b) and 700.11(a)(5), any person who intends to commercially use or sell coal extracted under an exploration permit must first obtain a surface coal mining and reclamation operation permit.

Section 480–03–19.772.14(b): Virginia proposes to add new regulations to require that the person conducting the exploration file an application demonstrating that testing is necessary for the development of a surface coal mining operation for which a permit application is to be submitted in the near future. The application also must demonstrate that the proposed commercial use or sale is solely for testing purposes. It must include specific information identifying the tests to be used, the testing firm, testing locations, reasons for the tests, and the amount of coal necessary for the tests. The applicant must supply evidence that sufficient coal reserves are available to support a mine and that the coal to be removed for testing purposes does not constitute the total minable reserves within the exploration area. Also, the application must include an explanation of why other means of exploration are not adequate to determine the quality of the coal.

Section 480–03–19.815.2: Virginia proposes to add new regulations to clarify that Section 480–03–19.772 establishes the notice and permit information requirements for coal exploration.

G. Probable Hydrologic Consequences Determination

Sections 480–03–19.780.21(f) and 480–03–19.784.14(e): Virginia has submitted a policy statement with this program amendment. This policy statement states that Virginia interprets its regulations to require that probable hydrologic consequence determinations address all proposed mining within the permit area, not just those activities expected to occur during the term of the permit. Therefore, no change to its regulations is necessary.

H. Permitting Obligations Relative to Reclamation

Section 480–03–19.701.11(a)–(c): Virginia proposes to amend its regulations to provide clarification that

permits are required only when surface coal mining is conducted.

Section 480–03–19.773.11(a): Virginia proposes to amend its regulations to provide clarification that reclamation is an obligation that is not affected by the existence of a permit.

Section 480–03–19.800.60(b): Virginia proposes to amend its regulations to require liability insurance to remain in effect for the full term of the operator's responsibility period for reclamation.

Section 480–03–19.843.11(a)(2): Virginia proposes to amend its regulations to specify that only surface coal mining operations conducted without a permit are subject to immediate cessation.

I. Prime Farmland

Section 480–03–19.785.17(e)(5): Virginia proposes to amend its regulations to include this proposed regulation specifying that water bodies may be created within the post-reclamation, non-prime farmland.

Section 480–03–19.823.11(b): Virginia proposes to amend its regulations to allow coal mine waste from underground mines to be disposed on prime farmland when this material is not technologically and economically feasible to store in underground mines or on non-prime farmland.

Section 480–03–19.823.12(c)(2): Virginia proposes to amend its regulations to allow an exception to removing the B and C soil horizons for prime farmland.

Section 480–03–19.823.14(d): Virginia proposes to amend its regulations to allow the Division to require deep tilling or other means to restore soil capabilities in areas where the B and C horizons were not removed.

J. Preparation Plants not Located Within the Permit Area of a Mine

Sections 480–03–19.785.21(a) and 480–03–19.821.1: Virginia proposes to amend its regulations to clarify that coal preparation plants operated in connection with a coal mine, that are outside the permit area for a specific mine, are regulated.

Section 480–03–19.827.1: Virginia proposes to amend its regulations to provide the requirements for coal preparation plants operating outside of a specific mine site.

K. Coal Extraction Incidental to the Extraction of Other Minerals

Section 480–03–19.700.11(a)(4): Virginia proposes to amend its regulations to provide the reference to a new Section 480–03–19.702 governing the exemption for extracting coal that is incidental to the extraction of other minerals.

Section 480–03–19.702: Virginia proposes to add a new Part governing the extraction of coal incidental to the extraction of other minerals to its regulations.

Section 480–03–19.702.5: Virginia proposes to add new regulations to provide definitions of cumulative measurement period, cumulative production, cumulative revenue, mining area, and other minerals as these terms are used in reference to the exemption for incidental coal extraction.

Section 480–03–19.702.11: Virginia proposes to add new regulations to provide the application requirements and procedures for the exemption for incidental coal extraction.

Section 480–03–19.702.12: Virginia proposes to add new regulations to provide the content requirements for applications for an exemption for incidental coal extraction.

Section 480–03–19.702.13: Virginia proposes to add new regulations to provide the requirements for availability of information to the public for a site granted an exemption for incidental coal removal.

Section 480–03–19.702.14: Virginia proposes to add new regulations to establish the requirements for determining if incidental coal extraction activities are exempt from the Act.

Section 480–03–19.702.15: Virginia proposes to add new regulations to provide the conditions of the exemption that must be observed by persons conducting activities covered by an exemption for incidental coal removal.

Section 480–03–19.702.16: Virginia proposes to add new regulations to provide the requirements applicable to the stockpiling of coal and other minerals under an exemption for incidental coal removal.

Section 480–03–19.702.17: Virginia proposes to add new regulations to provide enforcement procedures and the process for revocation of exemptions for incidental coal removal activities.

Section 480–03–19.702.18: Virginia proposes to add new regulations to require reporting requirements for operations which have received an approval of an exemption for incidental coal removal.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Virginia satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Virginia program.

Writen Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by close of business on November 15, 1990. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held.

Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES**". A written summary of each public meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 946

Coal Mining, Intergovernmental relations, Surface mining, and Underground mining.

Dated: October 22, 1990.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 90–25719 Filed 10–30–90; 8:45 am]

BILLING CODE 4510–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Ch. I

Open Meeting on Conflicts of Interest in Clinical Evaluation of Commercial Products

AGENCIES: National Institutes of Health Alcohol, Drug Abuse and Mental Health Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Public Health Service (PHS) recognizes the need to issue regulations addressing conflict-of-interest issues that arise when investigators conducting PHS-supported clinical evaluations of commercial products have financial interests in those products. Before proceeding with rule-making, the PHS invites members of the public to attend a meeting to discuss principles and questions relevant to such regulations.

DATES: November 30, 1990, 8:30 a.m. to 4:30 p.m.

ADDRESSES: Masur Auditorium, Clinical Center, (Building 10), National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: George Galasso, Ph.D., Associate Director for Extramural Affairs, NIH, Building 1, Room 152, 9000 Rockville Pike, Bethesda, Maryland 20892, Phone: (301) 496–5356.

SUPPLEMENTAL INFORMATION: The (PHS) supports clinical trials that involve the evaluation of commercial products such as drugs, vaccines, and devices. The efficient transfer of these research results into commerce is essential to improve health care and economic competitiveness. In generating new knowledge about a commercial product, the PHS-supported research may affect the product's value either favorably or adversely. To the extent that participating investigators have financial interests related to commercial products they are evaluating in clinical trials, the risk of apparent or actual conflicts of interest must be addressed by the PHS and the research community it supports. Financial holdings of investigators must not influence the design, conduct, or reporting of such clinical trials.

The PHS has already issued regulations dealing with misconduct in science to protect PHS-supported biomedical and behavioral research against falsification, fabrication, plagiarism or other practices that seriously deviate from commonly accepted practices within the scientific community. PHS is considering issuance of additional rules to promote the integrity of PHS-supported clinical trials where investigators may have financial interests that could affect or give the appearance of affecting their objectivity. Before doing so, the PHS and its component agencies, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) will conduct a public meeting to discuss one approach to addressing the issues involved, as well as other alternatives.

The proposed approach is outlined in this notice. In developing the outline, NIH/ADAMHA have taken into consideration the comments received on the earlier proposed Guidelines published in the *NIH Guide for Grants and Contracts,* vol. 18, No. 32 September 15, 1989. The meeting will provide a forum for public comments on the proposed approach and the various issues which it attempts to address, as well as an opportunity for alternative suggestions.

The meeting will be held on November 30, 1990 in Masur Auditorium on the campus of the NIH. Registration is requested as seating is limited to approximately 500 attendees. To assure that your comments will be considered in the event that you may not be able to present them orally, written comments may be submitted at the resgistration desk. Interested parties may register by contacting: Ms. Bonnie Kaps, National Institutes of Health, Building 31, Room 5B35, Bethesda, Maryland 20892, Telephone (301) 402–0854, Fax (301) 496–0166.

Discussion Topics—Clinical Product Evaluation

General Principles

- Efficient transfer of research results into commerce is an will continue to be essential if the United States is to maintain and enhance health care and economic competitiveness.
- Pertinent Federal statutes provide generally that tax-financed research institutions will give high priority to ensuring commercialization of their scientists' results wherever appropriate.
- The research community will not maintain public confidence without rules that harmonize the national interest, institutional interests, and individual interests.
- There is an apparent need for rules on conflict of interest that will protect the integrity of PHS-sponsored clinical trials and ensure that financial interests of investigators will not compromise the conduct or reporting of such research.
- At the same time, the PHS must strive to ensure that procedures for protection against conflict of interest do not stifle the advancement of research and technology transfer, which are key aspects of the PHS mission.
- The proposed approach is to address potential conflicts of interest in clinical trials of commercial products because of the near term significance for patient care.

Proposed Approach

- Require institutions to establish procedures that ensure that clinical trials supported by PHS are not compromised by inappropriate financial interests on the part of investigators.
- Covered individuals would include investigators responsible for designing, conducting or reporting research and their spouses, dependents and business partners.
- Institutions must solicit and review disclosures of financial interests of investigators who will receive PHS finding for clinical trials of commercial products and where necessary, take action to eliminate or prevent inappropriate financial interests, particularly financial interests in firms that manufacture, sell, or otherwise have property rights in the product under study.
- A financial interest in the product under study may be approved by the institution if it is judged unlikely to compromise the design, conduct, or reporting of the study. The institution should impose requirements to minimize even perceived conflict, for example, by requiring disclosure of interests in resulting publications.
- Investigators/institutions must disclose to the PHS all sources of support for the PHS-supported clinical trial (before the award of PHS funds and after the award when changes occur).

Issues

- The overarching issue is how best to protect the integrity of research while promoting technology transfer.
- Should the basic regulatory approach (a) require disclosure and allow flexibility for institutions to take appropriate action, (b) state specific prohibitions, or (c) require disclosure and decisions on appropriateness by the funding agency?
- To what extent should conflict of interest rules applicable to Federal employees, including those applicable to NIH/ADAMHA study section members, serve as a model in developing the proposed requirements? (See 45 CFR part 73.)

• Are there regulatory frameworks not specific to PHS (e.g. Federal Securities Laws) that are applicable to the topic?

• Who are the most appropriate parties to determine a conflict of interest?

• Should all forms of financial interests be reviewed, for example, equity, salary, other payment for services, honoraria, and gifts?

• Are there minimal levels of financial interests which would not create an actual or apparent conflict of interest?

• Should PHS require submission and approval of institutional policies in order to ensure consistency and provide technical assistance where necessary?

• Should PHS require disclosure to the funding agency of approved financial interests, if any?

• Should there be a requirement for public disclosure of financial interests, for example, in publications?

• Should there be disclosure of the investigators' financial interests as part of the document seeking the research subjects' informed consent to participation in clinical trials? (In this regard, see the decision in *Moore* v. *Regents of University of California*, 271 Cal. Rpt. 146, 793, P2d 475, 19 USPQ2d 1753 California Supreme Court, July 9, 1990).

• Should institutional financial interests be considered?

• What should the remedies be for violations?

Conflict of Interest

Clinical Evaluation of Products, November 30, 1990, Masur Auditorium, Clinical Center, NIH, Public Meeting.

8:30–9:00 Introduction and Opening Remarks
9:00–10:30 Presentations
9:00–10:00 Four Presentees—15 minutes each
10:00–10:30 General questions and answers
10:30–11:00 Coffee
11:00–12:30 Comments from the audience concerning all aspects of this issue including, but not limited to:

General Policy—Basic regulatory approach; responsibilities of PHS and institutions; reporting and disclosures of financial interests; resolution of conflicts of interest.

Restrictions—Types of financial interests; minimal levels; waivers.

Remedies and Sanctions—Federal oversight and role with respect to institutions; enforcement against investigators.

Audience comments—3–5 minutes each.

12:30–1:30 Lunch
1:30–2:45 Comments continued
2:45–3:15 Coffee
3:15–4:15 Comments continued
4:15 Conclusion

Dated: October 26, 1990.

James O. Mason,

Assistant Secretary for Health, PHS.

[FR Doc. 90–25827 Filed 10–30–90; 8:45 am]

BILLING CODE 4140–21–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[PR Docket No. 90–480; FCC 90–343]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Amendments of parts 13 and 80 are proposed to implement the Global Maritime Distress and Safety System (GMDSS) in the Commission's Rules. The new system will change international distress communications from manual ship-to-ship system based on 500 kHz Morse code telegraphy to a fully automated ship-to-shore system based on satellites and digital technology. New carriage requirements are proposed for cargo ships of 300 gross tons and over and passenger ships that carry more than 12 passengers irrespective of size that sail in the open sea. In accordance with international provisions, a seven year transition period, from February 1, 1992, to February 1, 1999, is proposed. During the transition period, both the present manual Morse code system and the new automated GMDSS will be operational.

DATES: Comments must be received on or before January 7, 1991, and reply comments on or before February 6, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632–7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 90–480, adopted October 11, 1990, and released October 25, 1991. The complete text of the Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: International Transcription Service, 2100 M Street NW., suite 140, Washington, DC 20037; telephone 202–857–3800.

Summary of Notice of Proposed Rule Making

1. The Notice of Proposed Rule Making (Notice) sets forth the proposed amendments that are necessary to implement the Global Maritime Distress and Safety System (GMDSS) in the United States. Changes adopted by the International Maritime Organization (IMO) in the fall of 1988, together with revisions to the Radio Regulations adopted by the World Administrative Radio Conference for Mobile Services in 1987 (1987 Mobile WARC), provided for the introduction of the GMDSS internationally.[1]

2. The Notice proposes that ships subject to the Safety of Life at Sea (SOLAS) Convention or title III, part II of the Communications Act of 1934, as amended, conform to the GMDSS provisions. Ships subject to the SOLAS Convention are required to carry certain radio equipment for safety purposes and are termed "compulsory" ships. Other ships, fitted with the same equipment, are termed "voluntary" ships. Under the SOLAS Convention, compulsory ships include all passenger ships that carry more than twelve passengers and all cargo ships of 300 gross tons and over engaged on international voyages. Similarly, title III, part II of the Communications Act of 1934, as amended, (title III, part II of the Act) specifies that it is unlawful for these ships to navigate in the open sea unless equipped with manual Morse code radiotelegraphy equipment. This proceeding addresses only those ships that are subject to either the SOLAS Convention or title III, part II of the Act, (*i.e.*, compulsory ships which includes all passenger ships that carry more than 12 passengers irrespective of size and cargo ships of 300 gross tons and over). Small ships, such as private fishing vessels and recreational yachts, are not affected by the proposed changes.

[1] Because of the magnitude of the revisions to the Radio Regulations adopted by the 1987 Mobile WARC, changes to the Commission's Rules are being implemented through three proceedings. The first proceeding addressed changes to the Table of Frequency Allocations and certain maritime requirements that entered into force on October 3, 1989. *See* Report and Order, GEN Docket No. 89–103, 4 FCC Rcd 7603 (1989). The second proceeding addressed those revisions that pertained to the maritime mobile HF bands between 4000–27500 kHz. *See* Notice of Proposed Rule Making, PR Docket No. 90–133, 5 FCC Rcd 1838 (1990). This, the final proceeding in this series, focuses on those changes necessary to implement the GMDSS in the maritime mobile service rules.

3. The present distress and safety is primarily based on a manually operated, ship-to-ship system whose effectiveness depends on the location of the nearest vessel and with communications quality that varies based upon propagation conditions. The GMDSS essentially replaces the existing manual Morse code ship-to-ship radiotelegraphy system with a fully automatic ship-to-shore distress alerting system using advanced satellite and terrestrial data communication systems. The basic concept of the GMDSS is that search and rescue authorities ashore, as well as shipping in the immediate vicinity of the ship in distress, can be rapidly alerted to a distress incident so they can assist in coordinated search and rescue operations with minimum delay. The reliability of communications to bring assistance to vessels in distress using the GMDSS is significantly improved when compared to the present system.

4. The GMDSS provides that the search and rescue operation be coordinated from shore by a Rescue Coordination Center. In accordance with arrangements made under the IMO by the International Convention on Maritime Search and Rescue (SAR Convention) adopted in 1979, Rescue Coordination Centers will provide the communication network to establish a coordinated search and rescue operation. The SAR Convention established an agreed international procedure for conducting search and rescue operations. The rescue will be coordinated by a SAR organization, or through the cooperation of neighboring SAR organizations. The Rescue Coordination Center will usually be connected through public switched networks or dedicated circuits with other Rescue Coordination Centers via coast stations or coast earth stations. In the United States, the U.S. Coast Guard is the designated maritime SAR organization and will operate the necessary Rescue Coordination Centers.

5. The GMDSS consists of several communication systems, some of which are new, but many of which have been in operation for several years. Satellite distress alerting is possible using the 406 MHz emergency position-indicating radiobeacon (EPIRB) of the Cospas–Sarsat system.[2] Satellite communications will be conducted through the use of the International Maritime Satellite Organizations's (Inmarsat) maritime mobile satellite system. Inmarsat provides a full range of distress alerting and communications capabilities, including voice, telex, and facsimile. Although satellites will be an important part of the GMDSS, new automated terrestrial data systems, as well as existing systems, will be combined into one overall system. The form of terrestrial communications will change. No longer will Morse code be used for distress alerting or traffic. Instead, automatic distress alerting will be conducted using digital selective calling (DSC). After the initial DSC distress alert and acknowledgement, subsequent distress and safety communications will be by narrow-band direct-printing or radiotelephony using existing terrestrial systems.

6. In accordance with international provisions, the Notice proposes that the GMDSS be phased in from February 1, 1992, to February 1, 1999. During this 7 year period, both the present distress and safety system and the new GMDSS will be operational. The implementation dates are as follows:

February 1, 1992: voluntary compliance, any ship may be GMDSS equipped;

February 1, 1995: new compulsory ships must be GMDSS equipped; and

February 1, 1999: all compulsory ships must be GMDSS equipped.

Additionally, all compulsory ships must be equipped as of August 1, 1993, with a satellite EPIRB and a Navtex receiver.

7. *Ship carriage requirements.* The Notice proposes that U.S. compulsory ships be required to carry equipment to perform in accordance with GMDSS provisions. The GMDSS is based on providing a distress signal to shore facilities. The specific type of equipment used to perform this function varies and is determined by the area in which the ship operates. The areas have been defined as:

Sea area A1. An area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available. (This would extend 20–30 miles from shore.)

Sea area A2. An area, excluding sea area A1, within the radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available. (This would extend 75–150 miles from shore.)

Sea area A3. An area, excluding sea areas A1 and A2, within the coverage of an Inmarsat maritime mobile geostationary satellite in which continuous alerting is available. (This would cover an area between 70° N Latitude and 70° S Latitude, which is within the footprint of the Inmarsat system.)

Sea area A4. An area outside sea areas A1, A2, and A3. (This would be essentially the polar regions.)

Sea areas are defined by individual countries and notified to the IMO. A sea area is established by equipping shore-based facilities with appropriate VHF, MF, HF, or satellite equipment to "cover" particular segments of ocean. The IMO is in the process of developing a Master Plan of Shore-based Facilities for the GMDSS that will delineate the geographic extent of the various sea areas worldwide. It is expected that additional sea areas will be incorporated into the GMDSS Master Plan as various shore-based stations are upgraded.[3]

8. The proposals would apply to all compulsory vessels. *i.e.*, cargo ships 300 gross tons and over and all passenger ships that carry more than twelve passengers regardless of size as specified in the SOLAS Convention or Title III, part II of the Act. Operationally, the proposed set of equipment must perform the following functions: (1) Transmitting ship-to-shore distress alerting by two independent means; (2) receiving of shore-to-ship distress alerts; (3) transmitting and receiving ship-to-ship distress alerts; (4) transmitting and receiving search and rescue coordinating communications; (5) transmitting and receiving on-scene communications; (6) transmitting and receiving locating signals; (7) transmitting and receiving maritime safety information; (8) transmitting and receiving shore-based general communications; and (9) transmitting and receiving bridge-to-bridge communications between ships.

9. The particular complement of equipment to perform these functions varies by sea area and each function has several equipment options. The full equipment requirements are not detailed here but are set out in § 80.1085 through § 80.1093 of the Notice's appendix. As a general matter, most compulsory U.S.

[2] COSPAS–SARSAT is a combined Russian-English acronym for a joint international satellite-based search and rescue system established by Canada, France, USSR, and the United States to locate emergency radiobeacons transmitting on 121.5 MHz and 406 MHz. The U.S. built satellites in this system operate on 243 MHz also. (COSPAS is the acronym for the Russian equivalent of Space System for Search of Distress Vessels and Sarsat is the acronym for Search and Rescue Satellite-Aided Tracking.)

[3] Sea areas A1 and A2 have been established along portions of the European coast. The U.S. Coast Guard has plans to establish an area A1 and, at least a partial A2 area, within United States waters. They also plan to install a trial operational MF/HF DSC system at the Boston communications station in 1991, and if successful, at one or two Pacific locations in 1992.

ships would be required to carry the following set of radio equipment: A VHF radio installation capable of DSC and radiotelephony transmission, a MF radio installation capable of DSC and radiotelephony transmissions a INMARSAT–A or INMARSAT–C ship earth station (or a HF radio installation capable of DSC, narrow-band direct-printing, and radiotelephony transmissions), a satellite EPIRB, a NAVTEX receiver, a 9 GHz radar transponder, and, until February 1, 1999, a 2182 kHz watch receiver and auto alarm device. Radio equipment for survival craft normally would consist of three two-way VHF radiotelephones and two 9 GHz radar transponders (one of which may be the ship radar transponder).

10. A few of these requirements are discussed here. First, in accordance with GMDSS provisions, every compulsory ship would have two separate and independent means of performing the alerting function. Further, these two methods of alerting must be performed using different radiocommunications systems. That is, a ship must be capable of transmitting a distress alert using two of the following three sytems: Terrestral, INMARSAT, or COSPAS–SARSAT. There are two exceptions to this rule. Area A1 ships may be equipped with both a VHF primary transmitter and a VHF EPIRB where both means of alerting would be dependent upon VHF terrestrial service. Likewise, area A3 ships may be equipped with a ship earth station and an L-band EPIRB; again both means of alerting are dependent upon one system, the highly reliable INMARSAT system.

11. Under the GMDSS provisions, the required primary radio equipment is dependent upon the ship's area of operation. Ships may be required to carry VHF, MF, or HF radio equipment, a ship earth station, or a combination of these. All ships are required to carry VHF radio equipment capable of operating on VHF distress frequencies: DSC frequency 156.525 MHz (Channel 70), and radiotelephony frequencies 156.3 MHz (Channel 6), 156.650 MHz (Channel 13), and 156.8 MHz (Channel 16). A VHF radio installation capable of operating on these VHF distress frequencies plus a DSC Channel 70 watch receiver will be referred to as VHF safety equipment.[4] Generally, ships that operate only in waters where a sea area A1 has been established must carry a VHF radio installation capable of general VHF communications in addition to the VHF safety equipment noted above. Ships sailing in areas A1 and A2 must carry the VHF safety equipment, and MF radio equipment that is capable of general MF communications and operation on DSC frequency 2187.5 kHz and radiotelephony frequency 2182 kHz, plus a DSC 2187.5 kHz watch receiver. Ships sailing in areas A1, A2, and A3 must carry VHF and MF safety equipment and either an INMARSAT ship earth station or a MF/HF radio installation. Ships sailing into area A4 must carry VHF and MF safety equipment plus a MF/HF radio installation. The Notice proposes to requiire U.S. compulsory ships to carry the primary radio equipment as specified by the GMDSS provisions and listed in the appendix. By providing for the full range of radio equipment, U.S. ships will have the flexibility to exercise all aspects of the GMDSS as the system matures.

12. In additon to the primary equipment noted above, the Notice proposes that all compulsory ships be required to carry an EPIRB, a NAVTEX receiver, a 9 GHz radar transponder, and, until February 1, 1999, a 2182 kHz watch receiver/auto alarm. In accordance with GMDSS provisions, it proposes that ships be equipped with a satellite EPIRB and NAVTEX receiver as of August 1, 1993. (The other equipment will follow the 7 year transition period.)

13. In accordance with GMDSS provisions, the Notice proposes that the satellite EPIRB be either the 406 MHz or L-band EPIRB. In the case of area A1 ships, it also proposes that a Channel 70 EPIRB be permitted as an alternative to the satellite EPIRBs. At present, only the 406 MHz EPIRB is in operation. The L-band EPIRB is in pre-operational testing and the Channel 70 EPIRB has not been developed. To provide for the options permitted under the GMDSS, however, it proposes to permit the use of all three EPIRBs. This would allow the L-band and Channel 70 EPIRBs to be used upon equipment authorization by the Commission.

14. The Notice also proposes that all compulsory ships be equipped with a NAVTEX receiver to receive maritime safety information. The GMDSS provisions permit ships that operate in non-NAVTEX service areas to be equipped with alternative maritime safety information receivers (*i.e.*, INMARSAT or HF band). The U.S. Coast Guard has established NAVTEX service along the East, West, and Gulf coasts of the United States. Consequently, it proposes that all compulsory ships be equipped with NAVTEX receivers because all will eventually sail in NAVTEX service areas. In addition to the NAVTEX receiver, it proposes that ships sailing outside NAVTEX areas but within INMARSAT coverage areas also be equipped with a radio facility for receiving INMARSAT maritime safety information, unless the voyage is exclusively within areas where HF maritime safety information is provided. Ships that sail exclusively in areas where HF maritime safety information is provided, may use, in addition to NAVTEX receivers, HF equipment in lieu of INMARSAT equipment to receive the safety broadcasts.

15. In accordance with GMDSS provisions, the Notice proposes to require compulsory ships to be equipped with a 9 GHz radar transponder that is stowed where it can be used easily and placed rapidly into survival craft. This requirement will assist rescue units to locate ships and survival craft during search and rescue operations. The GMDSS also provides for continued use of international distress frequency 2182 kHz as a link between the existing ship-to-ship system and the new ship-to-shore system during the transition phase from 1992 to 1999. Consequently, the proposed rules would require all compulsory ships, except for area A1 ships, to carry a 2182 kHz watch receiver and an automatic alarm device until February 1, 1999. Under the GMDSS, compulsory ships would no longer be required to carry Morse code (500 kHz) radiotelegraphy equipment but would continue to carry radio equipment capable of operating on VHF distress Channel 16 (see discussion above).

16. The Notice proposes that survival craft be equipped with two-way VHF radiotelephones and 9 GHz radar transponders. The GMDSS provisions require three VHF radiotelephones and two radar transponders (one of which may be the ship radar transponder) for all passenger ships regardless of size and cargo ships over 500 gross tons and only two VHF radiotelephones and one transponder for cargo ships between 300–500 gross tons. The proposed rules listed in the Notice's appendix reflect these requirements.

17. *Equipment standards and authorization.* To ensure the performance of equipment for distress and safety communications, the International Radio Consultative

[4] The GMDSS provisions allow ships that continue the manual watch on VHF Channel 16 to defer fitting the automated Channel 70 encoder and watch receiver until February 1, 1997. The Notice does not propose to incorporate this option into the Commission's Rules. This option is not in keeping with U.S. objectives because it promotes the aural watch requirement rather than the early implementation of automation.

Committee (CCIR) and IMO have established performance standards for the required equipment. The GMDSS provisions also require that the radio equipment be approved before use. The Notice proposes that all GMDSS equipment be type accepted by the Commission, except equipment used in the INMARSAT system. It proposes that INMARSAT equipment be notified by the Commission.[5] Because the INMARSAT equipment is type approved by INMARSAT, notification should be sufficient to ensure performance. The proposed rules require all GMDSS equipment to meet the IMO and CCIR standards and incorporate the standards into the Commission's Rules by reference. Non-INMARSAT equipment would be type accepted by the Commission for compliance with the IMO and CCIR performance standards based on the representations and test data submitted by the applicant. For INMARSAT equipment, applicants must attest that the equipment meets the IMO and CCIR performance standards and include a copy of the INMARSAT type approval certificate.[6] Finally, current Commission Rules require that applicants for type acceptance of compulsory equipment, except for radar equipment, submit with their application a working unit of the type for which type acceptance is required. The Notice proposes that GMDSS equipment not be submitted unless specifically requested by the Commission.

18. *Operating procedures.* The Notice proposes to amend the Commission's maritime distress and safety rules to incorporate the operating procedures provided for under the GMDSS. For GMDSS fitted vessels, the proposed rules would replace the manual method of sending a Morse code "SOS" or radiotelephone "MAYDAY" call and distress message with a simple and automatic means of distress alerting. Ships would transmit a distress alert (1) through satellites either with absolute priority on general communication channels or on exclusive distress and safety frequencies; or (2) on the distress and safety frequencies in the VHF, MF, or HF bands using DSC. The DSC distress alert will automatically identify the station in distress and its position and provide other information that might facilitate rescue. A distress alert will normally be activated and acknowledge manually. When a ship sinks, however, a float-free satellite EPIRB would be automatically activated. Subsequent to the distress alert, search and rescue and on-scene communications would be conducted by narrow-band direct-printing or radiotelephony. The GMDSS provisions do not provide for transmission of distress and safety information using Morse code radiotelegraphy. The proposed rules reflect this change.

19. Under the GMDSS, ship stations will continue to maintain a watch for distress alerts, but the use of automatic equipment would remove the burden currently associated with these watches. Thus, the Notice proposes to delete the manual Morse code watch on 500 kHz and require that ship stations maintain watches in accordance with GMDSS provisions. Depending upon the equipment fitted, compulsory ships would be required to maintain a continuous automatic watch on DSC safety frequencies Channel 70, 2187.5 kHz, 8414.5 kHz, and one other HF DSC distress and safety frequency. A watch for satellite shore-to-ship distress alerts also would be required if the ship is fitted with an Inmarsat ship earth station. Further, every ship would be required to maintain an automated watch for maritime safety information. Finally, ships would continue to maintain a manual watch on Channel 16 and to use an automated watch receiver on 2182 kHz until February 1, 1999. This requirement is necessary to maintain a link with the current distress and safety system until full implementation of the GMDSS.

20. For public coast stations, the Notice proposes no changes to their watch requirements. They would continue their radiotelegraphy safety watch on 500 kHz and the radiotelephony safety watches on Channel 16 and 2182 kHz.[7] Also, it proposes no additional GMDSS watches be required for public coast stations. As the GMDSS is defined, only certain coast stations (and coast earth stations) are designated to maintain the DSC fequency watches. As currently planned, no United States public coast stations are contemplated to provide safety watches under the GMDSS. Nevertheless public coast stations may become aware of distress alerts during their general operation.[8] In those situations, it proposes that public coast stations defer their response so that a Rescue Coordination Center may acknowledge, and, where an acknowledgement is not forthcoming in a timely manner (*i.e.*, 3 minutes), that the coast station ensure that the distress alert is routed to a Rescue Coordination Center and provide whatever assistance is requested by the U.S. Coast Guard.

21. For coast earth stations, the Notice does propose new requirements. Inmarsat is an integral part of the GMDSS, and in the United States, coast earth stations are licensed under the Commission's Rules to Communications Satellite Corporation (Comsat), the U.S. signatory to Inmarsat. Thus, it proposes, in accordance with GMDSS provisions, to require coast earth stations to relay a distress alert as soon as possible to a Rescue Coordination Center. Further, it proposes that no charge be made for the transmission of distress messages and replies thereto in connection with situations involving the safety of life and property at sea (see 47 U.S.C. 357(d)), but seek comment on the definition and scope of this traffic as set forth at § 80.1119(b) in the Notice's appendix.[9] This similar to the present

[5] Type acceptance and notification are procedures by which the Commission issues equipment authorizations. *See* 47 CFR 2.901. For type acceptance, the applicant makes measurements and submits to the Commission certain representations and test data that demonstrate compliance with the technical standards. For notification, the applicant makes measurements and attests that the measurements demonstrate compliance with the technical standards. Test data are not submitted unless specifically requested by the Commission. In both cases, an identification (FCC ID) number is issued by the Commission.

[6] INMARSAT equipment currently in use, such as the INMARSAT–A ship earth station, might not meet the performance standards adopted by IMO and CCIR although type-approved by INMARSAT. Under the proposed rules, the equipment must be tested by the manufacturer for conformance with the IMO and CCIR standards and notified by the Commission that it is approved for use. Compulsory ships that equip with INMARSAT equipment under the GMDSS must use equipment that has FCC ID numbers, which indicates compliance with IMO and CCIR performance standards. Voluntary ships may continue to use existing ship earth stations but without assurances that they meet GMDSS standards.

[7] These watches are necessary to maintain the present distress and safety system in effect during the transition period. Further, these frequencies most likely will continue to be used by smaller non-GMDSS vessels, such as recreational and fishing vessels, for some time. Although the Notice does not propose that ships other than compulsory ships be required to equip with the new GMDSS equipment, it does encourage the owners of other ships, and particularly new owners or those that sail on extensive trips, to consider voluntarily fitting their vessels with approved GMDSS radio equipment. It notes, for example, the smaller Inmarsat-C ship earth station would enhance safety by giving access to the GMDSS for a minimal cost. IMO estimates that the current cost of installing an Inmarsat-C ship earth station to be $5,000.

[8] A public coast station may receive distress alerts on Channel 70 because it is used for both general calling and distress alerting.

[9] Section 80.1119 proposes that no charge be made for distress alerts, urgency, and safety messages, or related traffic that is preceded by the signals: Mayday, Pan Pan, or Securite. The IMO is currently developing provisional funding arrangements for GMDSS communications.

requirement for public coast stations carrying distress and safety messages (see 47 CFR 80.95).

22. *Radio operators and maintainers.* The Notice proposes to follow the IMO requirements regarding the operation of radio equipment on-board ships. For radio operator licenses, it proposes to add a new GMDSS endorsement to the Commission's Rules that reflects the skills necessary to operate the GMDSS equipment. This endorsement would be based on the requirements contained in the General Operator's and Restricted Operator's Certificates adopted by the 1987 Mobile WARC. The GMDSS endorsement would be affixed to the First or Second Class Radiotelegraph Operator's Certificates (T–1 or T–2), General Radiotelephone Operator License (G), or Marine Radio Operator Permit (MP) after an operator has demonstrated, through a written examination given by the Commission, satisfactory knowledge of the GMDSS practices and procedures.[10] It further proposes that GMDSS compulsory ships (*i.e.*, ships subject to the SOLAS Convention or title III, part II of the Act that equip in accordance with the proposed subpart W) carry personnel that hold a GMDSS endorsed certificate. No GMDSS endorsement is proposed for ships that are voluntarily-fitted with GMDSS equipment. These ships would continue to be governed by the radio operator provisions of 47 CFR 80.165.

23. For maintenance, the Notice proposes to allow our licensees the choice of duplication of equipment, shore-based maintenance, or at-sea maintenance, as prescribed in the Final Acts of the 1988 IMO Conference.[11] In sea areas A3 and A4, a combination of at least two of these methods would be required. Because both shore-based maintenance and duplication of equipment are basically straightforward, it indicates that no further requirements or licensing are necessary. The requirement is simply that all distress equipment must be functioning when the ship leaves port. It notes that at-sea maintenance is different and states that certainly some training and minimal electronics skill is required for the individual providing the at-sea maintenance, especially since extensive facilities and technical expertise are not as conveniently available at sea as on shore. It requests comments on whether a certificate is needed for at-sea maintainers to assure the functioning of equipment during a distress situation. Although shore-based maintenance and duplication of equipment appear to be the best methods for ensuring that equipment is available for distress communications, it notes that the rules should allow U.S. ship owners the flexibility of at-sea maintenance that is permitted under international provisions. Comments should address whether the maintainer should be licensed and whether the Commission, the U.S. Coast Guard, or private schools should issue the license. Would an electronics engineering degree be acceptable? Comments should also indicate whether specific standards should be defined in the Commission's Rules and what they might be. Finally, comments should address whether at-sea maintenance is a viable option considering the complexity of some of the advanced equipment and the apparent difficulty in making repairs.

24. *Conclusion.* The proposed rules for the GMDSS are set forth in a separate subpart, subpart W. Because it is the Commission's intention to have a "self-contained" subpart in the Rules solely devoted to the GMDSS during the transition period, the maritime rules (47 CFR part 80) will have redundant sections for many requirements, such as ship carriage requirements, technical standards, and equipment authorization. Where a requirement is not specifically denoted in the proposed subpart W, then the existing requirements would continue. For example, neither the IMO or CCIR performance standards proposed for incorporation by reference specify a limit for spurious emissions of transmitters. Thus, the existing requirement listed in 47 CFR 80.211 (subpart E, General Technical Requirements) would govern and transmitters used in the GMDSS must be in compliance before type-acceptance is issued. In cases where a new requirement is specified in the subpart W, such as a sample unit is not required to be submitted for type-acceptance, the proposed rules would supersede existing requirements for GMDSS equipment only.

25. The Notice further indicated that newly constructed or existing vessels that wish to install the GMDSS equipment as of February 1, 1992, would be required to carry dual sets of equipment and Morse code radiotelegraph operators dedicated to radio operations if the Communications Act is not amended. Thus, it is expected that few owners will fit their ships voluntarily unless the Communications Act is amended since incurring this cost in addition to the cost of the radiotelegraphy operator would place U.S. ships at a competitive disadvantage. The operational costs to U.S. shipping companies required to carry currently required equipment and personnel is estimated to be millions of dollars per year. The GMDSS would significantly reduce operating costs by providing for the use of automated systems and eliminating the dedicated radio operator requirement while increasing safety. Thirteen countries with strong merchant marines already have authorized their vessels to equip with GMDSS equipment.

26. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that these rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. As discussed above, the proposed rules would apply to cargo ships of 300 gross tons and over and passenger ships that carry more than twelve passengers engaged on international voyages subject to the SOLAS Convention or voyages in the open sea subject to title III, part II of the Act. The proposed rules would not apply to smaller vessels, such as recreational or fishing vessels. Cargo or passenger ships licensed by the United States that travel on the open sea or on international voyages typically are not owned or operated by small entities. Accordingly, the proposed rules would not affect a substantial number of small entities.

27. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public.

28. This is a nonrestricted notice and comment rule making proceeding. *See* 47 CFR 1.1206(a) for the rules governing permissible *ex parte* contacts.

29. The proposals may have an impact on both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. Therefore, pursuant to the 1989 Canada-United States Trade Agreement (Public Law 100–449, 102 Stat. 1851) the Commission will provide a seventy-five day comment period. Pursuant to applicable procedures set forth in §§ 1.415 and

[10] It requests comments on whether T–1 or T–2 radio operators that have a 6 month endorsement may be grandfathered or whether they must take the examination. If grandfathering is acceptable, for what period of time should it be permitted?

[11] Duplication of equipment means that compulsory ships would need to be equipped with certain equipment critical to distress communications rather than a complete second set of all equipment required under the GMDSS system. The IMO is developing further guidance on the maintenance options.

1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before January 7, 1991, and reply comments on or before February 6, 1991. All relevant and timely comments will be considered by the Commission before taking final action in this proceeding.

30. In order to avoid unduly burdening the **Federal Register** and to save the approximate $3,500 in printing costs, we are publishing a summary of this Notice of Proposed Rule Making in the **Federal Register** without the appendices that contain the proposed rules. Copies of the entire document are available from the Commission's duplication contractor: International Transcription Service, Inc., suite 140, 2100 M Street NW., Washington, DC 20037; telephone 202–857–3800. This procedure satisfies notice requirements as well as the needs of the public while saving the Commission significant printing costs.

31. *It is Ordered,* That a copy of this Notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 13

Commercial radio operator licenses, Radio.

47 CFR Part 80

Coast stations, Communications equipment, Marine safety, Radio, Ship stations, Telegraph, Telephone.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–25696 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–471, RM–7432]

Radio Broadcasting Services; Cadillac, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by MacDonald Broadcasting Company proposing the substitution of Channel 244C3 for Channel 244A at Cadillac, Michigan, and modification of its license for Station WWLZ(FM) to specify operation on Channel 244C3. Canadian concurrence will be requested at coordinates 44–20–25 and 85–35–34.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard Hildreth, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., suite 400, Washington, DC 20036–2679.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–471, adopted September 27, 1990, and released October 26, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25780 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–472, RM–7342]

Radio Broadcasting Services; Rock Valley and Sibley, Iowa, Pipestone, Minnesota, Blair, Nebraska, and Sioux Falls and Vermillion, South Dakota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition jointly filed by Wallace Christensen, licensee of Station KISD, Pipestone, Minnesota, and Vermillion Radio, Inc., licensee of Station KVRF, Vermillion, South Dakota. Christensen seeks the substitution of Channel 254C for Channel 254C1 at Pipestone and the modification of its license for Station KISD to specify operation on the higher powered channel. The channel allotment at Pipestone requires the substitution of Channel 233A for Channel 252A at Sioux Falls, South Dakota, licensed to Station KCFS. Vermillion Radio seeks the substitution of Channel 292C1 for Channel 292A at Vermillion and the modification of its license for Station KVRF to specify operation on the higher powered channel. The allotment of Channel 292C1 at Vermilion requires the substitution of Channel 248A for Channel 292A at Blair, Nebraska, licensed to Station KBWH, the substitution of Channel 261A for unoccupied but applied for Channel 295A at Rock Valley, Iowa, and the substitution of Channel 282A for unoccupied and unapplied for Channel 262A at Sibley, Iowa. In accordance with § 1.420 of the Commission's rules, we will not accept competing expressions of interest in use of Channel 292C1 at Vermillion, South Dakota, or Channel 254C at Pipestone, Minnesota, or require the petitioners to demonstrate the availability of an additional equivalent class channel for use by such parties. The licensees of Stations KBHW, Blair, Nebraska, and KCFS, Sioux Falls, South Dakota, have been ordered to show cause as to why their licenses should not be modified as described above.

DATES: Comments must be filed on or before December 17, 1990, and reply comments on or before January 2, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis F. Begley, Esq., Reddy, Begley & Martin, 2033 M Street, NW., Washington, DC 20036 (Counsel to petitioners).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 90–472, adopted September 27, 1990, and released October 26, 1990. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

All of the channels under consideration herein can be allotted in compliance with the Commission's minimum distance separation requirements. Channel 254C an be allotted to Pipestone with a site restriction of 33.8 kilometers (21 miles) east to accommodate Christensen's desired transmitter site, at coordinates North Lattitude 43–53–01 and West Longitude 95–55–44. Channel 233A can be allotted to Sioux Falls, South Dakota, at Station KCFS' present transmitter site, at coordinates 43–31–57 and 96–44–20. Channel 292C1 can be allotted to Vermillion with a site restriction of 32.1 kilometers (20 miles) north to accommodate Vermillion Radio's desired transmitter site, at coordinates 43–03–00 and 96–47–12. Channel 248A can be allotted to Blair, Nebraska, at Station KBWH's present transmitter site, at coordinates 41–37–03 and 96–04–23. Channel 282A can be allotted to Sibley, Iowa, with a site restriction of 4 kilometers (2.5 miles) west to avoid a short-spacing to Station KUOO, Channel 280C2, Spirit Lake, Iowa, at coordinates 43–24–16 and 95–47–43. Channel 261A can be allotted to Rock Valley, Iowa, without the imposition of a state restriction, at coordinates 43–12–12 and 96–17–30, and can also be used at the transmitter sites proposed by the two applicants, Robert M. Mason (BPH–890324MI) and Iowa Communications (BPH–890411MC).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25781 Filed 10–30–90; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–117; Notice 1]

RIN 2137–AB 86

Transportation of a Hazardous Liquid in Pipelines Operating at 20 Percent or Less of Specified Minimum Yield Strength.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: By exception (49 CFR 195.1(b)(3), the Federal pipeline safety standards governing hazardous liquid pipelines do not apply to pipelines operated at 20 percent or less of the specified minimum yield strength (SMYS) of the pipe. In this Advance Notice of Proposed Rulemaking (ANPRM), the Research and Special Programs Administration (RSPA) is soliciting comments and information for evaluation in determining whether and to what extent to remove the exception from the regulations. The other exceptions in § 195.1(b) would not be affected. RSPA expects that this rulemaking will determine whether the application of the pipeline safety regulations to such pipelines would assure public safety and environmental protection by minimizing the possibility of accidents.

DATES: Comments must be received by December 31, 1990. Late filed comments will be considered to the extent practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, room 8417, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: G. Joseph Wolf, (202) 366–4560, regarding the subject matter of this ANPRM or to request a copy of the ANPRM questionnaire in 8½ x 11 inch format. Contact the Dockets Unit (202) 366–4453, for copies of the ANPRM or other docket material. Contact the Transportation Safety Institute, Pipeline Safety Division, 6500 South MacArthur Boulevard, Oklahoma City, OK 73123, (405) 680–4643, for a copy of 49 CFR part 195.

SUPPLEMENTARY INFORMATION:

Background

When the Federal pipeline safety regulations applicable to transportation of hazardous liquids by pipeline (49 CFR part 195) were issued in 1969, pipelines operated at 20 percent or less of SMYS were excepted from the regulations because these pipelines were thought to pose no unreasonable risk to public safety on the basis of their low operating stress. Since then, however, accidents that have occurred on low stress level pipelines provide reasons to reconsider the exception. One recent failure of such a pipeline, described later in this notice, resulted in extensive harm to the environment. Accordingly, RSPA is re-evaluating the need to regulate these pipelines.

Recommendations to DOT

In a resolution sent to RSPA on August 4, 1988, the National Association of Pipeline Safety Representatives (NAPSR), an association of state representatives participating in the cooperative Federal/State pipeline safety program, proposed that Part 195 be amended to remove the exception for hazardous liquid pipelines operating at 20 percent or less of SMYS. NAPSR based its resolution on an interstate petroleum products pipeline in Iowa and Nebraska that leaked and was found to be in poor condition. The pipeline right of way included a crossing of the Missouri River. Because it operated at less than 20 percent SMYS, it was not subject to Part 195. The State environmental agency required the operator to develop a plan to assure timely recovery and cleanup.

On October 17, 1988, RSPA accepted the NAPSR recommendation. RSPA further stated that the subject would be addressed by a DOT Safety Review Task Force (Task Force) which was nearing the end of an in-depth review of the pipeline safety program. The Task Force had been established by the Secretary of Transportation to review the adequacy of all of the safety programs of the Department. RSPA stated that the Task Force was expected to complete its report later that year and that RSPA would await the Task Force

report before proceeding with a rulemaking.

On January 12, 1989, the Task Force presented its report. The Task Force stated that many pipeline accidents have little or nothing to do with the relative strength of the pipe, and that many accidents result from third party damage and corrosion. The report included the recommendation that:

> RSPA should reassess the blanket exemption from safety regulations for hazardous liquid pipelines that operate at less than 20 percent of their specified minimum yield strength and should initiate rulemaking to revoke the exemption in whole or in part.

On February 10, 1989, RSPA accepted the Task Force recommendation and indicated that a basis for rulemaking would be established by developing information through a technical study and an Advance Notice of Proposed Rulemaking (ANPRM). RSPA determined that it has insufficient information to conduct a Technical Study and proceeded with this ANPRM in order to gather comments and information.

Pipeline Accident

On January 1, 1990, an incident occurred which strongly supports the need to obtain data regarding hazardous liquid pipelines operating at or less than 20 percent SMYS. A 12-inch diameter, 6.7 mile pipeline between New Jersey and Staten Island, N.Y. spilled over 500,000 gallons of fuel oil into the Arthur Kill waterway. The Arthur Kill and its connecting waterways traverse both densely industrialized and wildlife areas. The spill resulted in environmental damage of millions of dollars. According to a report by Battelle dated April 20, 1990, an underwater leak in the pipeline resulted from fatigue cracking subsequent to outside force damage which occurred possibly months or even years earlier.

One control on the pipeline was a negative deviation leak detection system. Leak detection was based on comparing volume flowing past both ends of the pipeline. When the volume delivered during a preset time interval was less than the volume shipped by more than a pre-set amount, a negative deviation signal automatically operated an alarm and began to shut down the pipeline. Prior to the leak, pipeline personnel had been responding to repeated false negative deviation alarms by resetting the system's automatic shut down device. When the system began to shut down the pipeline at the time of the leak, pipeline personnel reset it. As a result, oil was pumped through the leaking pipeline for about six hours before it was shut down.

Because it was operated at less than 20 percent of SMYS, the pipeline under the Arthur Kill was not subject to the hazardous liquid pipeline regulations or to periodic oversight by Federal pipeline inspectors for compliance with those regulations. Had the pipeline been subject to the equipment and operating procedure requirements of the Federal regulations, the spill might have been minimized.

Congressional Action

Legislation has been introduced in Congress which specifically would require that pipelines operating at 20 percent or less of SMYS be subject to the regulations (See Congressional Record of March 22, 1990, pages 3099–3101, which reports the introduction of bills cosponsored by New Jersey Senators Lautenberg and Bradley). Among its provisions, the proposed legislation would permit exemptions on a case-by-case basis; however, it would require that the owner or operator of the exempted pipeline annually certify continuing compliance with the conditions under which the exemption was granted.

National Transportation Policy

Consideration of this rulemaking is consistent with the elements of the National Transportation Policy that seek to ensure the integrity of the nation's transportation infrastructure, public safety, and environmental protection.

Current Requirements

Section 195.1 (b)(3) states that part 195 does not apply to "Transportation of a hazardous liquid through pipelines that operate at a stress level of 20 percent or less of the specified minimum yield strength of the line pipe;". For clarification, the pipelines excepted are those in which the stress does not exceed 20 percent SMYS at any point along the length of the pipeline. The other current exceptions to regulation would remain in effect if RSPA publishes a rule change.

It should be noted that § 195.8 states that "No person may transport any hazardous liquid through a pipe that is constructed after October 1, 1970, of material other than steel * * *". The section also contains provisions for notification to the Secretary of the intention to use a pipeline constructed of pipe material other than steel and for the Secretary to make a determination regarding the hazard of using the proposed pipe material for the specific application proposed. However, this ANPRM addresses only pipelines constructed of steel pipe and operated at 20 percent or less of SMYS.

Discussion

Most hazardous liquid pipelines are operated at a pressure creating a stress in excess of 20 percent of SMYS of the pipe because it is not economical to construct and operate pipelines to operate at a low stress. To maximize economy, many pipelines are operated at the maximum pressure permitted by part 195, which is equivalent to 72 percent SMYS.

Some pipelines are operated at 20 percent or less of SMYS for varying reasons. RSPA is unable to estimate the number of these pipelines. However, RSPA believes that such pipelines typically move hazardous liquids to or from petrochemical complexes such as refineries, manufacturing plants, and hazardous liquid terminals, and that these pipelines are relatively short. Low stress operation is adequate to move the liquid to or from the complex at the rate required for operation. The operators of petrochemical complexes usually do not operate other pipelines subject to part 195, and therefore may not be familiar with its requirements. Piping within petrochemical complexes is not regulated under 49 CFR part 195 and is not the subject of this ANPRM.

Many gathering lines in non-rural areas are operated at 20 percent or less of SMYS. As set forth in § 195.1, gathering lines in nonrural areas are subject to part 195, while gathering lines in rural areas are not subject to those rules.

Also, RSPA believes that there may be a limited number of pipelines that transport hazardous liquids for long distances at pressures equivalent to 20 percent or less of SMYS. RSPA believes that these pipelines are operated at low stress typically because they are old and potentially in poor condition.

Regardless of the stress at which they are operated, pipelines are vulnerable to damage from the two principal causes of pipeline failure—excavation (outside force) and corrosion. Admittedly, pipelines which are operated at lower stresses may survive damage from excavation and corrosion for a longer period before failure than will high stress pipelines, but the risk of failure is present nevertheless.

RSPA Is considering the modification or deletion of § 195.1(b)(3), so that some or all hazardous liquid pipelines operated at 20 percent or less of SMYS would no longer be excepted from regulation under part 195. As stated above, this ANPRM is only applicable to the construction and operation of

pipelines made of steel pipe because the use of other material is permitted only upon notice to the Secretary and upon review of the details of the notice by the Secretary.

If a rulemaking is proposed that applies part 195 to pipelines operating at 20 percent or less of SMYS. existing pipelines would be subject to all subparts of part 195 except Subpart C—Design Requirements, and Subpart D—Construction. Although the requirements of Subpat E—Hydrostatic Testing currently would not apply to non-HVL pipelines constructed before dates specified in the regulations, the issuance of a rule presently being considered would require the hydrostatic testing of those pipelines or, alternativley, a restriction of their operating pressure. All sections of part 195 would apply to pipelines constructed after publication of a regulation. Any rulemaking resulting from this ANPRM would not apply to hazardous liquid pipelines presently excepted by the other subparagraphs of § 195.1(b).

Information Acquistition

Because pipelines operated at 20 percent or less of SMYS have been excepted from Federal regulation (§ 195.1(b)(3)), owners and operators are excepted from filing reports with RSPA. Consequently, RSPA Lacks specific information about such pipelines. Therefore, this notice contains a questionnaire for the purpose of gathering information to make a decision regarding rulemaking. The owners or operators of hazardous liquid pipelines (1) operated at 20 percent or less of SMYS and (2) not otherwise excepted under § 195.1(b) are requested to complete the questionnaire for each such pipeline and return it by December 31, 1990. RSPA needs the information requested in the questionnaire to estimate the extent of low stress pipelines, to perform a cost/benefit analysis, and to develop and consider alternatives that would ensure the safe operation of low stress pipelines.

It is important that all owners or operators of pipelines potentially affected by such a rulemaking respond to the extent possible so that RSPA is aware of the impact of the change being considered. Partially completed questionnaires will have value. It is especially important that owners and operators respond to question 1. Pipeline owners and operators and other interested and affected parties are invited to comment on the subject of this ANPRM. In addition, state and local governments are invited to provide information as may be available to them about pipelines operated at 20 percent or less of SMYS that are located within their jurisdictions.

Definitions

For the purpose of responding to the questionnaire, the following definitions are provided:

Accident means a failure in a pipeline system for which a report is required in accordance with § 195.50.

Environmentally sensitive area means any onshore area where a loss of hazardous liquid could reasonably be expected to pollute any water crossing that is more than 100 feet wide from high water mark to high water mark, any reservoir holding water for human consumption, and any offshore area.

Hazardous liquid means petroleum, petroleum products, or anhydrous ammonia.

Highly volatile liquid or *HVL* means a hazardous liquid which will form a vapor cloud when released to the atmosphere and which has a vapor pressure exceeding 276 kpa (40 psia) at 37.8 °C (100 °F).

Limit of operating Pressure or *LOP* means the normal maximum limit of internal pressure in the pipeline during operation except for surges and other variations from normal operations. To qualify as a pipeline operated at 20 percent or less of SMYS, the LOP cannot be greater than a pressure equivalent to 20 percent of SMYS. *Major spill* means a release from the pipeline of 500 or more barrels of liquid; an escape to the atmosphere of 50 or more barrels per day of highly volatile liquid; the death of a person; or property damage to the property of the operator or others, or both, exceeding $50,000.

Navigable waterways means those waters that have been determined to be navigable waterways by the United States Coast Guard (USCG). A list of navigable waterways is available at the appropriate USCG District Office.

Pipeline means all parts of a pipeline facility through which a hazardous liquid moves in transportation, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

Populated area means any area other than a rural area.

Rural area means outside the limits of any incorporated or unincorporated city, town, village, or any any other designated residential or commercial area such as a subdivision, a business or shopping center, or community development.

Questionnaire

Pipelines transporting petroleum, petroleum products, or anhydrous ammonia are regulated under 49 CFR part 195, Transportation of Hazardous Liquids by Pipeline. The owners or operators of hazardous liquid pipelines (1) operated at 20 percent or less of SMYS and (2) not otherwise excepted under § 195.1(b) are requested to complete the questionnaire for each such pipeline and return it by December 31, 1990. A copy of the questionnaire in 8½ x 11 inch format may be requested from G. Joseph Wolf (202) 366–4560).

Complete a separate questionnaire for each pipeline reported. This questionnaire is only applicable to the operation of pipelines made of steel pipe. Pipelines to be reported include all hazardous liquid pipelines operating at 20 percent or less of SMYS throughout the entire length of the separate pipeline including gathering lines in non-rural areas and pipelines between plants at petrochemical complexes, but excluding piping within a single plant property. It is important that all owners or operators of such pipelines respond to the extent possible so that RSPA is aware of the impact of a change being considered. Partially completed questionnaires will have value. It is especially important that owners and operators respond to question 1.

See the ANPRM for definitions of terms used in this questionnaire.

1. Pipeline Identification and Description

a. Name or number (Provide the name or number by which the pipeline is commonly identified in company records.)

_____

b. Is this pipeline presently operated under 49 CFR Part 195? Yes____ No____.

c. Length_____ miles.

d. Volume of each liquid transported (bbl/year):

	1987	1988	1989
Non-HVL			
HVL			
Anhydrous ammonia			

e. Steel Pipe Type (Method of Manufacture):

Electric resistance weld

_____ _____

Other (specify) _____ _____

Unknown _____ _____

f. Date(s) of installation

_____

2. Limit of Operating Pressure (LOP)

a. LOP is: _____ psig; _____ Percent SMYS.

b. Indicate the method on which LOP is based. If LOP is not based on one of the four listed alternatives, describe the method in comments attached to the questionnaire.

—Calculated internal design pressure with a safety factor of 0. _____ times SMYS.

—_____ percent of the test pressure for any part of the pipeline which has been hydrostatically tested.

—_____ The design or test pressure of a pipeline component.

—_____ The documented highest operating pressure of the pipeline.

3. Testing

If this pipeline has been hydrostatically tested, list the date it was tested: _____. List the minimum value of test pressure divided by LOP at any point in the pipeline: test pressure ÷ LOP × 100 = _____ percent.

4. Performance

a. Tabulate estimated average annual costs of accidents which have occurred in the years 1986 through 1990.

Cost of repair or replacement	
Cost of product lost	
Costs attributed to loss of use of the pipeline	
Cost of damage to property other than the pipeline	
Cost of bodily harm and/or loss of life. Loss of life valued at $1,500,000. Bodily harm reportable per § 195.50(e) valued at $450,000.	
Cost of environmental clean-up, whether or not paid by the operator	
Estimated cost of damage to the environment, exclusive of clean-up	
Cost of litigation	
Other costs	
Total costs	

b. List and identify by date incidents that resulted in a major spill. Estimate costs on the same basis as in Question 4.a. If more than two major spills have occurred, list on an attachment to the questionnaire.

Date	Barrels spilled	Cause	Total cost

5. Risk Exposure

a. Indicate, in miles, what portion of the pipeline is located:

—within 220 yards of populated areas._____ miles

—under or over a navigable waterway._____ miles

—within an environmentally sensitive area._____ miles.

6. Cost of Compliance

a. Estimate the one-time costs that must be incurred to bring the pipeline into compliance with the requirements of Part 195.

Review, design and planning	$
Materials and construction	
Documentation and paperwork	
Operational and maintenance training	
Other (specify)	
Total	

b. Estimate the continuing additional annual costs necessary to operate the pipeline in compliance with 49 CFR Part 195.

Operational expense	$
Maintenance expense	
Operational and maintenance training	
Documentation and Paperwork	
Other (specify)	
Total	

7. Small Business

a. Is the operator a small business according to the guidelines of the Small Business Administration?

Yes ____ No ____ If yes, answer b. and c.

b. Furnish the pipeline's number of employees: _____

c. Furnish the pipeline's total revenue for the years:

1987 _____ 1988 _____ 1989 _____

Issued in Washington, DC on October 26, 1990.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 90–25729 Filed 10–30–90; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 553

[Docket No. 90–25; Notice 1]

RIN 2127–AD78

Reconsideration of Rules; Effect on Judicial Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: NHTSA is proposing to amend one provision of its procedural regulations that apply to the issuance, amendment, and revocation of rules under the Motor Vehicle Information and Cost Savings Act and the National Traffic and Motor Vehicle Safety Act. The provision at issue addresses the time within which affected persons may seek judicial review of a final rule if a petition for agency reconsideration of that rule has been filed. The proposed revision would make the regulation consistent with the judicial review provisions of the two statutes and with recent judicial decisions.

DATES: Comment closing date: Comments on this notice must be received on or before December 17, 1990.

Proposed effective date: If adotped as a final rule, these amendments would be effective November 30, 1990.

ADDRESSES: All comments on this notice should refer to Docket No. 90–25; Notice 1 and be submitted to the following: Docket Section, room 5109 National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kenneth Weinstein, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–5263.

SUPPLEMENTARY INFORMATION: The Motor Vehicle Information and Cost Savings Act ("Cost Savings Act") and the National Traffic and Motor Vehicle Safety Act ("Safety Act") each contain provisions authorizing judicial review of rules and standards issued thereunder. Section 504(a) of the Cost Savings Act. 15 U.S.C. 2004(a), provides that any person who may be adversely affected by any rule prescribed under sections 501, 502, 503, or 506 of that Act (relating to automobile fuel economy) may, at any time prior to 60 days after such rule is prescribed, file a petition for judicial review of the rule in an appropriate United States Court of Appeals. Section 610 of the Cost Savings Act, 15 U.S.C 2030, provides that persons who may be adversely affected by any standard or rule under title VI of that Act (relating to theft protection for automobiles) may obtain judicial review in accordance with section 504 of the Act. Similarly, section 103(a) of the Cost Savings Act, 15 U.S.C. 1913(a), provides that persons who may be adversely affected by a rule issued under section 102 of that Act (relating to automobile bumper standards) may, at any time prior to 60 days after such rule is issued, file a petition for judicial review of the rule in

an appropriate United States Court of Appeals.

Section 105(a) of the Safety Act, 15 U.S.C. 1394(a), provides that any person who will be affected by an order issued under section 103 of that Act (which authorizes the issuance, amendment, and revocaton of Federal motor vehicle safety standards) may at any time prior to the sixtieth day after such order is issued file a petition for judicial review of the order in an appropriate United States Court of Appeals.

Since these statutory time limitations are jurisdictional, courts cannot expand or alter them. *Natural Resources Defense Council* v. *N.R.C.*, 666 F.2d 595 (DC Cir. 1981); *Northside Sanitary Landfill, Inc.* v. *Thomas*, 804 F.2d 371, 378 (7th Cir. 1986). Similarly, an agency may not, through its regulations, expand the jurisdiction of the Federal courts beyond that established by Congress. *City of Tacoma* v. *Taxpayers of Tocoma*, 357 U.S. 320, 336 (1957); *City of Rochester* v. *Bond*, 603 F.2d 927, 931 (DC Cir. 1979).

Neither the Cost Savings Act nor the Safety Act require parties to seek administrative reconsideration prior to filing a petition for judicial review. However, NHTSA has authorized the filing of petitions for reconsideration of standards and rules issued under the two statutes in its regulations establishing procedures applicable to the issuance, amendment, and revocation of rules prusuant to those statutes. 49 CFR 553.35. Time limits and other procedures applicable to such petitions are set forth in 49 CFR 553.35–553.37.

Part 553 includes a provision (§ 553.39) that purports to address the effect that a timely petition for reconsideration would have on the period within which persons adversely affected by NHTSA rules could seek judicial review:

> The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the 60-day period in which to seek judicial review of that rule, as to every person adversely affected by the rule. Such a person may file a petition for judicial review at any time from the issuance of the rule in question until 60 days after publication in the Federal Register of the Administrator's disposition of any timely petitions for reconsideration.

Section 553.39 was adopted with the intent of minimizing litigation regarding final rules issued by the agency. 35 FR 19268 (December 19, 1970). However, recent case law has convinced NHTSA that several aspects of § 553.39 are not sustainable. First, the regulation refers to a "60-day period in which to seek judicial review." However, the language of both statutes provides that a petition for review must be filed "prior to" the sixtieth day. The District of Columbia Circuit has construed this language to require that petitions must filed on or before the fifty-ninth day after issuance of a rule issued under the Safety Act. *Center for Auto Safety* v. *Lewis*, No. 81–1636 (DC Cir., July 2, 1981) (unreported). Thus, NHTSA has tentatively determined that it would be appropriate to revise § 553.39 to be consistent with this decision. The proposed revised language would refer to "the statutory period in which to seek judicial review" rather than a 60-day period.

Section 553.39 also provides that the filing of a timely petition for agency reconsideration will postpone the expiration of the limitations period for judicial review "as to every person adversely affected by the rule." It is well settled that the filing of a timely petition for administrative reconsideration stays the running of the limitations period as to the petitioner. *ICC* v. *Brotherhood of Locomotive Engineers*, 482 U.S. 270 (1987); *Outland* v. *CAB*, 284 F.2d 224, 227 (DC Cir. 1960). The basis for this result is that the filing of the petition renders the action in question nonfinal (for purposes of judicial review) with respect to the filing party. *West Penn Power Co.* v. *EPA*, 860 F.2d 581, 584 (3d Cir. 1988). Thus, a party seeking reconsideration cannot simultaneously file a petition for judicial review, since review of nonfinal agency action is beyond the jurisdiction of the Federal courts. *Id.*

The rule or order under reconsideration, however, remains final with respect to nonpetitioning parties, who may seek judicial review without waiting for the completion of the administrative reconsideration.

American Farm Lines v. *Black Ball Freight Service*, 397 U.S. 532, 541 (1970); *ICG Concerned Workers Association* v. *United States*, 888 F.2d 1455, 1457–1458 (DC Cir. 1989); *West Penn Power Co., supra*, 860 F.2d at 586; *Winter* v. *ICC*, 851 F.2d 1056, 1062 (8th Cir.), *cert. denied*, 109 S.Ct. 308 (1988). Thus, persons who have not sought administrative reconsideration must comply with the statutory time limitations for judicial review, and may not rely upon another person's petition to extend the limitations period.

NHTSA's rulemaking regulation currently states that the statutory time limitation for petitions for judicial review will be postponed as to persons other than those who filed a petition for reconsideration. Therefore, to conform the regulation to the case law discussed above, NHTSA is proposing to amend § 553.39 to replace the words "as to every person adversely affected by the rule" with the phrase "as to the petitioner." In addition, the second sentence of current § 553.39 purports to authorize the filing of a petition for judicial review by a person who has sought administrative reconsideration prior to the completion of the administrative reconsideration. Since review at that time is clearly precluded under the case law discussed above, the agency is proposing to revise the sentence to clarify that, for such a person, the period for seeking judicial review will commence at the time the agency takes final action upon his or her petition for reconsideration.

NHTSA has evaluated this proposal to amend the regulations concerning requests for reconsideration of a rule and determined that it is neither "major" with the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The costs associated with these proposed amendments would be minimal because the changes are only procedural in nature. Thus, the amendments would not have an impact on the economy in excess of $100 million. Similarly, they would not result in a major change in costs or prices for consumers, individual industries, governments, or any geographic region. Nor would this action significantly affect competition. The agency has further determined that the costs associated with this proposal would be so minimal that preparation of a regulatory evaluation would not be warranted under Department of Transportation procedures.

The agency has also reviewed this proposal in accordance with the Regulatory Flexibility Act. For the reasons discussed above, I certify that this rule would not have a significant impact on a substantial number of small entities within the meaning of the statute.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria in Executive Order 12612. NHTSA has determined that this action has no Federalism implication that warrants preparation of a Federalism report.

Finally, NHTSA has reviewed this proposal under the National Environmental Policy Act. The agency has determined that the environmental consequences of the proposed change would be of such limited scope that they clearly would not have a significant effect on the quality of the human environment.

NHTSA is soliciting public comment on these proposed amendments,

although they are procedural in nature, and an opportunity for public comment is therefore not required. It is requested but not required that 10 copies of all comments be submitted.

Comments must not exceed 15 pages in length (49 CFR 533.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

NHTSA does not anticipate that a commenter will make a claim of confidentiality in connection with any comment on this proposal. However, if a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 553

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

PART 553—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 553 be amended as follows:

1. The authority citation for part 553 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1407, 1912, 1941, 1988, 2001; delegation of authority at 49 CFR 1.50.

2. Section 553.39 would be revised to read as follows:

§ 553.39 Effect of petition for reconsideration on time for seeking judicial review.

The filing of a timely petition for reconsideration of any rule issued under this part postpones the expiration of the statutory period in which to seek judicial review of that rule only as to the petitioner. For such a person, the period for seeking judicial review will commence at the time the agency takes final action upon the petition for reconsideration.

Issued on October 26, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-25755 Filed 10-30-90; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 90-26; Notice 1]

RIN 2127-AD44

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to questions that have arisen during the agency's compliance tests, this notice solicits comments on a proposal to amend Standard No. 210, *Seat Belt Assembly Anchorages*, to clarify the definition of "seat belt anchorage". The proposed definition would explicitly state that any vehicle part or component that bears the loads imposed by safety belt systems, other than the safety belt webbing, is part of the anchorage.

DATES: Comments must be received by December 31, 1990. If adopted as final this amendment would become effective on September 1, 1992, after publication of that rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4916.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 210, *Seat Belt Assembly Anchorages*, specifies performance requirements for safety belt anchorages to reduce the likelihood of the anchorage's failure in a crash. The requirements, which apply to passenger cars, trucks, buses, and multipurpose passenger vehicles, specify the forces that an anchorage must be capable of withstanding during a static strength test.

The anchorage for a safety belt system must transfer the loads imposed on the safety belt system in a crash to the vehicle structure. This function can be accomplished in most instances by locating the anchorage directly on some part of the vehicle structure, such as the floor or side pillars, with no intervening components other than the attachment hardware and attachment bolts for the safety belt system. However, in some cases, the anchorage for a safety belt system is located on vehicle components, such as seats, which, in turn, are attached to the vehicle structure. These latter types of anchorages have raised questions about the scope of Standard No. 210.

In the agency's compliance testing of seat-mounted anchorages, there have been instances in which the attachment of the seat to the vehicle floor has broken or otherwise failed before the required load had been applied to the anchorage. Since the attachment of the safety belt system to the seat had remained intact, it was not clear, under the existing provisions of Standard No. 210, whether failures of the seat attachment to the vehicle were non-compliances with the standard.

This notice proposes to amend Standard No. 210 to address such failures. The strength requirements of Standard No. 210 are intended to ensure that the safety belt system will remain attached to the vehicle and not break free, even when exposed to severe crash forces. This intent is not effectuated when the safety belt system remains attached to the seat, but the seat separates from the vehicle. Hence, this notice proposes to amend the definition of "anchorage" to make clear that any vehicle part or component that bears the loads imposed by safety belt systems,

other than the safety belt webbing, is part of the anchorage. The definition would expressly provide that the anchorage includes, but is not limited to, the attachment hardware for the safety belt system, seat frames, seat pedestals, and parts of the vehicle structure itself.

The agency does not intend this definition to include safety belt buckles which are part of the safety belt system, unless the buckle is used to attach the safety belt webbing to the vehicle structure. This distinction is accomplished by the phrase in the definition "separation of the belt from the vehicle structure". If a buckle is not used to attach the safety belt webbing to the vehicle structure, its failure would not cause separation of the safety belt from the vehicle, but failure of the belt itself. Essentially, the agency is proposing to require that the safety belt system must remain attached to the vehicle during Standard No. 210 compliance testing.

Economic and Other Impacts

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of E.O. 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. The amendment is intended to clarify the current definition.

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities.

Few, if any, passenger car manufacturers would qualify as small entities. Small organizations and governmental units should not be significantly affected since the amendment should not affect the purchase price of new motor vehicles. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

NHTSA has also analyzed this rulemaking action for the purpose of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Station. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.210, S3 would be revised to read as follows:

§ 571.210 Standard No. 210; Seat belt assembly anchorages.

* * * * *

S3. Definition. *Seat belt anchorage* means any component, other than the safety belt webbing, involved in transferring seat belt assembly loads to the vehicle structure, including, but not limited to, the attachment hardware, seat frames, seat pedestals, the vehicle structure itself, and any part of the vehicle whose failure causes separation of the belt from the vehicle structure.

* * * * *

Issued on October 26, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90–25756 Filed 10–30–90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 55, No. 211
Wednesday, October 31, 1990

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

Animal and Plant Health Inspection Service

[Docket No. 90-208]

Receipt of a Permit Application for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release a genetically engineered organism into the environment is being reviewed by the Animal and Plant Health Inspection Service. The application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permits, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release a genetically engineered organism into the environment:

Application No.	Applicant	Date received	Organism	Field test location
90-274-05	The Upjohn Co.	10-01-90	Soybean plants genetically engineered to contain a marker gene that expresses the enzyme of beta-glucuronidase, and a gene that expresses the enzyme of phosphinothricin acetyltransferase for tolerance to bialaphos herbicides.	Puerto Rico.

Done in Washington, DC, this 25th day of October 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-25739 Filed 10-30-90; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

American Sports Kids Association, Little Green Valley Camp, San Bernardino National Forest, San Bernardino County, CA; Intent to Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for an American Sports Kids Association (ASKA) proposal to refurbish and expand the organization camp at Little Green Valley and rename it Sports Kids University. The proposal envisions use of the camp as a year-round headquarters for its operations and as a venue for a variety of children's educational activities. The Forest Service will serve as the lead Federal agency in meeting the requirements of the National Environmental Policy Act (NEPA).

ASKA purchased the improvements on the site from the Los Angeles YMCA and the special use permit to operate and maintain the camp has been transferred to ASKA. The San Bernardino National Forest Land and Resource Management Plan (Plan) provides for the continuation of existing organization camps but directs that they not be allowed to expand outside permit boundaries when the expansion can be reasonably accommodated within existing boundaries or on private land. It is known that camps, both on private land and on National Forest System land, are available for sale elsewhere within the San Bernardino National Forest and, thus, the proposed expansion of the camp beyond the existing boundaries conflicts with direction in the Plan. The EIS will determine if the proposed expansion is in the best interest of the public and can be made compatible with the environmental needs of the land and resources.

In addition to the proposed expansion of the camp boundaries, new activities are planned for the camp.

ISSUES IDENTIFIED. Previous local scoping and discussions within the Forest Service have identified the following issues: Threatened and endangered species, wildlife, road location, water quality, ground water, riparian area encroachment, aesthetics, and the need for recreational and educational benefits to be provided by this proposal.

Five alternatives have been identified: (1) Eliminate Little Green Valley as an organization camp site and return the site to a natural condition, (2) no action, leave site and improvements as they are and do not allow any occupancy as an organization camp site, (3) refurbish with only minor improvements to bring developments up to current standards and take measures to correct

environmental problems, (4) revise site plan to eliminate developments in the southern portions (meadow area) and relocate existing administration building to northern section of camp and eliminate target shooting, horses, and chapel and (5) ASKA proposal as of September 15, 1990.

SUPPLEMENTARY INFORMATION: The additional activities proposed for the camp are: (1) Earth Games America—a series of twelve week-long sessions of sports and environmental education for 5 to 12 year old children, (2) Kamp Komfort—a series of six one-week sessions in the spring and six one-week sessions in the fall for battered children with attendees selected by social services agencies coordinated by Child Help USA. (3) Sports Kids—The TV Show—30 minute weekly series filmed on location at Little Green Valley Camp will house the administrative staff for this and other camps which ASKA is now operating or plans to operate in the future.

The Draft EIS (DEIS) is expected to be available for public review by December 1990 and comments will be received for a period of 45 days following the date that the notice of its availability is published in the **Federal Register**. It is important that those interested in the management of the San Bernardino National Forest participate at that time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the document or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal Court decisions have established that reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, (Vermont Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978)), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, (Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1338 (E.D. Wisc. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service when they can meaningfully consider them and respond to them in the final document. All comments will be considered and analyzed in preparing the final EIS, which is scheduled to be completed by February 1991. The responsible official will document the decision in the Record of Decision which will be subject to appeal under the provisions of 36 CFR Part 217.

DATES: Comments are requested on this notice concerning the scope of analysis of the draft EIS. Comments must be received within 30 days of the publication date of this notice.

PUBLIC MEETING: The Forest Service will conduct a public meeting to provide information on the project to the public on November 17, 1990 at 10 a.m. at the Hoffman Elementary School on Highway 18 in Running Springs, CA.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis for the American Sports Kids Association, Little Green Valley Camp proposal to Charles H. Irby, Forest Supervisor, San Bernardino National Forest, 1824 S. Commercenter Circle, San Bernardino, CA 92408–3430.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and preparation of the EIS to Gail van der Bie, Recreation Officer at the above address or call (714) 383–5696.

Dated: October 24, 1990.

Charles H. Irby,

Forest Supervisor.

[FR Doc. 90–25671 Filed 10–30–90; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[Docket No. 051–389]

Gary Gentile, Hearing

In the Matter of Gary Gentile, Respondent.

The informal hearing provided for in 924.8(c) of the regulations (15 CFR 924.8(c)) relating to the denial of appellant's request to conduct underwater photography or similar activities within the Monitor National Marine Sanctuary, will be held in Hearing Room 2409 at 401 M Street, SW., Washington, DC at 9 a.m. on November 2, 1990.

Dated: October 25, 1990.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 90–25670 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–GB–M

Bureau of Export Administration

Telecommunications Equipment Technical Advisory Committee; Closed Meeting

Federal Register citation of previous announcement: pp. 41368–9 October 11, 1990.

Previously announced time of meeting: 9:30 a.m., November 1, 1990. Changes in meeting: 9:30 a.m., November 28, 1990, Herbert C. Hoover Building, Room 1629, 14th Street and Pennsylvania Avenue, NW., Washington, DC Fully closed.

Dated: October 25, 1990.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 90–25712 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[A–357–405]

Barbed Wire and Barbless Fencing Wire From Argentina; Intent To Revoke Antidumping Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping order on barbed wire and barbless fencing wire from Argentina. Interested parties who object to this revocation must submit their comments in writing not later than November 30, 1990.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Alfredo Montemayor or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1983, the Department of Commerce ("the Department") published an antidumping order on barbed wire and barbless fencing wire from Argentina (49 FR 49126). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations (19 CFR 353.25(d)(4)), we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than November 30, 1990, interested parties, as defined in § 353.2(k) of the Department's regulations (19 CFR 353.2(k)), may object to the Department's intent to revoke this antidumping order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review by November 30, 1990, in accordance with the Department's notice of opportunity to request administrative review, or object to the Department's intent to revoke by November 30, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 26, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90–25764 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–815]

Preliminary Determination of Sales at Less Than Fair Value: Gray Portland Cement and Clinker from Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that grat portland cement and clinker (cement and clinker) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of cement and clinker from Japan, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 8, 1991.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Louis Apple, V. Irene Darzenta or David C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202 377–1769, 377–0186, 377–3798, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminary determine that cement and clinker from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on June 15, 1990 (55 FR 24295), the following events have occurred. On July 11, 1990, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports of cement and clinker from Japan (55 FR 28465).

On July 2, 1990, the Department presented its questionnaire to two companies that accounted for more than 60 percent of exports by volume to the United States during the period of investigation (POI): Nihon Cement Company, Ltd. (Nihon) and Onoda Cement Company, Ltd. (Onoda), in accordance with § 353.42(b) of the Commerce Department's regulations (19 CFR 353.42(b) (1989)) (the Department's regulations). Responses to the questionnaire was due on July 30, 1990. At the request of respondents, the response deadline was extended to August 20 and August 28, 1990, for Onoda and Nihon, respectively.

Respondents submitted replies to our questionnaire on August 20 and August 28, 1990. The Department issued deficiency letters to Onoda and Nihon on September 18 and September 19, 1990, respectively. Responses to these deficiency letters and supplemental responses were filed by Onoda on October 2 and by Nihon on October 3. A supplemental response was filed by Onoda on October 5, 1990.

On June 22, 1990, petitioner filed a first amendment to the petition adding certain co-petitioners. On July 9, 1990, petitioners filed a second amendment to the petition alleging critical circumstances (*see* "Critical Circumstances" section of this notice). On September 10, 1990, petitioners alleged that Nihon was selling cement in the home market at prices below the cost of production. On the same date, petitioners also alleged that Onoda was selling clinker to a third country at prices below the cost of production. Petitioners withdrew their sales below cost allegation against Nihon on September 20, 1990. On October 3, 1990, the Department rejected petitioners' cost allegation against Onoda as insufficient for purposes of initiating a cost of production investigation.

Scope of the Investigation

The products covered by this investigation are gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material produced when manufacturing cement, has no use other than grinding into finished cement.

Gray portland cement is currently classifiable under HTS item number 2523.29, and clinker is currently classifiable under HTS number 2523.10. Gray portland cement has also been entered under number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of the product coverage.

Period of Investigation

The period of investigation is December 1, 1989 through May 31, 1990.

Such or Similar Comparisons

Pursuant to section 771(16) of the Act, we established two categories of "such or similar" merchandise: Cement and clinker. Product comparisons were made within each such or similar category on the basis of the following criteria: (1) Product type, (2) chemical composition and (3) technical specifications. Where there were no sales of indentical merchandise in the foreign market with which to compare merchandise were compared on the basis of the characteristics described above. We used home market or third country sales as the basis for foreign market value (FMV), as described in the "Foreign Market Value" section of this notice.

For both respondents, we compared U.S. sales of bulk cement to home market sales of bulk cement. For Onoda, we also compared U.S. sales of cement which was further manufactured into ready-mix to home market sales of bulk cement, and U.S. sales of clinker to a third country sale of clinker. Both Nihon and Onoda reported that they sold a small quantity of bagged cement to the United States during the POI. Because of the small volumes involved, we did not require respondents to report these sales.

Product comparisons were made on the basis of standards established by the American Society for Testing and

Materials (ASTM standards). All of the cement sold in the United States during the POI fell within two ASTM standards: Type I and Type II. Onoda sold both Type I and Type II cement in the United States; Nihon sold only Type II in the United States. Both respondents sold at least three types of cement in the home market during the POI: Ordinary portland cement (NC), moderate heat cement (MC), and high early strength cement (VC). At our request, respondents provided documents indicating the chemical composition and technical specifications for each cement type sold in the home market during the POI.

Both petitioners and respondents agree that NC is most similar to Type I and, therefore, we have made product comparisons on this basis. Based on our review of the information submitted on the record, and the Department's finding in the 1983 investigation (*see Final Determination of Sales at Less Than Fair Value; Portland Hydraulic Cement from Japan*, 48 FR 41059, September 13, 1983), we have preliminarily determined that MC is the home market cement type which is most similar to Type II for comparison purposes.

Fair Value Comparisons

To determine whether sales of cement and clinker from Japan to the United States were made as less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Onoda, we based United States price on purchase price where sales were made directly to unrelated parties prior to importation into the United States, in accordance with section 772(b) of the Act. Where sales to the first unrelated purchaser took place after importation into the United States, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act. For Nihon, we based United States price on purchase price because all sales were made directly to unrelated parties prior to importation into the United States.

A. Onoda

For Onoda, we calculated purchase price based on f.o.b. Japanese port prices. We made deductions, where appropriate, for discounts and loading charges, in accordance with section 772(d)(2) of the Act. In accordance with section 772(d)(1)(C) of the Act. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of value added tax (VAT) that would have been collected if the merchandise had not been exported.

We calculated ESP based on c.i.f. picked up or delivered prices. We made deductions, where appropriate, for discounts, loading charges in Japan, ocean freight, marine insurance, harbor and Customs user fees, U.S. terminal and unloading charges, U.S. inland freight and inland insurance. In accordance with section 772(e)(1) and (2) of the Act, we made additional deductions, where appropriate, for credit expenses, commissions, advertising and warranty expenses, and indirect selling expenses consisting of technical services, dispatcher costs, product liability expenses, inventory carrying costs and general indirect selling expenses incurred in Japan and the United States. We made additions, where appropriate, for additional revenue obtained from certain sales of bulk cement.

For ready-mix sales, in accordance with section 772(e)(3) of the Act, we deducted value added resulting from assembly performed on the imported merchandise after its importation. This value added comprised two parts: The process of assembly (also referred to as "further manufacturing"); and the portion of total profit attributable to further manufacturing (also referred to as "allocated profit"). For purposes of this investigation, we determined that, in addition to the cost of materials, further manufacturing included the labor and overhead costs attributable to the materials; and selling expenses, general and administrative (G&A) expenses, and movement charges attributable to the further manufacturing process.

In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of VAT that would have been collected on the export sale had it been subject to the tax.

We found certain inconsistencies between the data reported in Onoda's ESP database and the narrative description provided in its August 20 and October 2, 1990 responses. Based on the information submitted in the narrative portions of Onoda's responses, we recalculated credit, inventory carrying costs, divisional advertising and G&A expenses for ready-mix sales, and general U.S. indirect selling expenses.

For both purchase price and ESP sales, Onoda reported quality control expenses as direct selling expenses. We have preliminarily determined that these expenses are more appropriately classified as costs of manufacturing. Therefore, we have not made any adjustment to United States price.

B. Nihon

For Nihon, we calculated purchase price based on the f.o.b. Japanese port price (Kamiiso). We made deductions for foreign brokerage. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of VAT that would have been collected if the merchandise had not been exported.

Foreign Market Value

In order to determine whether there were sufficient sales of cement and clinker in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of cement and clinker to the volume of third country sales of cement and clinker, in accordance with section 773(a)(1) of the Act. Both respondents had viable home markets with respect to sales of cement made during the POI. For Onoda's sales of clinker, the volume of home market sales was less than five percent of the aggregate volume of third country sales. Therefore, in accordance with § 354.48 of the Department's regulations, we determined that home market sales of clinker did not constitute a viable basis for calculating FMV.

In selecting which third country market to use for comparisons of clinker, we determined which third country had an "adequate" volume of sales, within the meaning of § 353.49(b)(1) of the Department's regulations. We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise exceeded or was equal to five percent of the volume sold to the United States. In selecting which third country market was the most appropriate for comparison purposes, we selected the third country market with the most similar merchandise and the largest volume of sales, in accordance with § 353.49(b)(2) of the Department's regulations.

A. Onoda

For Onoda, we calculated FMV of cement sales based on ex-factory, c.i.f. terminal or delivered prices to unrelated and related customers in the home market. We used the related party sales because the prices to related parties were determined to be at arm's-length, in accordance with § 353.45(a) of the Department's regulations. We made deductions, where appropriate, for discounts, rebates, inland freight and insurance, and tanker freight. We have

not made a deduction for claimed distribution terminal costs because some of the reported amounts appeared inaccurate.

Pursuant to § 353.56 of the Department's regulations, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses and revenue obtained from late-paying customers. We made further adjustments, where appropriate, for differences in commissions when incurred in both markets, in accordance with § 353.56(a)(2) of the Department's regulations. Where commissions were paid in one market and not in the other, we allowed an adjustment for indirect selling expenses incurred in the other market to offset commissions, in accordance with § 353.56(b) of the Department's regulations.

We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales. We computed the VAT adjustment based on a U.S. price net of discounts.

For comparisons to ESP sales, we made further deductions for home market indirect selling expenses, comprised of advertising, technical services, general indirect selling expenses, inventory carrying costs, and other selling expenses associated with distribution terminal scrap and disposal of obsolete equipment. We capped the amount deducted for home market indirect selling expenses by the amount of indirect selling expenses incurred on sales in the U.S. market, in accordance with § 353.56(b)(2) of our regulations.

Where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

We calculated FMV of clinker sales based on f.o.b. Japanese port prices. We made deductions, where appropriate, for discounts and loading charges. We also made an addition for special revenue associated with movement charges. Pursuant to § 353.56 of the Department's regulations, we made a circumstance of sale adjustment, where appropriate, for differences in credit expenses. We recalculated third country and U.S. credit expenses based on gross prices net of discounts.

For both home market and third country sales, Onoda reported quality control expenses as direct expenses. We have preliminarily determined that these expenses are more appropriately classified as costs of manufacturing. Therefore, we have not made any adjustment to FMV.

B. Nihon

Foir Nihon, we calculated FMV based on ex-factory, c.&f. terminal or delivered prices to related and unrelated customers in the home market. We used the related party sales because the prices to related parties were determined to be at arm's length, in accordance with § 353.45(a) of the Department's regulations. We made deductions, where appropriate, for discounts, rebates, inland freight, and loading and unloading costs.

We made circumstance of sale adjustments, where appropriate, for differences in credit expenses pursuant to § 353.56 of the Department's regulations. We recalculated home market and U.S. credit expenses using the average short-term borrowing rate reported for the POI. We made adjustments to FMV for home market selling expenses consisting of general indirect selling expenses and inventory carrying costs, pursuant to § 353.56(b) of the Department's regulations. We recalculated home market inventory carrying costs using the average short-term borrowing rate reported for the POI.

We made a circumstance of sale adjustment for VAT incurred on home market sales and not on export sales. We computed the VAT adjustment based on U.S. price.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of cement and clinker from Japan. Section 733(e)(1) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect the following:

(1) That there is a history of dumping of the same class or kind of merchandise, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value, and

(2) That there have been massive imports of the subject merchandise over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to § 353.16 (f) and (g) of our regulations, we examined the period beginning in the month in which the petition was filed and ending in the month prior to that in which we published our preliminary determination. We selected May 1990 (the month in which the petition was filed) as the beginning of the base period, and used September and October 1990, for Onoda and Nihon, respectively (the latest months for which respondents could provide shipment data) as the end of the base period.

We then compared the quantity of imports during the base period for each respondent over the imports during the immediately preceding period of comparable duration for each of the respondents. We found that shipments from none of the respondents had increased by at least 15 percent during the base period. Based on the above and in accordance with § 353.16(f)(2) of the Department's regulations, we preliminarily find that imports of gray portland cement and clinker from Japan have not been massive over a relatively short period.

Since we do not find that there have been massive imports, we need not consider whether there is a history of dumping or whether importers of this merchandise knew or should have known that such merchandise was being sold at less than fair value. Therefore, for purposes of the preliminary determination, we find that there is no reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cement and clinker from Japan.

Verification

As provided in section 776(b) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 773(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of cement and clinker from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Onoda Cement Co., Ltd	46.07
Nihon Cement Co., Ltd	67.68
All Others	50.21

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment in case or rebuttal briefs. The hearing will be held on December 28, 1990, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In addition, ten copies of the business proprietary and five copies of the nonproprietary versions of the case briefs or other written comments must be submitted to the Department at the address above in accordance with § 353.38 of the Department's regulations. Case briefs or other written comments must be submitted no later than December 21, 1990, and rebuttal briefs no later than December 24, 1990. In accordance with § 353.38(b) of the Department's regulations, oral presentations will be limited to issues raised in the briefs.

This determination is published prusuant to section 733(f) of the Act (19 U.S.C. § 16773b(f) and § 353.15 of the Department's regulations (19 CFR 353.15).

Dated: October 25, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–25765 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–333–502]

Deformed Steel Concrete Reinforcing Bar (Rebar) From Peru; Intent To Revoke Contervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on rebar from Peru. Interested parties who object to this revocation must submit their comments in writing not later that November 30, 1990.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Beth Chalecki or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1985, the Department of Commerce ("the Department") published a countervailing duty order on rebar from Peru (40 FR 48819). The Department has not received a request to conduct an administrative review of the countervailing duty order on rebar form Peru for four consecutive annual anniversary months. This is the fifth anniversary.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than November 30, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, Internaional Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by November 30, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.2(d).

Dated: October 25, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90–25766 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–357–048]

Certain Textiles and Textile Products From Argentina; Intent to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina, specifically men's and boy's woolen garments. Interested parties who object to this revocation must submit their comments in writing not later than November 30, 1990.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1978, the Department of Commerce ("the Department") published a countervailing duty order on certain textiles and textile products from Argentina (48 FR 53421). The Department has not received a request to conduct an administrative review of the countervailing duty order on certain textiles and textile products from Argentina for more than four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties

and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than November 30, 1990, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review or object to the Department's intent to revoke by November 30, 1990, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: October 25, 1990.

Ronald L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 90-25767 Filed 10-30-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review; Certain Cold Heading Quality Steel Billets

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain cold heading quality steel billets.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 15,500 net tons of certain cold heading quality steel billets for the first quarter of 1991 under Article 8 of the Arrangement Between the Government of Australia and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Australia Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 28.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public law 101-221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures (19 CFR 357.104(b)) ("Commerce Short Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain cold heading quality steel billets for use in the manufacture of wire rod used to make various types of fastners continuous welding wire. On October 22, 1990, the Secretary received an adequate petition from American Steel and Wire Corporation ("ASW") requesting a short-supply allowance for 15,500 net tons of this product during the first quarter 1991 under Article 8 of the U.S.-Australia Arrangement. ASW is requesting a short-supply allowance because its qualified domestic supplier has expressed an unwillingness to meet ASW's needs for the subject material during this period and its qualified foreign supplier has no regular export licenses available.

The requested material meets the following specifications:

Dimensions (and tolerances): 130 mm square (±2 mm) × 9.4 – 10.3 meters (no shorts);
Surface condition: Seams, laps, and other linear defects shall not exceed 6.35 mm as a general guideline. Harmful scabs, slivers and other point defects must be kept to an absolute minimum;
Twist: 5 degree max/length of billets;
Straightness: 13 mm max out-of-straight in any 1.5 meters, max 76 mm out-of-straight over full billet length, no hooked ends;
Squareness: Rhomboid sections with uneven diagonals more than 8 mm are unacceptable;
Ends: Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Detachable saw burrs, fins, or shear lips must be minimized. Mushroomed ends must not exceed 6 mm/side, no open or split ends;
Grades: 1005 AK, 1010 AK, 1022 MOD CG, 10B24 FG, 1038 CG, 1541H FG;

Rolled billets can be produced from ingots or bloom cast, and include controlled and certified product chemical analyses. All grades have a copper residual limit of 0.10 max.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist:

(1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 21, 1990.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than November 7, 1990, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 7, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible or Norbert O. Gannon, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230 (202) 377-0159 or (202) 377-4037.

Dated: October 24, 1990.

Marjorie A. Chorlins,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90-25843 Filed 10-30-90; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Steel Plate

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: certain steel plate.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 10,999.8 net tons of certain steel plate for the balance of 1990 under Article 8 of the U.S.-EC steel arrangement.

SHORT-SUPPLY REVIEW NUMBER: 29.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures (19 CFR 357.104(b)) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain steel plate for use in the manufacture of large diameter pipe (LDP). On October 23, 1990, Berg Steel Pipe Corporation submitted an adequate petition to the Secretary requesting a short-supply allowance under Article 8 of the Arrangement Between the European Coal and Steel Community and the European Economic Community, and the Government of the United States of America Concerning Trade in Certain Steel Products, for 10,999.8 net tons of American Petroleum Institute grade X–60 (modified) steel plate 73.918 inches in width and 0.576 inch in thickness, to be delivered during the balance of 1990. Berg is requesting a short-supply allowance because it believes this product is not produced in the United States and its potential foreign supplier has no regular export licenses available.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist:

(1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 22, 1990.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than November 7, 1990, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 7, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by the court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible or Norbert Gannon, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230 (202) 377–0159 or (202) 377–4037.

Dated: October 26, 1990.

Marjorie A. Chorlins,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90–25844 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

Short-Supply Review; Certain Welding Quality Steel Billets

AGENCY: Import Administration/ International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments; certain welding quality steel billets.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 10,900 net tons of certain welding quality steel billets for the fourth quarter of 1990 under Article 8 of the Arrangement Between the Government of Australia and the Government of the United States of America Concerning Trade in Certain Steel Products ("the U.S.-Australia Arrangement").

SHORT-SUPPLY REVIEW NUMBER: 27.

SUPPLEMENTARY INFORMATION: Pursuant to section 4(b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357.104(b) of the Department of Commerce's Short-Supply Procedures (19 CFR 357.104(b)) ("Commerce's Short Supply Procedures"), the Secretary hereby announces that a short-supply determination is under review with respect to certain welding quality steel billets for use in the manufacture of wire rod used to make continuous welding wire. On October 22, 1990, the Secretary received an adequate petition from American Steel and Wire Corporation ("ASW") requesting a short-supply allowance for 10,900 net tons of this product during the fourth quarter 1990 under Article 8 of the U.S.-Australia Arrangement. ASW is requesting a short-supply allowance because one of its major foreign suppliers is unable to fully meet its commitment to supply the subject material to ASW and viable domestic supplies are unavailable.

The requested material meets the following specifications:

Dimensions (and tolerances): 130 mm square (±)2 mm) × 9.4–10.3 meters (no shorts);

Surface condition: Seams, laps, and other linear defects shall not exceed 6.35 mm as a general guideline. Harmful scabs, slivers and other point defects must be kept to an absolute minimum;

Twist: 5 degrees max/length of billets;

Straightness: 13 mm max out-of-straight in any 1.5 meters, max 76 mm out-of-straight over full billet length, no hooked ends;

Squareness: Rhomboid sections with uneven diagonals more than 8 mm are unacceptable;

Ends: Perpendicular to longitudinal axis. Tapered cuts are unacceptable. Detachable saw burrs, fins, or shear lips must be minimized. Mushroomed ends must not exceed 6 mm/side, no open or split ends;

Deoxidization practice and grain size: Silicon killed, coarse grain;

Grades: ER 70S–6 and 70S–7;

Rolled billets can be produced from ingots or bloom cast, and include controlled and certified product chemical analyses, and possess the following copper residual limits: Grade ER 70S–6, 0.05 max. and Grade 70S–7, 0.07 max.

Section 4(b)(4)(B)(ii) of the Act and § 357.106(b)(2) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 30th day after the petition is filed, unless the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds that none of these conditions exist with respect to the requested product, and therefore, the Secretary will determine whether this product is in short supply not later than November 21, 1990.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than November 7, 1990, to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. Interested parties may file replies to any comments submitted. All replies must be filed not later than 5 days after November 7, 1990. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make in accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply review number.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible or Norbert O. Gannon, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230 (202) 377–0159 or (202) 377–4037.

Dated: October 24, 1990.

Marjorie A. Chorlins,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 90–25842 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

Montana State University: Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90–097. *Applicant:* Montana State University, Bozeman, MT 59717. *Instrument:* Sonic Fineness Tester, Model B. *Manufacturer:* Paton Scientific Pty., Ltd., Australia. *Intended Use:* See notice at 55 FR 28080, July 9, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides in situ measurement of wool fibers for samples as small as 2.0 grams and uses a top loading balance.

The U.S. Department of Agriculture advises that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–25768 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

Tufts University, et al.: Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 90–004. *Applicant:* Tufts University, Boston, MA 02111. *Instrument:* SIRA 10 Mass Spectrometer Acessory. *Manufacturer:* VG Isotech, United Kingdom. *Intended Use:* See notice at 55 FR 3439, February 1, 1990. *Advice Submitted by:* National Institutes of Health, June 26, 1990.

Docket Number: 90–022. *Applicant:* The Connecticut Agricultural Experiment Station, New Haven, CT 06504. *Instrument:* Emitter-Detector Unit for P700 Absorbance Measurement, Model ED 800T. *Manufacturer:* H. Walz Co., West Germany. *Intended Use:* See notice at 55 FR 8164, March 7, 1990. *Advice Submitted by:* National Institutes of Health, July 26, 1990.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States. *Reasons:* These are compatible accessories for instruments previously imported for the use of applicants. In each case, the instrument and accessory were made by the same manufacturer. NIH advises us that the accessories are pertinent to the intended uses and that it knows of no comparable domestic accessories.

We know of no domestic accessories which can be readily adapted to the previously imported instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–25769 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

Vanderbilt University School of Medicine, et al.: Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 90–073. *Applicant:* Vanderbilt University School of Medicine, Nashville, TN 37232–2175. *Instrument:* Micromanipulator, Model MK1. *Manufacturer:* Singer Instrument Co., Ltd., United Kingdom. *Intended Use:* See notice at 55 FR 19295, May 9, 1990. *Reasons:* The foreign instrument provides a pantograph balance mechanism for accurate reproduction of hand movements scaled down by a factor of five with rapid 3–D operation. *Advice Submitted by:* National Institutes of Health, August 30, 1990.

Docket Number: 90–078. *Applicant:* Yale University, New Haven, CT 06510. *Instrument:* Magnetic Cell Sorter. *Manufacturer:* Miltenyl Biotech, GmbH, West Germany. *Intended Use:* See notice at 55 FR 20503, May 17, 1990. *Reasons:* The foreign instrument can identify and recover magnetically marked T cells from mixed cell populations. *Advice Submitted by:* National Institutes of Health, August 30, 1990.

Docket Number: 90–080. *Applicant:* The University of Michigan, Ann Arbor, MI 48109–2214. *Instrument:* 3-Dimensional Motion Analysis System, Model Optotrak. *Manufacturer:* Northern Digital, Inc., Canada. *Intended Use:* See notice at 55 FR 21420, May 24, 1990. *Reasons:* The foreign instrument performs real-time analysis of motion with a spatial resolution of 0.1 mm and a sampling rate of 1000 Hz with one marker. *Advice Submitted by:* National Institutes of Health, August 30, 1990.

Docket Number: 90–082. *Applicant:* The Johns Hopkins University, Baltimore, MD 21218. *Instrument:* Flash Lamp System, Model JML–E. *Manufacturer:* Optoelektronik, West Germany. *Intended Use:* See notice at 55 FR 20503, May 17, 1990. *Reasons:* The foreign instrument provides focusing optics and pulse shaping optimized for initiating contractile events in muscle fibers. *Advice Submitted by:* National Institutes of Health, August 30, 1990.

The National Oceanic and Atmospheric Administration and National Institutes of Health advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–25770 Filed 10–30–90; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF91–10–000]

Haverstraw Limited; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

October 23, 1990.

On October 15, 1990, Haverstraw Limited, of 15508 Wright Brothers Drive, Addison, Texas 75224 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in West Haverstraw, New York. The facility will consist of five gasfired engine generators. The electric power production capacity will be 775 Kilowatts. The primary energy source will be biomass in the form of landfill gas. There is no planned usage of natural gas, coal or oil by the facility. Operation of the facility is expected to begin on February 1, 1991.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–25689 Filed 10–30–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER90–564–000, et al.]

New England Power Pool, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 24, 1990.

Take notice that the following filings have been made with the Commission:

1. New England Power Pool

[Docket No. ER90–564–000]

Take notice that on Ocboter 19, 1990, New England Power Pool (NEPOOL) tendered for filing additional materials to be included as part of the Supplement filed in this docket on August 29, 1990. NEPOOL states that this additional information provides some technical background for the tables shown in appendix C of the Supplement.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power & Light Company

[Docket No. ER91–39–000]

Take notice that on October 22, 1990, Florida Power & Light Company (FP&L) tendered for filing a Notice of Cancellation of sevice to Tampa Electric under Rate Schedule FERC No. 106. FP&L requests an effective date of October 12, 1990.

Comment date: November 8, 1990, in accordance with Standard paragraph E at the end of this notice.

3. Wisconsin Power & Light Company

[Docket No. ER91–30–000]

Take notice that on October 15, 1990, Wisconsin Power & Light Company (WP&L) tendered for filing an amendment to the Wholesale Power Contract between the City of Elkhorn and WP&L.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Logan Energy, L.P.

[Docket No. ER91–38–000]

Take notice that on October 19, 1990, Logan Energy, L.P., organized under the laws of the State of New Jersey, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales of 100 MW to Jersey Central Power & Light Company and an initial rate schedule which is a tariff governing sales of the remaining 81 MW from its facility in Logan Township, New Jersey.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Turbo Power Systems—II, L.P.

[Docket No. ER91–37–000]

Take notice that on October 19, 1990, Virginia Turbo Power Systems—II, L.P., organized under the laws of the State of Delaware, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Virginia Electric and Power Company.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Vista Energy, L.P.

[Docket No. ER91–35–000]

Take notice that on October 19, 1990, Vista Energy, L.P. organized under the laws of the State of New Jersey, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales of 100 MW to Jersey Central Power & Light Company and an initial rate schedule which is a tariff governing sales of the remaining 81 MW from its facility in Logan Township, New Jersey.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Turbo Power Systems—I, L.P.

[Docket No. ER91–36–000]

Take notice that on October 19, 1990, Virginia Turbo Power Systems—I, L.P., organized under the laws of the State of Delaware, submitted for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for sales to Virginia Electric and Power Company.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Detroit Edison Company

[Docket No. ER91–33–000]

Take notice that on October 17, 1990, Detroit Edison Company (Detroit Edison) tendered for filing an Agreement for the Lease of a Portion of Generating Capability of Ludington Pumped Storage Hydroelectric Generating Plant by the Detroit Edison Company to the Toledo Edison Company dated January 1, 1990.

The Agreement provides for the lease by Detroit Edison to the Toledo Edison Company of one sixth of Detroit Edison's 49% share of the generating capability of the Lundington hydroelectric plant which is jointly owned by Detroit Edison and Consumers Power Company.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp Electric Operations

[Docket No. ER90–512–000

Take notice that PacifiCorp Electric Operations (PacifiCorp), on October 22, 1990, tendered for filing, in accordance with section 35 of the Commission's Regulations, a Supplemental Filing to the Electric Supply Agreement (Agreement) between PacifiCorp and Utah Municipal Power Agency (UMPA) filed with the Commission by letter dated July 19, 1990 under FERC Docket No. ER90–512–000. This Supplemental Filing provides additional cost support information.

PacifiCorp states that copies of the filing were supplied to the Oregon Public Utilities Commission, Utah Public Service Commission and UMPA.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Co. (Minnesota); Northern States Power Co. (Wisconsin)

[Docket No. EL91–2–000]

Take notice that on October 22, 1990, Northern States Power Company (Minnesota) (NSP(M)) and Northern States Power Company (Wisconsin) (NSP(W)) (collectively Companies) tendered for filing in accordance with §§ 35.14(a)(10) and 385.207 of the Commission's regulations a request for waiver of the Commission's fuel clause regulations.

Companies state that this waiver is sought in order to obtain Commission approval of the recovery through the Companies' fuel adjustment clauses of certain anticipated surface final reclamation payments under a coal supply contract between NSP(M) and one of its coal suppliers.

Comment date: November 8, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–25690 Filed 10–30–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–170–000, et al.]

Mississippi River Transmission Corp., et al.; Natural Gas Certificate Filings

October 23, 1990.

Take notice that the following filings have been made with the Commission:

1. Mississippi River Transmission Corporation

[Docket No. CP91–170–000]

Take notice that on October 16, 1990, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed a request with the Commission in the above referenced docket, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to transport natural gas for AmGas, Inc., a shipper, under the blanket certificate issued in Docket No. CP89–1121–000 pursuant to section 7 of the NGA, all as more fully set forth in the requests which are open to public inspection.

MRT proposes an interruptible natural gas transportation service of up to a maximum of 5,300 MMBtu of natural gas per day from receipt points in Arkansas, Texas, Louisiana, and Illinois to a delivery point located in Missouri. It is stated that the average and annual

volumes would be 342 MMBtu and 125,000 MMBtu, respectively. It is also stated that the transportation service commenced on August 15, 1990, as reported in Docket No. ST90-4717-000, pursuant to § 284.223 of the Regulations.

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. United Gas Pipe Line Co.

[Docket Nos. CP91-193-000; CP91-194-000; CP91-195-000]

Take notice that on October 18, 1990, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[2] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related [1] docket, contract date
CP91-193-000 (10-18-90)	Oxy U.S.A. Inc	2,575 2,575 939,875	TX	TX	9-17-90, ITS Interrptible.	ST91-73-000, 1-6-89.[3]
CP91-194-000 (10-18-90)	International Paper Company.	3,090 3,090 1,127,850	LA, TX	LA, AL	8-1-90, ITS, Interruptible.	ST91-154-000, 7-1-90.
CP91-195-000 (10-18-90)	Ashton Energy Company.	20,600 20,600 7,519,000	LA, TX	LA, TX	8-10-90, ITS, Interruptible.	ST90-4462-000, 10-17-88.[4]

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Amended 7-31-90.
[4] Amended 8-8-90.

3. Stingray Pipeline Co., Natural Gas Pipeline Co. of America, Natural Gas Pipeline Co. of America

[Docket Nos. CP91-171-000 [2]; CP91-172-000; CP91-173-000]

Take notice that on October 17, 1990, Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their respective blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the Applicants' address, the contract number, the docket number of the blanket certificate, the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (contract No.)	Applicant	Shipper name	Peak day, [1] average annual	Points of Receipt	Points of Delivery	Start up date, rate schedule, service type	Related [2] dockets
CP91-171-000 (IGP-7255)	Stingray Pipeline Company, 701 East 22nd Street, Lombard, Illinois 60148.	Shell Gas Trading Company.	200,000 75,000 27,375,000	LA, Off. LA & TX	LA & Off. TX	8-8-90, ITS, Interruptible.	Order No. 509, RM89-70-000, ST90-4714-000.
CP91-172-000 (IGP-2636)	Natural Gas Pipeline Co. of America, 701 East 22nd Street, Lombard, Illinois 60148.	Marathon Oil Company.	20,000 15,000 5,475,000	Off. TX	Off. TX	8-10-90, ITS, Interruptible.	CP86-582-000, ST90-4685-000.

Docket No. (contract No.)	Applicant	Shipper name	Peak day, [1] average annual	Points of		Start up date, rate schedule, service type	Related [2] dockets
				Receipt	Delivery		
CP91-172-000 (IGP-2606)	Natural Gas Pipeline Co. of America.	Centran Corporation.	30,000 15,000 5,475,000	Various existing points.	Various existing points.	8-9-90, ITS, Interruptible.	CP88-582-000, ST90-4684-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP and RM docket numbers and the order number correspond to applicant's blanket transportation certificate. The ST docket number represents that a 120-day transportation service was reported in it.

4. Trunkline Gas Co.

[Docket No. CP91-166-000]

Take notice that on October 16, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-166-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service provided for Amoco Gas (Amoco) in Docket No. CP84-760-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that pursuant to Rate Schedule T-92 of its FERC Gas Tariff, Original Volume No. 2, it transported up to 5,000 Mcf of natural gas per day on a firm basis for Amoco's account from a point of receipt in South Timbalier Block 161, Platform C, offshore Louisiana, to the point of interconnection between the facilities of Amoco and Trunkline in Abstract 203, Waller County, Texas.

It is stated that Trunkline and Amoco mutually agreed by written statement to terminate the agreement effective April 1, 1989. Trunkline states that Amoco's remaining gas reserves are currently transported on an interruptible basis under Trunkline's Rate Schedule PT.

Comment date: November 13, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. Texas Eastern Transmission Corporation

[Docket No. CP91-203-000]

Take notice that on October 19, 1990, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252-2521 filed in Docket No. CP91 203 000 a request pursuant to § 157.205) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Nortech Energy Corporation (Nortech), a marketer, under Texas Eastern's blanket certificate issued in Docket No. CP88-136-000 pursuant to section 7 of the Natural Gas Act, and authorization pursuant to § 157.211 to effect transportation through delivery points originally installed under section 311 of the Natural Gas Policy Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport, on an interruptible basis, up to 50,000 MMBtu of natural gas per day for Nortech. Texas Eastern states that construction of facilities would not be required to provide the proposed service.

Texas Eastern states that the maximum day, average day, and annual transportation volumes would be approximately 50,000 MMBtu and 18,250,000 MMBtu of natural gas respectively.

Texas Eastern advises that service under § 284.223(c) commenced August 31, 1990, as reported in Docket No. ST90-5297-000.

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

Columbia Gulf Transmission Co.

[Docket Nos. CP91-197-000; CP91-198-000]

Take notice that on October 19, 1990, Columbia Gulf Transmission Company (Applicant), P.O. Box 683, Houston, Texas 77001, filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak Day,[2] Average, annual	Points of [3]		Start up date, rate schedule, service type	Related [1] docket, contract date
			Receipt	Delivery		
CP91-197-000 (10-19-90)	Rangeline Corporation	20,000 10,000 3,650,000	LA, OLA	LA, MS, TN	9-14-90, ITS-1 & ITS-2, Interruptible.	ST91-46-000-2-1-90.[4]
CP91-198-000 (10-19-90)	Eagle Natural Gas Company.	30,000 10,000 3,650,000	LA, OLA	LA, MS, TN	9-5-90, ITS-1 & ITS-2, Interruptible.	ST91-47-000, 8-13-90.[5]

[1] If an ST docket is shown, 120-day transportation service was reported in it.
[2] Quantities are shown in MMBtu.
[3] Offshore Louisiana and Offshore Texas are shown as OLA and OTX.
[4] ITS-1 and ITS-2 amended 8-24-90.
[5] ITS-2 agreement amended 9-25-90.

7. Texas Eastern Transmission Corp.

[Docket No. CP91-204-000]

Take notice that on October 19, 1990, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252-2521 filed in Docket No. CP91-204-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Ensearch Gas Company (Ensearch) under Texas Eastern's blanket certificate issued in Docket No. CP88-136-000 pursuant to section 7 of the Natural Gas Act, and authorization pursuant to § 157.211 to effect transportation through delivery points originally installed under section 311 of the Natural Gas Policy Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Eastern proposes to transport, on an interruptible basis, up to 145,261 MMBtu of natural gas per day for Ensearch. Texas Eastern states that construction of facilities would not be required to provide the proposed service.

Texas Eastern states that the maximum day, average day, and annual transportation volumes would be approximately 145,261 MMBtu, 145,261 MMBtu and 53,020,265 MMBtu of natural gas respectively.

Texas Eastern advises that service under § 284.223(c) commenced September 8, 1990, as reported in Docket No. ST91-0089-000.

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. El Paso Natural Gas Co.

[Docket No. CP91-181-000]

Take notice that on October 17, 1990, El Paso Natural Gas Company, P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP91-181-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a meter station, to be located in El Paso County, Texas, in order to permit the delivery of natural gas to Southern Union Gas Company (SUG), all as more fully set forth in the request on file with the Commission and open to public inspection.

El Paso indicates that it has received a written request from SUG for natural gas service at a point on its existing 16" O.D. Jal-El Paso "A" Line in El Paso County. El Paso also states that it has been advised by SUG that the requested volumes of natural gas will be utilized to serve the firm industrial natural gas requirements of the El Paso Public Service Board in El Paso County.

In order to accommodate SUG's request, Specifically, El Paso proposes to construct and operate a 4" O.D. sales meter station consisting of one tap and value assembly and one Daniels orifice-type meter, with appurtenances, at an estimated cost of $37,464. SUG estimates annual requirements of 217,543 Mcf and peak day requirements of 103 Mcf in the third year for the El Paso Public Service Board.

Further, El Paso states that the quantities of natural gas to be delivered will be sold by El Paso to SUG for resale at the Southeast Treatment Plant.

Comment date: December 7, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25691 Filed 10-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-183-000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

October 24, 1990.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Co.

[Docket No. CP91-183-000]

Take notice that on October 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-183-000 a request pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon a transportation service for Chevron Chemical Company (Chevron), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that pursuant to Trunkline's Rate Schedule T-96 of its FERC Gas Tariff, Trunkline provides transportation service for Chevron under a transportation agreement dated September 26, 1977, as amended January 11, 1985, in Docket No. CP85-316-000. Under this agreement, Trunkline and

Natural Gas Pipeline Company of America (NGPL) agreed to transport, on behalf of Chevron, gas which Chevron is purchasing offshore Louisiana. Chevron contracted with Trunkline and NGPL to transport on a firm basis up to 10,000 Mcfd. Trunkline transports 25 percent of the total or up to 2,500 per day. NGPL transports the remaining 75 percent.

Chevron has given notice of its election to reduce the daily contract demand level from 10,000 Mcfd to 5,000 Mcfd commencing November 5, 1990.

Trunkline requests to reduce Chevron's daily contract demand level from 10,000 Mcfd to 5,000 Mcfd pursuant to Article II of Rate Schedule T-96, effective on November 5, 1990. This would reduce Trunkline's volume to transport from 2,500 Mcfd to 1,250 Mcfd on a firm basis for Chevron. It is asserted that no facilities would be abandoned.

Comment date: November 14, 1990, in accordance with Standard Paragraph F at the end of this notice.

2. U-T Offshore System, U-T Offshore System, U-T Offshore System, Southern Natural Gas Co.

[Docket Nos. CP91-217-000; CP91-218-000; CP91-219-000; CP91-220-000]

Take notice that U-T Offshore System, P.O. Box 1396, Houston, Texas 77251, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563 (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued by the Commission's Order No. 509 corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000 and in Docket No. CP88-316-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 10, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Mcf	Receipt points[1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-217-000 (10-22-90)	Public Service Electric and Gas Company (LDC).	300,000 300,000 109,500,000	Offshore Louisiana	Cameron Parish, Louisiana.	7-1-90, IT, Interruptible.	ST90-4802-000, 8-22-90.
CP91-218-000 (10-22-90)	P.S.I., Inc. (Marketer)	100,000 100,000 36,500,000	Offshore Louisiana	Cameron Parish, Louisiana.	7-1-90, IT, Interruptible.	ST90-4799-000, 8-21-90.
CP91-219-000 (10-22-90)	Coast Energy Group, Inc. (Marketer).	250,000 250,000 91,250,000	Offshore Louisiana	Cameron Parish, Louisiana.	7-1-90, IT, Interruptible.	ST90-4938-000, 8-22-90.
CP91-220-000 (10-23-90)	Superior Natural Gas Corporation (Marketer).	50,000 25,000 9,125,000	OTX, OLA, TX, LA, MS, AL.	GA, SC, TN	8-23-90, IT, Interruptible.	ST90-5331-000, 8-31-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Southern's quantities are in MMBtu.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25692 Filed 10-30-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC81-9-003]

Texas Gas Transmission Corp.; Tariff Sheet Filing

October 24, 1990.

Take notice that on October 1, 1990, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. TC81-9-003 the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet No. 93
First Revised Sheet No. 94
First Revised Sheet No. 95
Second Revised Sheet No. 96
First Revised Sheet No. 97

The tariff sheets proposed to be effective April 1, 1991 are filed pursuant to section 4 of the Natural Gas Act and would replace Texas Gas' existing curtailment plan currently in effect by Commission order issued April 19, 1983, in Docket No. TC81-9-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas asserts that the filing of these revised tariff sheets and the proposed revision to the existing curtailment plan was made in compliance with Article VIII of the Stipulation and Agreement (S&A) approved by the Commission's April 19, 1983 order in Docket TC81-9-000 and a June 1, 1990 notice expressing Texas Gas' intent to terminate the S&A and

reopen the curtailment plan effective April 1, 1991.

Texas Gas states that the revised tariff sheets set forth sections 10.2 through 10.7 of Texas Gas' tariff which, together with the Index of Quantity Entitlements and the end-use, priority of service data for each customer, would constitute Texas Gas' new curtailment plan. Texas Gas explains that the proposed changes would place essential agricultural end users into priority 2 category and provide for the periodic updating of Quantity Entitlements at least every three years. Texas Gas further states that it intends to supplement this filing, Docket No. TC81–9–003, prior to April 1, 1991, by filing a revised Index of Quantity Entitlements which would reflect current customer entitlements. Texas Gas indicated that a Data Verification Committee has already begun the process of reviewing and verifying updated customer entitlement nominations.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before November 14, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). 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 protests 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.

Lois D. Cashell,

Secretary.

[FR Doc. 90–25693 Filed 10–30–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Continuation of Solicitation for Special Research Grants and Research Opportunity Announcement for Research Contracts, No. 91–1

AGENCY: Department of Energy, Office of Energy Research.

ACTION: Annual notice of continuation of availability of research grants and contracts.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy hereby announces its continuing interest in receiving applications/proposals for Special Research Grants or Research Contracts supporting work in the following ER program offices: Basic Energy Sciences, Health and Environmental Research, Fusion Energy, Scientific Computing, Field Operations Management, Superconducting Super Collider, University and Science Education Programs, and High Energy and Nuclear Physics. Information about submission of applications/proposals, eligibility, limitations, evaluation and selection processes, and other policies and procedures are specified, for grants, in 10 CFR part 605 which was published in the **Federal Register** on March 19, 1990 (55 FR 10035) and, for contracts, in the Research Opportunity Announcement published on November 8, 1988 (53 FR 45234). The Catalog of Federal Domestic Assistance number is 81.049.

DATES: Applications and proposals may be submitted at any time in response to this Notice of Availability but in all cases must be received by DOE on or before October 31, 1991.

ADDRESSES: Applicants/proposers may obtain forms and additional information from Director, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, U.S. Department of Energy, Washington, DC 20585, (301) 353–5544. Completed applications or proposals must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitations for Special Research Grants and the Research Opportunity Announcement for research contracts were published in the **Federal Register**. Those solicitations specify the policies and procedures which govern the application/proposal, evaluation, and selection processes for research grants and contracts. It is anticipated that approximately 506 million dollars will be available for award in FY 1991. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applicants/proposals submitted in response to this notice.

Issued in Washington, DC on October 17, 1990.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90–25763 Filed 10–30–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Environmental Restoration and Waste Management

Environment Restoration: Alternate Business Strategy; Inquiry

AGENCY: Department of Energy, Office of Environmental Restoration and Waste Management.

ACTION: Notice of intent to develop an environmental restoration alternate business strategy.

SUMMARY: The objective of this notice is to notify interested firms and the public of the intent of the Department of Energy (DOE) to develop an alternate business strategy relating to Environmental Restoration at DOE facilities. This strategy calls for an Environmental Restoration Management Contractor (ERMC) to assist DOE in managing all the environmental restoration work at each Department of Energy (DOE) Operations Office. This is a function currently being performed by the DOE's Management and Operating (M&O) contractors.

DATES: A meeting is planned on November 15, 1990, to introduce and explain this business strategy with interested firms and the general public. The meeting title will be Alternate Business Strategy for DOE's Office of Environmental Restoration. The meeting will be held at the: Orlando Marriott, 8001 International Drive, Orlando, FL 32819, (407) 351–2420.

If you plan to attend, please notify Mr. Owen Robertson in writing by c.o.b. November 9, 1990 (facsimile: 301–353–3888).

The agenda for this meeting is as follows:

8:30–9:00 a.m.
- Introduction: Paul D. Grimm, Deputy Director, Office of Environmental Restoration and Waste Management
- Overview of Alternate Business Strategy, R.P. Whitfield, Associate Director, Office of Environmental Restoration

9:00–10:00 a.m.—Detailed Presentation of Alternate Business Strategy Owen Robertson, Office of Environmenatl Restoration

10:00–10:30 a.m.—Break

10:30–12:00 noon—Comments by Public

12:00–1:30 p.m.—Lunch

1:30–3:00 p.m.—Continuation of Comments by Public.

At this meeting, comments by the public should be limited to five minutes or less. An effort will be made to hear all who wish to make comments at this meeting, but because of time constraints, DOE reserves the right to limit the

number of persons participating. Those who wish to make oral comments should bring 5 hard copies of their comments to the meeting. Any additional written comments will be considered if received by November 30, 1990.

ADDRESS AND FURTHER INFORMATION CONTACT: Written comments and inquiries should be addresseed to: Owen C. Robertson, U.S. Department of Energy, Office of Environmental Restoration, EM–442, Rm B213, Washington, D.C. 20585, (301) 353–2393.

SUPPLEMENTAL INFORMATION:

Background

The objective of this strategy is to implement an alternate contracting approach that has a "management only" contractor to subcontract and assist DOE in managing the Environmental Restoration (ER) program at each of the DOE Operations Offices. The purpose of this change is to:

—Bring more contractors with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)/Resource Conservation and Recovery Act (RCRA) expertise into the DOE system;
—Reduce potential conflict of interest (or the appearance thereof);
—Improve management control of the ER Program;
—Reduce cleanup costs by reducing overhead layering, by reducing the number of people requiring security clearances, and by encouraging the issuance of fixed priced contracts;
—Enhance technology exchanges throughout the ER Program;
—Facilitate a more time restoration of DOE facilities.

Conceptually, each DOE Operations Office will have an Environmental Restoration Management Contractor (ERMC). An Integration Management (INC) contractor will be located at DOE Headquarters to coordinate the various activities of the ERMCs.

Environmental Restoration Management Contractor Guidelines

The ERMCs responsibilities would include subcontracting in accordance with DOE Operations Offices' site requirements, evaluating their own subcontractors' performance, reviewing their own subcontractors deliverables and assisting the DOE Operations Offices in their ER compliance activities. The ERMCs would also be responsible for reporting and coordination with the INC. The following guidelines apply to the ERMC:

—The ERMCs are not to interface directly with the regulators nor to make decisions with regard to the regulatory processes. However, they may perform certain activities related to this function.
—The ERMCs will be management contractors only.
—There will only be one ERMC per Operations Office.
—The ERMCs are not to perform budget development but may prepare factual program data as requested by the DOE Operations Offices.
—Although the ERMCs cannot perform any assessment or remediation work at their assigned Operations Office, they can be a cleanup subcontractor to another ERMC at a different Opearations Office or Offices.
—It would not be prohibited for an ERMC to be awarded a contract at another Operations Office as long as activities were limited to managing subcontractors and the contractor had sufficient and qualified personnel to staff two Operations Office contracts.
—DOE's facility management and operating (M&O) contractors may participate as ERMCs at other locations or become a subcontractor to another ERMC at a different Operations Office. The M&O contractors, however, are precluded from particpating as the ERMC for the Operations Office with responsibilities for the facilities the M&O contractor operates. The M&O contractors are also precluded from participating as an ERMC or as a subcontractor to an ERMC when any contractor interest or relationship would exist.

The expertise required by the ERMCs can be summarized as follows:

—The ERMCs must have a contracting system that is congizant of Federal contracting procedures.
—The ERMCs must have a project management system that includes engineering and construction management, project control, quality assurance and quality control.
—The ERMCs must have regulatory knowledge of the environmental laws and experience in the CERCLA/RCRA activities.

Integration Contractor Guildelines.

The INC will be an information management support services contractor and will require a different mix of technical and managerial skills as compared to the ERMCs. The INC will be responsible for analyses of technical and project management reports prepared by the ERMCs and preparing summary reports for EM–HQs. The INC will develop and maintain a computerized data system that allows the electronic access to the reports, compliance deadlines, budget data, etc., that is required by EM–HQs and the Operations Offices to manage the ER Program.

Another requirement of the computerized system is the online generation of activity data sheets and other documents.

The INC will develop a knowledge of the ERMCs activities in an effort to reduce duplication of effort between the various sites. The INC will also develop a knowleged of subcontractor activities and prepare factual perfomance information for use by the Operations Offices.

It is imperative that the INC be a disinterested party; therefore, the INC cannot be an ERMC or an assessment/remediation subcontractor to an ERMC.

Comments

All written comments received as well as a transcript of the workshop will be available for public inspection in the DOE Reading Room, Room IE–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Between the hours of 8 a.m and 4 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC on October 18, 1990.

Paul D. Grimm,

Acting Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 90–25870 Filed 10–30–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 90–55–NG]

Western Gas Marketing U.S.A. Ltd.; Blanket Authorization To Import Natural Gas From and Export Natural Gas To Canada

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to import natural gas from and export natural gas to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting Western Gas Marketing U.S.A. Ltd (Western) blanket authorization to import up to 300 Bcf of Canadian natural gas and to export up to 100 Bcf of natural gas over a two-year period beginning on the date of first delivery after the expiration of Western's existing blanket export authorization.

Western's existing blanket export authorization expires October 31, 1990.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, October 24, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–25762 Filed 10–30–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30308; FRL 3797–8]

Azinphos-Methyl; Deletion of Certain Uses and Directions for Use for Agricultural Crops

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete certain uses and directions for use.

SUMMARY: This notice announces that Mobay Chemical Corporation, one of the four producers of the technical active ingredient azinphos-methyl in the United States has requested to amend its registrations of Guthion Technical (EPA reg. no. 3125–108), Guthion 25% Wettable Powder Insecticide for Repackaging of an Insecticide (EPA reg. no. 3125–153), Guthion 22 Concentrate (EPA reg. no. 3125–223), Guthion Garden Spray Insecticide for Repackaging of an Insecticide Only (EPA reg. no. 3125–225), Guthion 50% Wettable Powder (EPA reg. no. 3125–193), Guthion 50% Wettable Powder in Water Soluble Packets (EPA reg. no. 3125–301), Guthion 35% Wettable Powder (EPA reg. no. 3125–378), Guthion 35% Wettable Powder in Water Soluble Packets (EPA reg. no. 3125–179), Guthion 2L (EPA reg. no. 3125–102), and Guthion 2S (EPA reg. no. 3125–123) by deleting all uses and directions for use on the following 22 agricultural crops: apricots, barley, beans, blackberries, boysenberries, broccoli, brussels sprouts, cabbage, cauliflower, celery, clover, grass mixture, loganberries, oats, pasture grasses, peas, raspberries, rye, soybeans, spinach, tobacco, and wheat. EPA is at this time soliciting comments on the proposed amendments.

DATES: Written comments must be submitted on or before November 30, 1990. Q02

ADDRESSES: Send three copies of your written comments identified by the docket control number OPP-30308, to: Public Docket and Freedom of Information Branch, Field Operations Division (H7504C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 246, CM# 2, 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: By mail: Richard W. King, Special Review and Reregistration Division (H7508C), Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: Reregistration Branch, Crystal Station 1, WF32F6, 2805 Jefferson Davis Highway, Arlington, Virginia, 703-308-8052.

SUPPLEMENTARY INFORMATION: Azinphos-methyl is the commonly accepted name for *O,O*-dimethyl-*S*-[(4-oxo-1,2,3-benzotriazin-3 (4H)-yl)methyl]phosphordithioate. It is a broad spectrum organophosphate insecticide that was initially registered as a pesticide under FIFRA in 1957 by Mobay Chemical Corporation. Azinphos-methyl is primarily used in the formulation of insecticide products for use on terrestrial food crops and terrestrial non-food crops. Azinphos-methyl is marketed by Mobay Chemical Corporation under the trade name Guthion. Mobay, one of the four registrants of technical grade azinphos-methyl, has requested to amend their registrations for Guthion products by deleting all uses and directions for use on the 22 crops listed in this notice. EPA intends to approve this request. Since there will no longer be Guthion manufacturing use products available from which to formulate registered end-use azinphos-methyl products on the 22 crops, the other three registrants, Aceto Chemical Company, Makhteshim-Agan (America) Inc., and Gowan Company, are being notified by certified mail that they are being given the opportunity to generate data in support of the reregistration of azinphos-methyl for the 22 crops listed in this notice. End-use registrants of azinphos-methyl are being notified by certified mail that their generic data exemption is not valid for these uses. In the event that Aceto Chemical Company, Makhteshim-Agan (America) Inc., or Gowan Company, do not generate the data necessary to reregister the use of azinphos-methyl for the 22 crops listed in this notice, end-use registrants will be given opportunity to generate data in support of these uses. EPA is now soliciting comments on the proposed amendments. Interested persons are invited to submit written comments to the address given above.

Authority: 7 U.S.C. 136.

Dated: October 12, 1990.

Edwin F. Tinsworth,

Director, Special Review and Reregistration Division.

[FR Doc. 90–25640 Filed 10–30–90; 8:45 am]

BILLING CODE 6560–50–F

[FRL–3856–8]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Accra Pac, Inc. et al.

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a de minimis settlement under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g). This proposed settlement is intended to resolve the liabilities under CERCLA of five de minimis parties for response costs incurred and to be incurred at the I. Jones Recycling, Clinton Street facility in Fort Wayne, Indiana.

DATES: Comments must be provided on or before November 30, 1990.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, and should refer to: In Re I. Jones Recycling Site in Fort Wayne, Indiana, U.S. EPA Docket No. V–W–89C–018.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, 5CS–TUB–7, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 886–0562

Notice of De Minimis Settlement: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notice is hereby given of a proposed administrative settlement concerning the I. Jones Recycling hazardous waste site at 3651 Clinton Street in Fort Wayne, Indiana. The present agreement was proposed by EPA Region V on January 2, 1990. Subject to review by the

public pursuant to this Notice, the agreement has been approved by the United States Department of Justice and the Department of the Interior. The proposed order was issued to the following parties, who have executed binding certifications of their consent to participate in the settlement: Accra Pac, Inc.; Arco Industries Corporation; Dolco Packaging Corporation; Kem Krest Co., Inc.; and The Par-Tee Company.

The terms of this settlement are identical in all but one respect to the terms of the *de minimis* settlement for the same site in U.S. EPA Docket No. V–W–89C–009. That initial settlement was finalized on October 25, 1989. All of the parties to the present settlement were eligible for the initial settlement, and expressed a timely interest in participating in the terms of that settlement. In addition, all of the parties to the present settlement demonstrated to U.S. EPA that they were financially unable to pay their obligations under the initial settlement in a lump sum as required therein. Accordingly, the present settlement permits these five parties to pay their obligations, plus statutory interest, in specified installments. The present settlement therefore represents a supplemental to the initial settlement.

These parties have begun paying their obligations under the settlement, subject to the contingency that EPA may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice. These parties will pay a total of $215,814.88, plus interest. Of the principal amount, $167,765.31 would reimburse EPA for a portion of its past response costs at the I. Jones Recycling site. The remainder of the settlement payments would represent settlement of the potential liability of certain settling parties for penalties related to EPA's July 27, 1988, unilateral order concerning the site.

EPA is entering into this agreement under the authority of section 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with certain parties in the I. Jones case, each of whom are responsible for less than .3 percent of the volume of hazardous substances at the site. The proposed settlement reflects, and was agreed to based on, conditions as known to the parties as of the time of U.S. EPA's settlement offer. Settling Parties will be required to pay their volumetric share of the Government's past response costs and the then-estimated future response costs at the site. Settling parties will also be required to pay a settlement premium on the then-expected future response costs to compensate for the risks that are posed by settling before all costs are known. Settling parties had the option to choose between two different premiums. Settling parties Accra Pac, Kem Krest and Par-Tee have chosen to pay a premium of approximately 1.5 times the share of expected future response costs in exchange for a release from further civil or administrative liabilities for the site, including Federal natural resource damage liabilities, which would be reopened if total site response costs exceeded $10.5 million. Settling parties Arco and Dolco have chosen to pay a premium of approximately 2.5 times the share of expected future response costs in exchange for a complete release from further civil or administrative liabilities for the site, including Federal natural resource damage liabilities. In addition, because the settling parties did not fully comply with the EPA's July 27, 1988, unilateral cleanup order for the I. Jones Recycling Clinton Street site, they will be required to pay an additional amount, equal to their volumetric share of expected future response costs, in settlement of their potential liability for noncompliance penalties related to that order.

The Environmental Protection Agency will receive written comments relating to this agreement for 30 days from the date of publication of this notice.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region V Office of Regional Counsel, 230 South Dearborn Street, Chicago, Illinois, 60604. Additional background information relating to the settlement is available for review at the EPA's Region V Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Todd A. Cayer,

Acting Regional Administrator.

[FR Doc. 90–25732 Filed 10–30–90; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51754; FRL 3839–1]

Toxic and Hazardous Substances; 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 the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 131 such PMNs and provides a summary of each.

DATES: Close of Review Periods:

P 90–1801, 90–1802, 90–1803, 90–1804, November 12, 1990.

P 90–1805, 90–1806, November 13, 1990.

P 90–1807, 90–1808, 90–1809, 90–1810, 90–1811, 90–1812, 90–1813, 90–1814, 90–1815, 90–1816, November 14, 1990.

P 90–1817, 90–1818, 90–1819, 90–1820, 90–1821, 90–1822, 90–1823, 90–1824, 90–1825, 90–1826, 90–1827, 90–1828, 90–1829, 90–1830, 90–1831, November 17, 1990.

P 90–1832, 90–1834, 90–1835, 90–1836, 90–1837, 90–1838, 90–1839, 90–1840, November 18, 1990.

P 90–1841, November 20, 1990.

P 90–1842, 90–1843, 90–1844, 90–1845, 90–1846, November 18, 1990.

P 90–1847, 90–1848, 90–1849, November 19, 1990.

P 90–1853, 90–1854, 90–1855, 90–1856, November 20, 1990.

P 90–1858, October 29, 1990.

P 90–1859, 90–1860, 90–1861, November 20, 1990.

P 90–1862, 90–1863, 90–1864, November 21, 1990.

P 90–1865, 90–1866, 90–1867, 90–1868, 90–1869, 90–1870, 90–1871, 90–1872, 90–1873, 90–1874, 90–1875, 90–1876, 90–1877, November 25, 1990.

P 90–1878, 90–1879, 90–1880, 90–1881, 90–1882, 90–1883, 90–1884, 90–1885, 90–1886, 90–1887, 90–1888, 90–1889, 90–1890, 90–1891, 90–1892, 90–1893, 90–1894, 90–1895, 90–1896, 90–1897, 90–1898, 90–1899, November 26, 1990.

P 90–1900, 90–1901, November 27, 1990.

P 90–1902, 90–1903, November 28, 1990.

P 90–1904, 90–1905, 90–1906, 90–1907, 90–1908, December 2, 1990.

P 90–1909, November 28, 1990.

P 90–1910, 90–1911, 90–1912, 90–1913, December 3, 1990.

P 90–1914, December 1, 1990.

P 90–1915, December 2, 1990.

P 90–1916, 90–1917, December 3, 1990.

P 90–1918, November 21, 1990.

P 90–1919, 90–1920, 90–1921, 90–1922, 90–1923, December 5, 1990.

P 90–1925, 90–1926, 90–1927, 90–1928, 90–1929, 90–1930, 90–1931, 90–1932, 90–1933, 90–1934, 90–1935, 90–1936, 90–1937, December 9, 1990.

Written comments by:

P 90–1801, 90–1802, 90–1803, 90–1804, October 13, 1990.

P 90–1805, 90–1806, October 14, 1990.

P 90–1807, 90–1808, 90–1809, 90–1810, 90–1811, 90–1812, 90–1813, 90–1814, 90–1815, 90–1816, October 15, 1990.

P 90–1817, 90–1818, 90–1819, 90–1820, 90–1821, 90–1822, 90–1823, 90–1824, 90–1825, 90–1826, 90–1827, 90–1828, 90–1829, 90–1830, 90–1831, October 18, 1990.

P 90–1832, 90–1834, 90–1835, 90–1836, 90–1837, 90–1838, 90–1839, 90–1840, October 19, 1990.

P 90–1841, October 21, 1990.

P 90–1842, 90–1843, 90–1844, 90–1845, 90–1846, October 19, 1990.

P 90–1847, 90–1848, 90–1849, October 20, 1990.

P 90–1853, 90–1854, 90–1855, 90–1856, October 21, 1990.

P 90–1858, September 29, 1990.

P 90–1859, 90–1860, 90–1861, October 21, 1990.

P 90–1862, 90–1863, 90–1864, October 22, 1990.

P 90–1865, 90–1866, 90–1867, 90–1868, 90–1869, 90–1870, 90–1871, 90–1872, 90–1873, 90–1874, 90–1875, 90–1876, 90–1877, October 26, 1990.

P 90–1878, 90–1879, 90–1880, 90–1881, 90–1882, 90–1883, 90–1884, 90–1885, 90–1886, 90–1887, 90–1888, 90–1889, 90–1890, 90–1891, 90–1892, 90–1893, 90–1894, 90–1895, 90–1896, 90–1897, 90–1898, 90–1899, October 27, 1990.

P 90–1900, 90–1901, October 28, 1990.

P 90–1902, 90–1903, October 29, 1990.

P 90–1904, 90–1905, 90–1906, 90–1907, 90–1908, November 2, 1990.

P 90–1909, October 29, 1990.

P 90–1910, 90–1911, 90–1912, 90–1913, November 3, 1990.

P 90–1914, November 1, 1990.

P 90–1915, November 2, 1990.

P 90–1916, 90–1917, November 3, 1990.

P 90–1918, October 22, 1990.

P 90–1919, 90–1920, 90–1921, 90–1922, 90–1923, November 5, 1990.

P 90–1925, 90–1926, 90–1927, 90–1928, 90–1929, 90–1930, 90–1931, 90–1932, 90–1933, 90–1934, 90–1935, 90–1936, 90–1937, November 9, 1990.

ADDRESS: Written comments, identified by the document control number "(OPTS–51755)" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L–100, Washington, DC, 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street, SW., Washington, DC 20460 (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 90–1801

Manufacturer. Confidential.

Chemical. (G) Hydroxy acid functional acrylic polymer.

Use/Production. (S) Polymer polyol for polyurethane foam. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Inhalation toxicity: LC50 > 191 mg/l.Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 90–1802

Importer. Confidential.

Chemical. (G) Copolymer of acrylate esters modified with heterocyclic ring N-groups.

Use/Import. (S) Coating additive used in paint formulation. Import range: Confidential.

P 90–1803

Importer. Confidential.

Chemical. (G) Copolymer of acrylate esters modified with heterocyclic ring N-groups.

Use/Import. (S) Coating additive used in paint formulation. Import range: Confidential.

P 90–1804

Importer. Confidential.

Chemical. (G) Metalic borate alkanoate.

Use/Import. (G) Additive to improve interfacial adhesion. Import range: Confidential.

P 90–1805

Importer. Nachem, Inc.

Chemical. (G) Photopolymer based on dimethylmalein-imide-system.

Use/Import. (S) Copolymer for coating of metal plate. Import range: Confidential.

P 90–1806

Importer. Basf Corporation.

Chemical. (G) Diamino-isoindoline derivative.

Use/Import. (G) Colorant. Import range: Confidential.

Toxicity Data. Inhalation toxicity: LC50 > 5.8 mg/l species (Rat). Static acute toxicity: time LC50 > 1,000 mg/l species (Orange-Red Killifish). Eye irritation: none species (Rabbit).Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 90–1807

Manufacturer. Confidential.

Chemical. (G) Acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 5 g/kg species (Rabbit). Eye irritation: strong species (Rabbit). Skin irritation: moderate species (Rabbit).

P 90–1808

Manufacturer. Pfister Chemical, Inc.

Chemical. (S) 2,5-diethoxy-4-(4-morpholinyl)benzenamine (H2SO4)x.

Use/Production. (S) Intermediate for manufacture of diazonium salts. Prod. range: Confidential.

P 90–1809

Manufacturer. Pfister Chemical, Inc.

Chemical. (S) 2,5-dibutoxy-4-(4-morpholinyl)benzenamine H2SO4)X.

Use/Production. (S) Intermediate for manufacture of diazonium salts. Prod. range: Confidential.

P 90–1810

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coating. Prod. range: Confidential.

P 90–1811

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 90–1812

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 90–1813

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 90-1814

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 90-1815

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 90-1816

Manufacturer. Confidential.

Chemical. (G) Hydroxy functional acrylic polymer.

Use/Production. (S) Spray applied coatings. Prod. range: Confidential.

P 90-1817

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester polyurethane.

Use/Production. (G) Polish binder. Prod. range: Confidential.

P 90-1818

Importer. Confidential.

Chemical. (G) Polyether polyol (aliphatic polyhydric alchol and alkylene oxide) with methyl end cap.

Use/Import. (G) Polyglycol lubricant. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 2,000 kg/yr species (Rat). Inhalation toxicity: LC50 > 3.55 mg/l species (Rat). Eye irritation: none species (Rabbit). Mutagenicity: negative.Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 90-1819

Manufacturer. Confidential.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 50 ml/kg species (Rat). Static acute toxicity: time EC50 100 mg/l species (Daphnia Magna). Skin irritation: negligible species (Rabbit).

P 90-1820

Manufacturer. Schering Berlin Polymers Inc.

Chemical. (G) Aliphatic ketimine.

Use/Production. (G) Destructive use. Prod. range: Confidential.

P 90-1821

Manufacturer. Schering Berlin Polymers, Inc.

Chemical. (G) Epoxy curing agent.

Use/Production. (G) Epoxy curing agent. Prod. range: Confidential.

P 90-1822

Manufacturer. Ciba-Geigy Corporation.

Chemical. (S) Acetic acid, hydroxyphosphono-, disodium salt.

Use/Production. (S) Corrosion inhibitor. Prod. range: Confidential.

P 90-1823

Importer. Confidential.

Chemical. (S) 2,4-toluene diisocyanate; hydroxy ethyl acrylate; furane, tetrahydro 3-methyl polymer with tetrahydro furane.

Use/Import. (S) Radiation cure coating for industrial use. Import range: 1,000–10,000 kg/yr.

P 90-1824

Importer. Confidential.

Chemical. (S) 2,4-toluene diisocyanate; hydroxy ethyl acrylate; furan, tetrahydro 3-methyl polymer with tetrahydro furane.

Use/Import. (S) Radiation cure coating for industrial use. Import range: 1,000–10,000 kg/yr.

P 90-1825

Importer. Confidential.

Chemical. (S) 2,4-toluene duiisocyanate; hydroxy ethyl acrylate; furane, tetrahydro 3-methyl polymer with tetrahydro furane.

Use/Import. (S) Radiation cure coating for industrial use. Import range: 1,000–10,000 kg/yr.

P 90-1826

Importer. Confidential.

Chemical. (S) 2,4-toluene duiisocyanate; hydroxy ethyl acrylate; furane, tetrahydro 3-methyl polymer with tetrahydro furane.

Use/Import. (S) Radiation cure coating for industrial use. Import range: 1,000–10,000 kg/yr.

P 90-1827

Importer. Confidential.

Chemical. (S) 2,4-toluene duiisocyanate; hydroxy ethyl acrylate; furane, tetrahydro 3-methyl polymer with tetrahydro furane.

Use/Import. (S) Radiation cure coating for industrial use. Import range: Confidential.

P 90-1828

Importer. Confidential.

Chemical. (S) 2,4-toluene duiisocyanate; hydroxy ethyl acrylate; furane, tetrahydro 3-methyl polymer with tetrahydro furane.

Use/Import. (S) Radiation cure caoting for industrial use. Import range: 1,000–10,000 kg/yr.

P 90-1829

Manufacturer. Confidential.

Chemical. (G) Styrene acrylic latex.

Use/Production. (G) Latex for coatings. Prod. range: Confidential.

P 90-1830

Manufacturer. Champion Technologies, Inc.

Chemical. (G) Alkyl carbamodithioic acid compound.

Use/Production. (S) Nonpotable water coagulant and floculant. Prod. range: 49,000–80,000 kg/yr.

Toxicity Data. Skin sensitization: negative species (guinea pig).

P 90-1831

Manufacturer. Pacific Anchor Chemical Corp.

Chemical. (G) Polymer of aryl alkyl epoxy compund with dibasic fatty acid, monobasic fatty acid, triethylenetetramine, phenol and an aldehyde.

Use/Production. (S) Curing for epoxy resin surface coating systems. Prod. range: Confidential.

P 90-1832

Importer. Confidential.

Chemical. (G) Epoxy resin.

Use/Import. (G) Epoxy resin. Import range: Confidential.

P 90-1834

Importer. Shell Oil Company.

Chemical. (G) Maleimide resin.

Use/Import. (S) Electrical laminated. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit).Skin irritation: negligible species (Rabbit). Skin sensitization: negative species (Guinea Pig).

P 90-1835

Manufacturer. Confidential.

Chemical. (G) Alkyl naphthalene.

Use/Production. (G) Industrial lubricant. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1836

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Cyclopentanone, 2-(2-hexenyl)-.

Use/Production. (S) Fragrace, soap, and detergent component. Prod. range: Confidential.

P 90-1837

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) Cyclopentanol, 2-(2-hexenyl)-.

Use/Production. (S) Fragrace, soap, and detergent component. Prod. range: Confidential.

P 90-1838

Manufacturer. Bedoukian Research. Inc.

Chemical. (S) Cyclopentanol, 2-(2-hexenyl)-, acetate.

Use/Production. (S) Fragrance, soap, and detergent component. Prod. range: Confidential.

P 90-1839

Manufacturer. Keil Chemical Div. Ferro Corporation.

Chemical. (G) Dialkyldithiophosporic acid, aliphate aminesalt.

Use/Production. (S) Oil additive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 g/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 g/kg species (Rabbit).

P 90-1840

Manufacturer. E.I. DuPont & De Nemours & Co., Inc.

Chemical. (G) Aromatic aminoether.

Use/Production. (G) Isolated intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: ALD 690 mg/kg species (Rat). Static Acute toxicity: LC50 14 mg/l 96H species (Fathead Minnow). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1841

Manufacturer. The Dow Chemical Company.

Chemical. (G) Halogenated biphenols.

Use/Production. (G) Electrical/electronic applications. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1842

Manufacturer. The Dow Chemical Company.

Chemical. (G) Halogenated bisphenols.

Use/Production. (G) Electrical/electronic applications. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1843

Manufacturer. The Dow Chemical Company.

Chemical. (G) Halogenated biphenols.

Use/Production. (G) Electrical/electronic applications. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1844

Manufacturer. The Dow Chemical Company.

Chemical. (G) Halogenated biphenyl glycidyl ether.

Use/Production. (G) Electrical/electronic applications. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1845

Manufacturer. The Dow Chemical Company.

Chemical. (G) Halogenated bophenyl glycidyl ether.

Use/Production. (G) Electrical/electronic applications. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1846

Importer. The Dow Chemical Company.

Chemical. (G) Halogenated biphenyl glycidyl ether.

Use/Import. (G) Electrical/electronic applications. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 1,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1847

Manufacturer. Basf Corporation.

Chemical. (G) Polyoxyalkylate of methanol.

Use/Production. (G) Rinse aid. Prod. range: Confidential.

P 90-1848

Manufacturer. PCR, Inc.

Chemical. (G) Acryltrialkoxysilane.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

P 90-1849

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymers.

Use/Production. (G) Dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit).

P 90-1853

Importer. Confidential.

Chemical. (G) Substituted aromatic hetercycle.

Use/Import. (S) Chemical intermediate. Import range: Confidemtial.

Toxicity Data. Eye irritation: moderate species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1854

Manufacturer. Confidential.

Chemical. (G) Substituted aromatic heterocycle.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1855

Manufacturer. Confidential.

Chemical. (G) Aromatic ether.

Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1856

Manufacturer. Confidential.

Chemical. (G) Substituted carboxylic acid.

Use/Production. (G) Intermediate (destructive). Prod. range: Confidential.

P 90-1858

Manufacturer. The Gryphin Co.,Inc.

Chemical. (S) Liquid modified phenolic resin.

Use/Production. (G) Paint additive. Prod. range: Confidential.

P 90-1859

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester polyacid.

Use/Production. (G) Additive in an openly-used coating. Prod. range: Confidential.

P 90-1860

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester polyacid.

Use/Production. (G) Additive in an openly-used coating. Prod. range: Confidential.

P 90-1861

Manufacturer. Confidential.

Chemical. (G) Aliphatic polyester polyacid.

Use/Production. (G) Additive in an openly-used coating. Prod. range: Confidential.

P 90-1862

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane acrylate.

Use/Production. (S) Radiation cure coating. Prod. range: Confidential.

P 90-1863

Manufacturer. Confidential.

Chemical. (G) Fumarated, phenolic rosin ester.

Use/Production. (G) Ink vehicle. Prod. range: Confidential.

P 90-1864

Manufacturer. Angus Chemical Company.

Chemical. (S) 7*a*-Ethyldihydro-3,5-bis(1-methylethyl)-1*H*,3*H*,5*H*-oxazolo (3,4-*c*)oxazole.

Use/Production. (S) Urethane adhesive. Prod. range: 32,000–45,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 > 5 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1865

Importer. Schering Berlin Polymers, Inc.

Chemical. (G) Metal alkyl chloride.

Use/Import. (G) Catalyst. Import range: Confidential.

P 90-1866

Importer. Schering Berlin Polymers, Inc.

Chemical. (G) Metal alkyl chloride.

Use/Import. (G) Catalyst. Import range: Confidential.

P 90-1867

Manufacturer. Dow Chemical U.S.A.

Chemical. (G) Complex phenyl aliphatic ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 11,000 mg/kg species (Rat). Static acute toxicity: time LC50 96H1,000 mg/l species (Fathead Minnow). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1868

Manufacturer. Dow Chemical U.S.A.

Chemical. (G) Complex phenyl aliphatic ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 11,000 mg/kg species (Rat). Static acute toxicity: time LC50 96H11,000 mg/l species (fathead minnow). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1869

Manufacturer. Dow Chemical U.S.A.

Chemical. (G) Complex phenyl aliphatic ester.

Use/Production. (G) Chemical intermrdiate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 11,000 mg/kg. Static acute toxicity: time LC50 96H1,000 mg/l species (Fathead Minnow). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit).

P 90-1870

Manufacturer. Dow Chemical U.S.A.

Chemical. (G) Complex phenyl aliphatic ester.

Use/Production. (G) Chemical intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 11,000 mg/kg species (Rat). Static acute toxicity: time LC50 1,000 mg/l species (Fathead Minnow). Eye irritation: none species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1871

Importer. Rhom Tech Inc.

Chemical. (G) Higher alkyl methacrylates copolymer.

Use/Import. (G) Mineral oil additive. Import range: Confidential.

P 90-1872

Importer. Hoechst Celanese Corp.

Chemical. (S) Montan wax fatty acids, componds with diethanolamine.

Use/Import. (S) Component of coatings for thermocarbon ribbons. Import range: 5,000–10,000 kg/yr.

P 90-1873

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) 4-Hepten-1-ol, (2)-.

Use/Production. (G) Fragrance, soap, and detergent component. Prod. range: Confidential.

P 90-1874

Manufacturer. Bedoukian Research, Inc.

Chemical. (S) 1-Penten-3-ol, 1-(2,6,-trimethyl-1-cyclohexen-1-yl)-.

Use/Production. (G) Fragrance, soap, and detergent component. Prod. range: Confidential.

P 90-1875

Manufacturer. Confidential.

Chemical. (G) Polyester resin.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 90-1876

Manufacturer. Confidential.

Chemical. (G) Polyacrylate.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 90-1877

Importer. Confidential.

Chemical. (G) Tridecadinenitrile.

Use/Import. (G) Additives for consumer products. Import range: Confidential.

Toxicity Data. Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 90-1878

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1879

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1880

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1881

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1882

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1883

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1884

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1885

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1886

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1887

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1888

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1889

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (S) Polyurethane. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 6.450 species (Rat). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit).

P 90-1890

Importer. Unichema Chemicals, Inc.

Chemical. (G) Modified acrylic resin.

Use/Import. (S) Skin care emollient; coemulsifier in cosmetics. Import range: Confidential.

P 90-1891

Manufacturer. Rheox, Inc.

Chemical. (G) Modified acrylic resin.

Use/Production. (G) Paint and adhesive additive. Prod. range: Confidential.

P 90-1892

Manufacturer. Organic Dyestuffs Corporation.

Chemical. (G) Reactive red 141.

Use/Production. (G) Physical mixtures with other shading colors. Prod. range: Confidential.

P 90-1893

Manufacturer. Confidential.

Chemical. (S) Alkyl naphthalene disulfonic acid, sodium salt.

Use/Production. (G) Chlorine competible wetting agent. Prod. range: 140,000–420,000 kg/yr.

P 90-1894

Manufacturer. Sika Corporation.

Chemical. (G) Reaction product of aromatic isocyanate and polyols.

Use/Production. (S) Adhesive for laminating compounds of transportation vehicles. Prod. range: Confidential.

P 90-1895

Manufacturer. Confidential.

Chemical. (G) Modified acrylic copolymer.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 90-1896

Manufacturer. Hoechst Celanese Corporation.

Chemical. (G) 4-Butoxyacetophenone.

Use/Production. (G) Plastic additive. Prod. range: Confidential.

P 90-1897

Manufacturer. Allied-Signal, Inc.

Chemical. (G) Modified ethylene-based polymer.

Use/Production. (G) Plastics additive. Prod. range: Confidential.

P 90-1898

Importer. Confidential.

Chemical. (G) Acrylate polymer.

Use/Import. (S) Polyurethane finish. Import range: Confidential.

P 90-1899

Manufacturer. Confidential.

Chemical. (G) Modified acrylic resin.

Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 90-1900

Importer. Marubeni America Corporation.

Chemical. (G) Methyl methacrylate-glycidyl metharcylate copolymer.

Use/Import. (G) Compatibilizing agent for polymer blends. Prod. range: Confidential.

P 90-1901

Manufacturer. Confidential.

Chemical. (G) Polymer of an aromatic anhydride with a fatty acid oil, aromatic acid and alkane polyols.

Use/Production. (G) Open, nondispersive use coating. Prod. range: Confidential.

P 90-1902

Manufacturer. Confidential.

Chemical. (G) Aliphatic epoxy ester anhydride polymer.

Use/Production. (G) Convertible epoxy resin for preparation of specialty articles. Prod. range: Confidential.

P 90-1903

Manufacturer. Angus Chemical Company.

Chemical. (S) 4-ethyl-2-(1-methylethyl)-oxazolidine.

Use/Production. (S) Moisture scavenger for urethane coatings. Prod. range: 11,400–68,000 kg/yr.

Toxicity Data. Acute oral toxicity: LD50 1.6 g/kg species (Rat). Acute dermal toxicity: LD50 > 2 g/kg species (Rabbit). Eye irritation: moderate species (Rabbit). Mutagenicity: negative. Skin irritation: moderate species (Rabbit).

P 90-1904

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (G) Isolated intermediate. Prod. range: Confidential.

P 90-1905

Manufacturer. Confidential.

Chemical. (G) Unsaturated polyester/alkyl ether urethane.

Use/Production. (G) Ingredient in an openly used coating. Prod. range: Confidential.

P 90-1906

Manufacturer. Confidential.

Chemical. (G) Amide acid amine / base salt.

Use/Production. (G) Component of treatment with open nondispersive use. Prod. range: Confidential.

P 90-1907

Manufacturer. Confidential.

Chemical. (G) Amide acid amine / base salt.

Use/Production. (G) Component of treatment with open nondispersive use. Prod. range: Confidential.

P 90-1908

Manufacturer. Confidential.

Chemical. (G) Amide acid amine / base salt.

Use/Production. (G) Component of treatment with open nondispersive use. Prod. range: Confidential.

P 90-1909

Importer. Confidential.

Chemical. (G) Alkylnaphthalene sulfonic acid, polymer with formaldehyde, sodium salt.

Use/Import. (G) Dyebath auxiliaries for natural and synthetic fibers. Import range: Confidential.

P 90-1910

Manufacturer. Confidential.

Chemical. (S) Polymer of neopentyl glycol, 1,4-cyclohexanedimethanol, trimethylolethane, adipic acid, isophthalic acid, and terephthalic acid.

Use/Production. (S) Polymer for coil coating. Prod. range: Confidential.

P 90-1911

Manufacturer. American Cyanamid Company.

Chemical. (G) Modified polyacrylamide.

Use/Production. (G) Mineral floculent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Static acute toxicity: time LC50 48H1.5 mg/l species (Daphnia Magna). Skin irritation: moderate species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 90-1912

Manufacturer. American Cyanamid Company.

Chemical. (G) Modified polyacrylamide.

Use/Production. (G) Mineral floculent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Static acute toxicity: time LC50 48H1.5 mg/l species (Daphnia Magna). Skin irritation: moderate species (Rabbit). Mutagenicity: negative. Skin sensitization: positive species (Guinea Pig).

P 90-1913

Manufacturer. American Cyanamid Company.

Chemical. (G) Modified polyacrylamide.

Use/Production. (G) Mineral floculent. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 5,000 mg/kg species (Rat). Acute dermal toxicity: LD50 > 2,000 mg/kg species (Rabbit). Eye irritation: slight species (Rabbit). Static acute toxicity: time LC50 1.5 mg/l species (Daphnia Magna). Skin irritation: moderate species (Rabbit). Mutagenicity: negative. Skin sensitization: positive species (Guinea Pig).

P 90-1914

Manufacturer. Monsanto Company Inc.

Chemical. (G) Sulfonate aromatic acid with diamine.

Use/Production. (G) Nylon polymer additive. Prod. range: Confidential.

P 90-1915

Manufacturer. Confidential.

Chemical. (G) Magnesium salt.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 90-1916

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Modified polyvinylbutyral.

Use/Production. (G) Polymeric coating. Prod. range: Confidential.

P 90-1917

Manufacturer. Minnesota Mining & Manufacturing (3M).

Chemical. (G) Modified polyvinylbutyral.

Use/Production. (G) Polymeric coating. Prod. range: Confidential.

P 90-1918

Manufacturer. Confidential.

Chemical. (G) Polymer of cellulose and carboxylic acids,.

Use/Production. (G) Component in consumer and commercial products. Prod. range: Confidential.

Toxicity Data. Static acute toxicity: LC50 > 1,000 mg/l 96H species (Fathead Minnow). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative. Skin sensitization: negative species (Guinea Pig).

P 90-1919

Manufacturer. Confidential.

Chemical. (G) Silylated aliphatic alicyclic polyester.

Use/Production. (G) Dispersively applied coating. Prod. range: Confidential.

P 90-1920

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Ingredient in a coating with an open, nondispersive use. Prod. range: 28,500–114,000 kg/yr.

P 90-1921

Importer. Rhone-Poulenc Incorporated.

Chemical. (G) Modified bismaleimide resin.

Use/Import. (S) Matrix resin for production of circuit boards. Import range: 11,100–27,750 kg/yr.

P 90-1922

Importer. Rhone-Poulenc Incorporated.

Chemical. (G) Modified bismaleimide resin.

Use/Import. (S) Matrix resin for production of circuit boards. Import range: 11,100–27,750 kg/yr.

P 90-1923

Importer. Rhone-Poulenc Incorporated.

Chemical. (G) Modified bismaleimide resin.

Use/Import. (S) Matrix resin for production of circuit boards. Import range: 11,100–27,750 kg/yr.

P 90-1925

Importer. Confidential.

Chemical. (G) Hydroxy terminated polyacrylate.

Use/Import. (G) Automotive repair finishes. Import range: Confidential.

P 90-1926

Importer. Reichhold Chemicals, Inc.

Chemical. (G) Polyester modified styrene-acrylic copolymer.

Use/Import. (G) Industrial coatings. Import range: Confidential.

P 90-1927

Importer. Reichhold Chemicals, Inc.

Chemical. (G) Fluoroolefin copolymer.

Use/Import. (G) Resin for exterior coatings. Import range: Confidential.

P 90-1928

Manufacturer. Westvaco Corporation.

Chemical. (G) Shellac, acrylic copolymer, ammonium salt.

Use/Production. (G) Resin for water based ink. Prod. range: Confidential.

P 90-1929

Manufacturer. Dow Chemical Company.

Chemical. (G) Modified ethylene-octene polymer.

Use/Production. (G) Adhesive. Prod. range: Confidential.

P 90-1930

Manufacturer. Confidential.

Chemical. (G) Polyether polyurethane pre-polymer.

Use/Production. (G) Coatings, polymer intermediate. Prod. range: Confidential.

P 90-1931

Manufacturer. Confidential.

Chemical. (G) Acrylic polyether; polyurethane copolymer.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 90-1932

Manufacturer. Confidential.

Chemical. (G) Acrylic polyether; polyurethane copolymer.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 90-1933

Manufacturer. Confidential.

Chemical. (G) Acrylic polyether; polyurethane copolymer.

Use/Production. (G) Coatings. Prod. range: Confidential.

P 90-1934

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Paint. Prod. range: Confidential.

P 90-1935

Manufacturer. Confidential.

Chemical. (G) Acrylated polyester.

Use/Production. (G) Acrylated polyester. Prod. range: Confidential.

P 90-1936

Manufacturer. Confidential.

Chemical. (G) Polyester.

Use/Production. (G) Paint. Prod. range: Confidential.

P 90-1937

Manufacturer. Confidential.

Chemical. (G) Caprolactam derivative.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Dated: October 24, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 10-25723, Filed 10-30-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Agency Information Collection Activities Under OMB Review

October 25, 1990.

The following information collection requirements have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, (44 U.S.C. 3507). For further information contact Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB No.: 3060-0090.

Title:

Part 1—Registration of Canadian Radio Station Licensee and Application for Permit to Operate;

Part 2—Certificate of Registration of Canadian Radio Station Licensee and Permit for Operation in the United States.

Form No.: FCC 410.

The approval on FCC 410 has been extended through 10/31/93. The February 1989 edition with the previous OMB expiration date of 9/30/90 is obsolete. The current edition is October 1990.

OMB No.: 3060-0113.

Title: Broadcast Equal Employment Opportunity Program Report.

Form No.: FCC 396.

The approval on FCC 396 has been extended through 9/30/93. The January 1988 edition with the previous OMB expiration date of 9/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form No.: FCC 396-A.

The approval on FCC 396-A has been extended through 9/30/93. The January 1988 edition with the previous OMB expiration date of 9/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0130.

Title: Private Fixed, Mobile, and Radiolocation Services Supplementary Information to FCC Form 574.

Form No.: FCC 574-B.

The approval on FCC 574-B has been extended through 9/30/93. The October 1982 edition with the previous OMB expiration date of 9/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0390.

Title: Broadcast Station Annual Employment Report.

Form No.: FCC 395-B.

A revised report form FCC 395-B has been approved for use through 9/30/93. The February 1990 edition with the previous OMB expiration date of 9/30/90 will remain in use until updated forms are available.

OMB No.: 3060-0444.

Title: 800 MHz Construction Letter.

Form No.: FCC 800-A.

A revised form letter, FCC 800-A, has been approved for use through 8/31/93. The April 1990 edition with the previous OMB expiration date of 6/30/93 is obsolete. The current edition is July 1990.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-25694 Filed 10-30-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; United States Atlantic and Gulf/Venezuela Freight Association

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-006190-055.

Title: United States Atlantic and Gulf/Venezuela Freight Association.

Parties: Companhia Anonima Venezolana De Navegacion, American Transport Lines, Inc., Venezuelan Container Service, King Ocean Service de Venezuela, S.A., Maritima Aragua, S.A. Consorcio Naviero de Occidente, C.A.

Synopsis: The proposed amendment would (1) change the name of the Agreement from United States Atlantic/Venezuela Steamship Conference to United States Atlantic and Gulf/Venezuela Freight Association, (2) add U.S. Gulf Coast ports to the geographic scope, (3) clarify the definition of alternate port service, (4) expand the number of ratemaking sections and (5) republish the Agreement.

Agreement No.: 202–011207–007.

Title: Turkey/United States Atlantic and Gulf Rate Agreement.

Parties: Farrell Lines, Inc., Levant Line, S.A., Lykes Bros. Steamship Co., Inc., Pharos Lines, S.A. Sea-Land Service, Inc.

Synopsis: The proposed modification would reduce the notice period required for any party to take independent action on any rate or service item from 10 days to 48 hours.

Dated: October 25, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–25685 Filed 10–30–90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

James M. Forrest; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 16, 1990.

A. **Federal Reserve Bank of Chicago** (David S. Epistein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *James M. Forrest,* Gilman, Illinois; to acquire 38.18 percent of the voting shares of Iroquois Bancorp, Inc., Gilman, Illinois, and First National Bank of Gilman, Gilman, Illinois.

Board of Governors of the Federal Reserve System, October 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25698 Filed 10–30–90; 8:45 am]

BILLING CODE 6210-01-M

Greenwood National Bancorporation; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Greenwood National Bancorporation,* Greenwood, South Carolina; to engage *de novo* in providing management consulting services to clients banks, pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1990.

Board of Governors of the Federal Reserve System, October 26, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25699 Filed 10–30–90; 8:45 am]

BILLING CODE 6210-01-M

Sterling Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The Companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 22, 1990.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President), 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sterling Bancorp,* Baltimore, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of Sterling Bank & Trust Co., Baltimore, Maryland.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Central Bancshares of the South, Inc.,* Birmingham, Alabama, and Compass Bancshares, Inc., Houston, Texas; to acquire 100 percent of the voting shares of River Oak Bancshares, Inc., Houston, Texas, and thereby indirectly acquire River Oaks Bank, Houston, Texas. Applicant also proposes to merge River Oaks Bancshares with and into Compass Bancshares.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Preston Bancshares, Inc.*, Preston, Iowa; to acquire 100 percent of the voting shares of Chadwick Bancshares, Inc., Chadwick, Illinois, and Farmers State Bank, Chadwick and Mount Carroll, Mount Carroll, Illinois.

2. *Southwestern Wisconsin Bancshares, Inc.*, Highland, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Highland State Bank, Highland, Wisconsin.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Chandler Bancshares, Inc.*, Chandler, Minnesota; to become a bank holding company by acquiring 84.76 percent of the voting shares of State Bank of Chandler, Chandler, Minnesota.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Bancwest Bancorp, Inc.*, Austin, Texas; to acquire 100 percent of the voting shares of The Bank of the West, Austin, Texas.

Board of Governors of the Federal Reserve System, October 25, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25700 Filed 10–30–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

1991 Cost-of-Living Increase and Other Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary has determined—

(1) A 5.4 percent cost-of-living increase in benefits under title II, effective for December 1990 (the Old-Age, Survivors, and Disability Insurance (OASDI) fund ratio, determined to be 74.7 percent for 1990, does not affect this cost-of-living increase);

(2) An increase in the Federal Supplemental Security Income (SSI) (title XVI) monthly benefit amounts for 1991 to $407 for an eligible individual, $610 for an eligible individual with an eligible spouse, and $204 for an essential person;

(3) The average of the total wages for 1989 to be $20,099.55;

(4) The amount of earnings a person must have to be credited with a quarter of coverage in 1991 to be $540;

(5) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 1991 to be $810 for beneficiaries age 65 through 69 and $590 for beneficiaries under age 65;

(6) The "bend points" used in the benefit formula for workers who become eligible for benefits in 1991 and in the formula for computing maximum family benefits;

(7) The deemed average wages total for 1989 to be $20,486.23;

(8) The Social Security contribution and benefit base to be $53,400 for remuneration paid in 1991 and self-employment income earned in taxable years beginning in 1991; and

(9) The "old-law" contribution and benefit base to be $39,600 for 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3013.

SUPPLEMENTARY INFORMATION: The Secretary is required by the Social Security Act (the Act) to publish within 45 days after the close of the third calendar quarter of 1990 the benefit increase percentage and the revised table of "special minimum" benefits (section 215(i)(2)(D)). Also, the Secretary is required to publish before November 1 the average of the total wages for 1989 (section 215(i)(2)(C)(ii)) and the OASDI fund ratio for 1990 (section 215(i)(2)(C)(ii)). Finally, the Secretary is required to publish on or before November 1 the contribution and benefit base for 1991 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 1991 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 1991 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 1991 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 1991 (section 203(a)(2)(C)).

OASDI Fund Ratio

General. Section 215(i) of the Act provides for automatic cost-of-living increases in OASDI benefit amounts. This section also includes a "stabilizer" provision that can limit the automatic OASDI benefit increase under certain circumstances. If the combined assets of the OASI and DI Trust Funds, as a percentage of annual expenditures, are below a specified threshold, the automatic benefit increase is equal to the lesser of (1) the increase in average wages or (2) the increase in prices. The threshold specified for the OASDI fund ratio is 20.0 percent for benefit increases for December of 1989 and later. The amendments also provide for subsequent "catch-up" benefit increases for beneficiaries whose previous benefit increases were affected by this provision. "Catch-up" benefit increases can occur only when trust fund assets exceed 32.0 percent of annual expenditures.

Computation. Section 215(i) specifies the computation and application of the OASDI fund ratio. The OASDI fund ratio for 1990 is the ratio of (1) the combined assets of the OASI and DI Trust Funds at the beginning of 1990, including advance tax transfers for January 1990, to (2) the estimated expenditures of the OASI and DI Trust Funds during 1990, excluding transfer payments between the OASI and DI Trust Funds, and reducing any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.

Ratio. The combined assets of the OASDI and DI Trust Funds at the beginning of 1990 (including advance tax transfers for January 1990) equaled $188,864 million, and the expenditures are estimated to be $252,906 million. Thus, the OASDI fund ratio for 1990 is 74.7 percent, which exceeds the applicable threshold of 20.0 percent. Therefore, the stabilizer provision does not affect the benefit increase for December 1990. Although the OASDI fund ratio exceeds the 32.0-percent threshold for potential "catch-up" benefit increases, no past benefit increase has been reduced under the stabilizer provision. Thus, no "catch-up" benefit increase is required.

Cost-of-Living Increases

General. The cost-of-living increase is 5.4 percent for benefits under titles II and XVI of the Act.

Under title II, old-age, survivors, and disability insurance benefits will

increase by 5.4 percent beginning with the December 1990 benefits, which are payable on January 3, 1991. This increase is unaffected by the stabilizer provision, as described above. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 5.4 percent effective for payments made for this month of Janaury 1991 but paid on December 31, 1990. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f). The percentage increase effective January 1991 is the same as the title II benefit increase and the annual payment amount is rounded, when not a multiple of $12, to the next lower multiple of $12. (The stabilizer provision does not affect SSI payment levels.)

Automatic Benefit Increase Computation. Under section 215(i) of the Act, the third calendar quarter of 1990 is a cost-of-living computation quarter for all the purposes of the Act. The Secretary is, therefore, required to increase benefits, effective with December 1990, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 1990, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 1989 through the third quarter of 1990. The December 1990 benefit increases is not affected by the stabilizer provision because the OASDI fund ratio for 1990 exceeds the 20.0 percent threshold fixed by statute.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 1989, was: for July 1989, 123.2; for August 1989, 123.2; and for September 1989, 123.6. The arithmetic mean for this calendar quarter is 123.3 (after rounding to the nearest 0.1). The corresponding Consumer Price Index for each month in the quarter ending September 30, 1990 was: For July 1990, 128.7; for August 1990, 129.9; and for September 1990, 131.1. The arithmetic mean for this calendar quarter is 129.9. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 1990, exceeds that for the calendar quarter ending September 30, 1989 by 5.4 percent, a cost-of-living benefit increase of 5.4 percent is effective for benefits under title II of the Act beginning December 1990.

Title II Benefit Amounts. In accordance with section 215(i) of the Act, in the case of insured workers and family members for whom eligibility for benefits (i.e., the worker's attainment of age 62, or disability or death before age 62) occurred before 1991, benefits will increase by 5.4 percent beginning with benefits for December 1990 which are payable on January 3, 1991. In the case of first eligibility after 1990, the 5.4 percent increase will not apply.

For eligibility after 1978, benefits are generally determined by a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, benefits are determined by means of a benefit table. In accordance with section 215(i)(4) of the Act, the primary insurance amounts and the maximum family benefits shown in this table are revised by (1) increasingly by 5.4 percent the corresponding amounts established by the last cost-of-living increase and the last extension of the benefit table made under section 215(i)(4) (to reflect the increase in the contribution and benefit base for 1990); and (2) by extending the table to reflect the higher monthly wage and related benefit amounts now possible under the increased contribution and benefit base for 1991, as described later in this notice. A copy of this table may be obtained by writing to: Social Security Administration, Office of Public Affairs, Office of Public Inquiries, 4100 Annex, Baltimore, MD 21235.

Section 215(i)(2)(D) of the Act also requires that, when the Secretary determines an automatic increase in Social Security benefits the Secretary shall publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). These benefits are referred to as "special minimum" benefits and are payable to certain individuals with long periods of relatively low earnings. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 5.4 percent benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS

Special minimum primary insurance amount payable for December 1989	Number of years required at minimum earnings level	Special minimum primary insurance amount payable for December 1990	Special minimum family benefit payable for December 1990
$21.90	11	$23.00	$34.70
43.60	12	45.90	69.20
65.60	13	69.10	104.00
87.40	14	92.10	138.30
109.30	15	115.20	172.80
131.20	16	138.20	207.80
153.10	17	161.30	242.30
175.00	18	184.40	276.80
196.90	19	207.50	311.40
218.60	20	230.40	345.90
240.80	21	253.80	380.80
262.50	22	276.60	415.20
284.60	23	299.90	450.30
306.40	24	322.90	484.80
328.20	25	345.90	519.00
350.30	26	369.20	554.20
372.20	27	392.20	588.70
393.20	28	415.10	623.10
415.70	29	438.10	657.90
437.60	30	461.20	692.20

Section 227 of the Act provides flat-rate benefits to a worker who became age 72 before 1969 and was not insured under the usual requirements, and to his or her spouse or surving spouse. Section 228 of the Act provides similar benefits at age 72 for certain uninsured persons. The current monthly benefit amount of $159.00 for an individual under sections 227 and 228 of the Act is increased by 5.4 percent to obtain the new amount of $167.50. The present montly benefit amount of $79.60 for a spouse under section 227 is increased by 5.4 percent to $83.80.

Title XVI Benefit Amounts. In accordance with section 1617 of the Act, Federal SSI benefit amounts for the aged, blind, and disabled are increased by 5.4 percent effective January 1991. Therefore, the yearly Federal SSI benefit amounts of $4,632 for an eligible individual, $6,948 for an eligible individual with an eligible spouse, and $2,316 for an essential person, which became effective January 1990, are increased, effective January 1991, to $4,884, $7,320, and $2,448, respectively, after rounding. The corresponding monthly amounts for 1991 are determined by dividing the yearly amounts by 12, giving $407, $610, and $204, respectively. The monthly amount is reduced by subtracting monthly countable income. In the case of an eligible individual with an eligible spouse, the amount payable is further divided equally between the two spouses.

Averages of the Total Wages for 1989

General. Under provisions of the Act, several amounts are scheduled to increase automatically for 1991. These include (i) the contribution and benefit base, (ii) the "old law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), (iii) the amount of earnings required for a worker to be credited with a quarter of coverage, (iv) the retirement test exempt amounts, and (v) the "bend points" in the PIA and maximum family benefit formulas. Normally, all of these amounts are based on the increase in the average of the total wages.

However, section 10208 of Pub. L. 101–239 (the Omnibus Budget Reconciliation Act of 1989) requires that the contribution and beneftis base and the "old law" contribution and benefit base be determined under a "transitional rule" using deemed average wage amounts. The deemed average wages and the resulting bases are determined later in this notice.

The determination of the average wage figure for 1989 is based on the 1988 average wage figure of $19,334.04 announced in the **Federal Register** on October 31, 1989 (54 FR 45801), along with the percentage increase in average wages from 1988 to 1989 measured by annual wage data tabulated by the Social Security Administration (SSA). The average amounts of wages calculated directly from this data were $18,274.38 and $18,997.93 for 1988 and 1989, respectively. To determine an average wage figure for 1989 at a level that is consistent with the series of average wages for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiplied the 1988 average wage figure of $19,334.04 by the percentage increase in average wages from 1988 to 1989 (based on SSA-tabulated wage data) as follows (with the result rounded to the nearest cent): Average wage for 1989 = $19.334.04 × $18,997.93 ÷ $18,274.38 = $20,099.55. Therefore, the average wage for 1989 is determined to be $20,099.55.

Quarter of Coverage Amount

General. The 1991 amount of earnigns required for a quarter of coverage is $540. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or an individual was credited with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, wages generally are no longer reported on a quarterly basis; instead, annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95–216) amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to maximum of 4 quarters of coverage for the year).

Computation. Under the prescribed formula, the quarter of coverage amount for 1991 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1989 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the **Federal Register** on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1989 has been determined to be $20,099.55 as stated above.

Quarter of Coverage Amount. The ratio of the average wage for 1989, $20,099.55, compared to that for 1976, $9,226.48, is 2.1784635. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 2.1784635 produces the amount of $544.62, which must then be rounded to $540. Accordingly, the quarter of coverage amount is determined to be $540 for 1991.

Retirement Earnings Test Exempt Amounts

(a) *Beneficiaries Aged 70 or Over.* Beginning with months after December 1982, there is no limit on the amount an individual aged 70 or over may earn and still receive Social Security benefits.

(b) *Beneficiaries Aged 65 through 69.* The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is stated int he Act of section 203(f)(8)(D) for years 1978 through 1982. A formula is provided in section 203(f)(8)(B) for computing the exempt amount applicable for years after 1982. The monthly exempt amount for 1990 was determined by this formula to the $780. Under the formula, the exempt amount for 1991 shall be the 1990 exempt amount multiplied by the ratio of (1) the average amount, per employee, of the total wages for calendar year 1989 to (2) the average amount of those wages for calendar year 1988. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for 1989, as determined above, is $10,099.55. Therefore, the ratio of the average wages for 1989, $20,099.55, compared to that for 1988, $19,334.04, is 1.0395939.

Exempt Amount for Beneficiaries Aged 65 through 69. Multiplying the 1990 retirement earnings test monthly exempt amount of $780 by the ratio of 1.0395939 produces the amount of $810.88. This must then be rounded to $810. The retirement earnings test monthly exempt amount for beneficiaries aged 65 through 69 is determined to be $810 for 1991. The corresponding retirement earnings test annual exempt amount for these beneficiaries is $9,720.

(c) *Beneficiaries Under Age 65.* Section 203 of the Act provides that beneficiaries under age 65 have a lower retirement earnings test monthly exempt amount than those beneficiaries aged 65 through 69. The exempt amount for beneficiaries under age 65 is determined by a formula provided in section 203(f)(8)(B) of the Act. Under the formula, the monthly exempt amount for beneficiaries under age 65 is $570 for 1990. The formula provides that the exempt amount for 1991 shall be the 1990 exempt amount for beneficiaries under age 65 multiplied by the ratio of (1) the average amount, per employee, of the toal wages for calendar year 1989 to (2) the average amount of those wages for calendar year 1988. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average Wages. The average wage for 1989, as determined above, is $20,099.55. Therefore, the ratio of the average wages for 1989, $20,099.55, compared to that of 1988, $19,334.04, is 1.0395939.

Exempt Amount for Beneficiaries Under Age 65. Multiplying the 1990 retirement earnings test monthly exempt amount of $570 by the ratio 1.03955939 produces the amount of $592.57. This must then be rounded to $590. The retirement earnings test monthly exempt amount for beneficiaries under age 65 is thus determined to be $590 for 1991. The corresponding retirement earnings test annual exempt amount tor these beneficiaries is $7,080.

Computing Benefits After 1978

General. The Social Security Amendments of 1977 provided a new

method for determining an individual's primary insurance amount. This method uses a formula based on "wage indexing" and was fully explained with interim regulations and final regulations published in the **Federal Register** on December 29, 1978, at 43 FR 60877 and July 15, 1982, at 47 FR 30731 respectively. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. The formula uses the worker's earnings after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's average indexed monthly earnings. The computation formula is adjusted automatically each year to reflect changes in general wage levels.

Average Indexed Monthly Earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during his or her working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1991, we divide the average of the total wages for 1989, $20,099.55, by the average of the total wages for each year prior to 1989 in which the worker had earnings. We then multiply the actual wages and self-employment income as defined in section 211(b) of the Act credited for each year by the corresponding ratio to obtain the worker's adjusted earnings for each year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollar amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1991.

Computing the Primary Insurance Amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The dollar amounts in the formula which govern the portions of the average indexed monthly earnings are frequently referred to as the "bend points" of the formula. Thus, the bend points for 1979 were $180 and $1,085.

The bend points for 1991 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1989, $20,099.55, and for 1977, $9,779.44. These results are then rounded to the nearest dollar. For 1991, the ratio is 2.0552864. Multiplying the 1979 amounts of $180 and $1,085 by 2.0552864 produces the amounts of $369.95 and $2,229.99. These must then be rounded to $370 and $2,230. Accordingly, the portions of the average indexed monthly earnings to be used in 1991 are determined to be the first $370, the amount between $370 and $2,230, and the amount over $2,230.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1991, or who die in 1991 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $370 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexed monthly earnings over $370 and through $2,230, plus

(c) 15 percent of the average indexed monthly earnings over $2,230.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General. The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. The new formula was explained in a final rule published in the **Federal Register** on May 8, 1981, at 46 FR 25601. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The dollar amounts in the formula which govern the portions of the primary insurance amount are frequently referred to as the "bend points" of the family-maximum formula. This, the bend points for 1979 were $230, $332, and $433.

The bend points for 1991 are obtained by multiplying the corresponding 1979 bend-point amounts by the ratio between the average of the total wages for 1989, $20,099.55, and the average for 1977, $9,779.44. This amount is then rounded to the nearest dollar. For 1991, the ratio is 2.0552864. Multiplying the amounts of $230, $332, and $433 by 2.0552864 produces the amounts of $472.72, $682.36, and $889.94. These amounts are then rounded to $473, $682, and $890. Accordingly, the portions of the primary insurance amounts to be used in 1991 are determined to be the first $473, the amount between $473 and $682, the amount between $682 and $890, and the amount over $890.

Consequently, for the family of a worker who becomes age 62 or dies in 1991, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $473 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $473 through $682, plus

(c) 134 percent of the worker's primary insurance amount over $682 through $890, plus

(d) 175 percent of the worker's primary insurance amount over $890.

This amount is then rounded to the next lower multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Deemed Average of the Total Wages Under Transitional Rule

Section 10208 of Public Law 101–239, which amended section 209 of the Act (42 U.S.C. 409), provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base. The transitional rule was used to determine the bases for 1990 and will be used to determine the bases for 1991 and 1992. The determination of the 1990 bases was published as a notice in the **Federal Register** on December 29, 1989, at 54 FR 53751, and superseded the determination as a notice in the **Federal Register** on October 31, 1989, at 54 FR 45801.

Computation. Under the transitional rule, the deemed average of the total wages for 1989 is equal to the average of the total wages for 1989, as determined above, plus 2 percent of the average wage amount determined for 1988.

Amount. The average wage amount announced above for 1989 was $20,099.55. The average wage amount announced for 1988 in the **Federal Register** on October 31, 1989 (54 FR 45801), was $19,334.04. Two percent of $19,334.04 is $386.68, and the sum of this amount and $20.099.55 is $20,486.23. Therefore, the deemed average wage under the transitional rule for 1989, as used below to determine the bases for 1991, is $20,486.23.

Contribution and Benefit Base

General. The contribution and benefit base is $53,400 for remuneration paid in 1991 and self-employment income earned in taxable years beginning in 1991.

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which Social Security taxes are paid.

(2) It is the maximum annual amount used in determining a persons' Social Security benefits.

Computation. Section 230(c) of the Act provides a table with the contribution and benefit base for each year 1978, 1979, 1980, and 1981. For years after 1981, section 230(b) of the Act contains a formula for determining the contribution and benefit base. This formula was amended by section 10208 of Public Law 101–239 to substitute deemed average wage amounts for average wage amounts. Under the prescribed formula, the contribution and benefit base for 1991 shall be equal to the 1990 base of $51,300 multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year 1989 to (2) the deemed average amount of those wages for the calendar year 1988. Section 230(b) further provides that if the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages. The deemed average wage for calendar year 1988 was previously determined to be $19,702.57. That determination was published as a notice in the **Federal Register** on December 29, 1989, at 54 FR 53751. The deemed average wage for calendar year 1989 has been determined to be $20,486.23, as stated above.

Amount. The ratio of the deemed average wage for 1989, $20,486.23, compared to the deemed average wage for 1988, $19,702.57, is 1.0397745. Multiplying the 1990 contribution and benefit base amount of $51,300 by the ratio of 1.0397745 produces the amount of $53,340.43 which must then be rounded to $53,400. Accordingly, the contribution and benefit base is determined to be $53,400 for 1991.

"Old-Law" Contribution and Benefit Base

General. The 1991 "old-law" contribution and benefit base is $39,600. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. The base is computed under section 230(b) of the Act as it read prior to the 1977 amendments.

The "old-law" contribution and benefit base is used by:

(1) The Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits.

(2) The Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Act), and

(3) Social Security to determine a "year of coverage" in computing the "special minimum" benefit and in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation. The base is computed using the automatic adjustment formula in section 230(b) of the Act as it read prior to the enactment of the 1977 amendments, but as amended by section 10208 of Public Law 101–239. Under the formula, the "old-law" contribution and benefit base shall be the "old-law" 1990 base multiplied by the ratio of (1) the deemed average amount, per employee, of total wages for the calendar year of 1989 to (2) the deemed average amount of those wages for the calendar year of 1988. If the amount so determined is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Deemed Average Wages. The deemed average wage for calendar year 1988 was previously determined to be $19,702.57. The deemed average wage for calendar year 1989 has been determined to be $20,486.23, as stated above.

Amount. The ratio of the deemed average wage for 1989, $20,486.23, compared to the deemed average wage for 1988, $19,702.57, is 1.0397745. Multiplying the 1990 "old-law" contribution and benefit base amount of $38,100 by the ratio of 1.0397745 produces the amount of $39,615.41 which must then be rounded to $39,600. Accordingly, the "old-law" contribution and benefit base is determined to be $39,600 for 1991.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802–93.805, and 93.807 Social Security Programs)

Dated: October 25, 1990.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 90–25714 Filed 10–30–90; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

[Docket No. 88N–0394]

Generic Animal Drug and Patent Term Restoration Act; Sixth Policy Letter; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a sixth policy letter, dated October 17, 1990, on the implementation of the Generic Animal Drug and Patent Term Restoration Act. the letter contains policy statements prepared by the Center for Veterinary Medicine (CVM) regarding withdrawal periods for generic animal drugs and eligibility of a new salt or ester of a pioneer animal drug for an abbreviated new animal drug application (ANADA). The agency is soliciting comments on the letter.

DATES: Written comments may be submitted at any time regarding this or previous policy letters or implementation of the Generic Animal Drug and Patent Term Restoration Act in general.

ADDRESSES: Submit written requests for single copies of the sixth policy letter to

the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, Rm. 7–85, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the policy letter to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The policy letter and received comments are available for public examination in the Dockets Management Branch between 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Livingston, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4313.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (the new law) (Pub. L. 100–670). The new law amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by extending the generic approval system to copies of new animal drugs that were approved after October 1962, and provides patent extension of certain animal drugs.

FDA has published five policy letters concerning implementation of the new law. See the **Federal Register** of June 18, 1990 (55 FR 24645), for a list of the dates and topics of those policy letters. FDA is now announcing the availability of a sixth policy letter dated October 17, 1990. This letter contains two policy statements. One concerns withdrawal periods for generic animal drugs, and the other concerns eligibility of a new salt or ester of a pioneer animal drug for an ANADA. The first of these two policy statements is a revision of, and supercedes, a policy statement that was issued with the August 2, 1989 policy letter (54 FR 35534; August 28, 1989).

The agency anticipates that changes in these policy statements may occur in the future. When and if changes are made, copies of the revised policy statements will be placed on display in the Dockets Management Branch (address above) and a notice of availability will be published in the **Federal Register.**

In addition, the subjects contained in these policy statements may be addressed in the regulations that will implement the new law. Comments submitted in response to this notice will be considered in the drafting of the proposed regulations.

Dated: October 25, 1990.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–25704 Filed 10–30–90; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Reconsideration of Disapproval of Oklahoma State Plan Amendment (SPA); Hearing

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 12, 1990, in room 1945, 1200 Main Tower, Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma State Plan Amendment 89–18.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by November 15, 1990.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, telephone: (301) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Oklahoma State Plan amendment (SPA) number 89–18.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Oklahoma SPA 89–18 relates to the State Medicaid plan for payment of inpatient hospital services. The amendment would establish an inflation factor of 5.9 percent in order to update inpatient hospital rates. The State has requested an effective date of July 1, 1989, for this amendment.

The issues in this matter are whether the proposed effective date violates: (1) The yearly Department of Health and Human Services appropriations enactments which limit the retroactivity of plan amendments that result in increased Federal financial participation to the beginning of the quarter in which an approvable plan amendment is submitted; and (2) Medicaid regulations at 42 CFR 447.253(f). These regulations require the State Medicaid agency to comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for inpatient hospital and long-term care facility services.

The State's letter of April 24, 1990, indicated that the requested effective date of July 1, 1989, is acceptable. It does so because § 430.20(b)(2) provides the Health Care Financing Administration with the authority to approve a new plan with an effective date earlier than the first day of the calendar quarter in which the amendment is submitted. However, the yearly Department of Health and Human Services appropriations enactments limit the retroactivity of plan amendments that result in increased Federal financial participation to the beginning of the quarter in which an approvable plan amendment was submitted. Since the State submitted its amendment on December 12, 1989, the earliest possible effective date of this amendment would have been October 1, 1989, not July 1, 1989, if the State had met the public notice requirements.

In addition, in accordance with Federal regulations at 42 CFR 447.205(d)(1), the Medicaid agency must provide public notice before the proposed effective date of the change. Sections 447.205 (c) and (d) set forth additional requirements regarding the content and publication of the notice.

Specifically, the provision at § 447.205(d)(2) requires that notice appear in a State register similar to the **Federal Register** or in the newspaper of widest circulation in each city in the State with a population over 50,000. In the event that the State has no State register or city with a population of

50,000 or more, the public notice must appear in the newspaper with the widest circulation in the State.

The State's letter of June 14, 1990, indicated that, on May 4, 1989, the Secretary of State furnished notice of the proposed change under SPA 89–18 to only the provider groups on the open meetings mailing list. However, HCFA disapproved the amendment because it believes that notice of the proposed change to the provider groups was insufficient, but that the State must provide public notice in accordance with § 447.253(f), prior to the effective date of the plan amendment. Consequently, HCFA believes the earliest approvable effective date of this plan amendment will be the day following the date on which the notice is published pursuant to the applicable Federal regulations.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its State plan amendment reads as follows:

Mr. Phil Watson,
Director, Department of Human Services, Sequoyah Memorial Office Building, P.O. Box 25352, Oklahoma City, Oklahoma 73125

Dear Mr. Watson: I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendment SPA 89–18.

The issues in this matter are whether the proposed effective date violates: 1) the yearly Department of Health and Human Services appropriations enactments which limit the retroactivity of plan amendments that result in increased Federal financial participation to the beginning of the quarter in which an approvable plan amendment was submitted; and 2) Federal regulations at 42 CFR 447.253(f). These regulations require the State Medicaid agency to comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for inpatient hospital and long-term care facility services.

I am scheduling a hearing on your request, for reconsideration to be held on December 12, 1990, at 10:00 a.m. in Room 1945, 1200 Main Tower, Dallas, Texas. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597–3013.

Sincerely,

Gail R. Wilensky, Ph.D.
Administrator.

Authority: Sec. 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: October 23, 1990.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 90–25717 Filed 10–30–90; 8:45 am]
BILLING CODE 4120–03–M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1990.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: November 29, 1990, 9 a.m.–5 p.m.

Place: Conference Room G & H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the meeting will include but not be limited to: Status report on the Vaccine Injury Compensation Program; status reports from the National Vaccine Program; and presentations from various vaccine manufacturers and insurance companies on how the National Childhood Vaccine Injury Act has impacted their respective area of vaccine responsibility.

Public comment will be permitted at the end of the day. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation, by November 16 to Ms. Rosemary Havill, Vaccine Injury Compensation Programs, Bureau of Health Professions, Health Resources and Services Administration, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Room G & H before 10 a.m., November 29. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Council should contact Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda Items are subject to change as priorities dictate.

Dated: October 26, 1990.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.

[FR Doc. 90–25786 Filed 10–30–90; 8:45 am]
BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Paperwork Reduction Project 1076–0122, Washington, DC 20503, telephone (202) 395–7340.

Title: 25 CFR 31, Subchapter E. Federal Schools for Indians.

Abstract: The student enrollment application is needed to determine a student's enrollment eligiblility for Indian students desiring to attend Bureau operated or Bureau funded schools. The application contains background information on students,

such as schools previously attended, tribe affiliation, enrollment number degree of Indian blood, and language spoken in the home. The information collection will involve individual students, parents and/or guardians. Bureau Form Number: BIA–6248.

Frequency: Upon enrollment.

Description of Respondents: Students, parents or guardians.

Annual Responses: 15,000.

Annual Burden Hours: 7,504.

Bureau Clearance Officer: Gail Sheridan (202) 208–2685.

Dated: September 4, 1990.

Joe Christier,

Deputy to the Assistant Secretary—Indian Affairs/Director (Indian Education Programs).

[FR Doc. 90–25675 Filed 10–30–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[ID–943–01–4214–10; IDI–3378]

Partial Termination of Proposed Withdrawal and Reservation Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Withdrawal Application Termination.

SUMMARY: The Bureau of Reclamation has partially relinquished a withdrawal application affecting lands within the Targhee National Forest. The purpose of the withdrawal was to protect the lands for possible future construction of a dam and reservoir on the South Fork of the Snake River. The Bureau of Reclamation has determined the lands are no longer needed for this purpose. This action terminates the segregative effect of the application insofar as it affects the lands described below. The land will remain temporarily closed to surface entry and mining by a Forest Service exchange application.

EFFECTIVE DATE: November 5, 1990.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, BLM, 3380 Americana Terrace, Boise, Idaho 83706, (208) 334–1597.

1. Notice of an application, serial number IDI–3378, for withdrawal and reservation of lands was posted in the Land Office records on January 26, 1970. The application agency has cancelled its application insofar as it affects those lands described below:

Boise Meridian

T 3 N., R. 42 E.,
Sec. 6, lot 21;
Sec. 7, lot 19.

The area described contains 5.22 acres in Bonneville County.

2. Pursuant to the regulations contained in 43 CFR subpart 2091, the lands described above will be at 9 a.m. on November 5, 1990, relieved of the segregative effect of the above mentioned application. The lands remain closed to surface entry and mining due to a pending Forest Service exchange application.

Dated: October 23, 1990.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 90–25710 Filed 10–30–90; 8:45 am]

BILLING CODE 4310–66–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0054), Washington, DC 20503, telephone (202) 395–7340.

Title: Abandoned Mine Reclamation Funds—30 CFR 872.

OMB Number: 1029–0054.

Abstract: 30 CFR 872 establishes requirements for information collection to be used by the regulatory authority to determine whether delays in the use of allocated funds were due to unavoidable delays in program approval or are not necessary to carry out approved reclamation activities. These requirements serve as safeguards to protect States/Indian tribes against automatic or indiscriminate funds withdrawal.

Bureau Form Number: None.

Frequency: As required.

Description of Respondents: State and Indian tribes.

Estimated Completion Time: One hour.

Annual Responses: One.

Annual Burden Hours: One.

Bureau Clearance Office: Andrew F. DeVito (202) 343–5150.

Dated: October 9, 1990.

John P. Mosesso,

Chief, Division of Technical Services

[FR Doc. 90–25677 Filed 10–30–90; 8:45 am]

BILLING CODE 4310–05–M

Valid Existing Rights Within the Wayne National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Department of the Interior.

ACTION: Notice of Decision.

SUMMARY: This notice announces the decision of the Office of Surface Mining Reclamation and Enforcement (OSM) regarding a determination of Valid Existing Rights (VER) to conduct surface coal mining operations under the provisions of section 522(e)(2) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The applicant, Belville Mining Company (BMC), has requested a determination that it has VER to extract coal by surface mining methods on the tracts of land known as the Jenkins, Simmering, and Bauer properties within the boundaries of the Wayne National Forest in Ohio. Under the applicable VER standard, OSM has determined that BMC has not demonstrated VER to extract coal by surface mining methods.

ADDRESSES: Documents comprising the administrative record are available for public review and copying during regular business hours at the address below:

Administrative Record Room, room 5131L, Office of Surface Mining Department of Interior, 1100 L Street NW., Washington, DC 20240.

Copies of the Director's decision and of relevant notices may be obtained at the same location.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Office of the Deputy Director for Operations and Technical Services, 1951 Constitution Ave., NW., Washington, DC 20240, (202) 208–2618.

SUPPLEMENTARY INFORMATION:

I. VER Requirement

Section 522(e) of SMCRA provides that:

> After the enactment of this Act and subject to valid existing rights no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted * * * on any Federal lands within the boundaries of any national forest: * * *

Under the Federal regulations at 30 CFR 740.4(a)(4) and 745.13(o), the Secretary of the Interior retains responsibility for making VER

determinations on Federal lands within the boundaries of any areas specified in section 522 (e)(1) or (e)(2) of SMCRA. Under these rules, the Secretary may not delegate this responsibility to a State.

Consequently, OSM must make determinations regarding whether parties seeking to undertake surface mining on Federal lands within the areas specified in section 533(e)(1) and 522(e)(2) have VER to conduct surface coal mining operations within these areas. Under 30 CFR 740.11(a), the approved State regulatory program is applicable to Federal lands in a State. Therefore, OSM uses the State program definition of VER on section 522(e) (1) and (2) Federal lands in States with approved regulatory programs.

II. The Belville Mining Company VER Application

On September 4, 1985, BMC submitted an application for a VER determination on lands in the Wayne National Forest.

The lands consisted of five properties totaling approximately 5440 acres. The five properties are known as "The McMullen Property", "The Culbertson Property", "The Jenkins Property", "The Bauer Property", and "The Simmering Property".

OSM reviewed the material submitted by BMC in support of its VER application and on December 2, 1986, notified BMC that based on the information provided, OSM was unable to grant VER on the lands applied for. The letter also requested BMC to provide additional information should it wish to pursue the matter further.

On August 15, 1988, BMC requested OSM to reconsider its December 3, 1986 decision. On December 23, 1988, OSM notified BMC that it had determined that BMC had a valid existing right to conduct surface coal mining activities on the five properties listed above. This decision effectively reversed the December 3, 1986 determination by OSM that earlier submissions by BMC were insufficient to establish VER for the five properties in question.

Following its December 23, 1988 determination that BMC had a valid existing right to mine on these properties, OSM reviewed recent actions it had taken concerning VER determinations and concluded that the administrative record of the December 23, 1988 VER determination did not provide sufficient information to assure that OSM's determination regarding BMC's possession of VER had been made properly. Consequently, OSM made the decision to review and reconsider its December 23, 1988 determination on BMC's VER application.

On August 24, 1989, OSM sent a letter to BMC outlining the reasons for reconsidering the determination of VER. In the letter, OSM stated that based on its review of OSM VER matters, indications existed that OSM may not have followed its own internal procedures for processing VER requests, that the December 23, 1988 decision was made without the development of a sufficient administrative record, and that there was no record of any opportunity for other parties to assert any competing property rights, claims, or interests in this matter.

The letter further stated that the record did not indicate the extent to which OSM considered substantive issues regarding the nature of the rights reserved in the deeds for the five properties or whether the agency had correctly applied the State standard for VER and whether OSM had expressly considered the issue on whether VER is transferrable under Ohio law.

The letter also informed BMC that the effect of OSM's action to reconsider the decision of December 23, 1988, was to stay that decision and that OSM would consider the VER application as a whole, and would proceed with a determination regarding the land known as the "McMullen property" on an expedited basis. VER determinations for the remaining four properties would follow the initial decision on the McMullen property.

In a notice appearing in the **Federal Register** on August 30, 1989 (54 FR 35945), OSM announced its reconsideration of the 1988 VER determination and the reopening of the administrative record to receive additional information from the public. Any additional information received would be used to develop an administrative record which will support a final determination regarding Belville's VER.

Reopening the record did not have the effect of reinstating the original determination of December 3, 1986, which had denied BMC's request for VER.

On September 8, 1989, OSM requested BMC to provide additional information regarding its application for VER. At the same time, OSM requested that the United States Forest Service (USFS) and the Ohio Department of Natural Resources (ODNR) also provide additional information for the administrative record. On October 20, 1989, BMC provided additional information which has been included in the administrative record of this decision. (BMC Submission October 20, 1989) On November 1, 1989, ODNR provided additional information concerning the Ohio VER standard (ODNR November 1, 1989) and on November 13, 1989, the Forest Service provided a title opinion and report concerning BMC's interest in the McMullen and Culbertson properties. (USFS Title Report November 13, 1989).

By further notice appearing in the **Federal Register** on November 14, 1989 (54 FR 47418), OSM extended the period in which the public could submit relevant information until such time as OSM made a determination regarding BMC's VER. Subsequently, a notice appeared in the **Federal Register** on November 17, 1989, which stated that the period for the public to submit information on the BMC VER application would close on November 29, 1989 (54 FR 47861).

In a December 21, 1989 **Federal Register** notice, OSM issued its determination regarding the McMullen property and the Culbertson property. OSM concluded that BMC had not demonstrated that it had the necessary VER for the two properties in question under applicable standards and regulations. (54 FR 52465)

III. The Jenkins, Simmering and Bauer Properties

As part of its earlier submission, BMC provided property descriptions and copies of the deeds in the abstracts of title for these tracts. These documents have been entered into the administrative record and were reviewed by the USFS in its capacity as the surface managing agency.

IV. United States Forest Service Title Opinion

OSM has now received a title report from the Forest Service regarding the Jenkins, Simmering, and Bauer properties.

These title reports and accompanying documents from the Forest Service have been included in the administrative record for this determination.

A. The Jenkins Property

In a June 27, 1990 letter to OSM, the Forest Service expressed the view that "* * * the minerals in the Jenkins tract reverted to the United States by operation of the deed on December 31, 1989, therefore no mining rights exist to this tract."

B. The Simmering Property

BMC obtained the reserved mineral rights through a deed dated November 27, 1982. According to the title conclusions provided to OSM by the Forest Service, when the Forest Service acquired the land in question the

purchase price of the property was reduced by 20 per cent to account for the destruction of surface values that would result from the mineral reservation. The Forest Service manual in effect at the time of the transaction provided a table for per cent reductions in value for mineral reservations. For mining by means other than hydraulic, a 20 per cent reduction was taken. For hydraulic and surface mining methods, a reduction of 40 per cent was required in all cases. The Forest Service also noted that strip and hydraulic mining were listed together, and assigned the same reduction in value as destructive of surface values. They conclude that "* * * this would very strongly imply that stripping, which has the same effect as hydraulic mining, would be prohibited under the reservation language." The Forest Service report concludes that thus surface mining was not a contemplated method of mining at the time of the mineral reservation, and that shaft or tunnel mining only was intended on the Simmering tract.

C. The Bauer Property

BMC acquired reserved mineral rights by contract dated July 3, 1986. The Forest Service states that the factors discussed above apply equally to the Bauer property. The mineral reservation for the Bauer tract included essentially the same wording as was found in the Simmering tract. "The only significant difference in the "Bauer" tract is that it was reduced 30 per cent instead of 20 per cent. According to the table on deductions for reserved minerals, the "Bauer" tract minerals could be removed by open excavations and mines subject to collapse. Stripping was not intended."

V. State VER Provisions

A. Ohio Regulatory Program History

On August 10, 1982, the Secretary of Interior conditionally approved the permanent program submission of the State of Ohio.

This approval and the background on the Ohio program submission appeared in the **Federal Register** on August 10, 1982 (47 FR 34688–35718).

The conditional approval stated that the Ohio regulation defining VER (OAC 1501:13–3–02(A)(1)), as modified by the State on May 7, 1982, was consistent with the two-part test established under the Federal rules at 30 CFR 761.5, and no less effective than the Federal regulation.

Ohio resubmitted its regulatory program for approval on May 16, 1986, and on July 17, 1987, OSM reapproved the Ohio regulatory program (52 FR 26972), including the VER test.

B. The Ohio Regulatory Program Definition of VER

1. Ohio's definition of VER, which is currently codified at ORC 1501:13–1–02(FFFFFF) is as follows:

'Valid Existing Rights' means;

(1) Except for haul roads

(a) Those property rights of the applicant in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorizes the applicant, any subsidiary, affiliate or persons controlled by or under common control with the applicant, to produce coal by a mining operation; and

(b) The persons proposing to conduct surface coal mining operations on such lands either:

(i) Had been validly issued, on or before August 3, 1977, all State and Federal permits necessary to conduct such operations on those lands; or

(ii) Can demonstrate to the chief that the coal is both needed for, and immediately adjacent to, an ongoing surface coal mining operation for which all mine plan approvals and permits were obtained prior to August 3, 1977.

(2) For haul roads;

(a) A right-of-way or easement recorded prior to August 3, 1977, or a coal mining permit issued prior to August 3, 1977; or (b) Any road in existence as of August 3, 1977.

(3) Where an area comes under the protection of division (d) of § 1513.073 of the Revised Code, valid existing rights shall be found if, on the date the protection comes into existence, a validly authorized coal mining operation exists on that area.

(4) Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon the usage and custom at the time and place where it came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

(5) "Valid Existing Rights" does not mean mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or when a person has only applied for a permit.

C. Ohio Policy on Transferability of VER

In its letter responding to OSM's letter of September 8, 1989 requesting information on the current interpretation and application of the State of Ohio rule for determining VER, the Ohio Department of Natural Resources replied that:

> The Ohio Department of Natural Resources, Division of Reclamation has always taken the position that VER is not transferable.

ODNR also stated that:

> Although at first glance VER may appear to be solely a property right, careful reading of the entire definition indicates that VER is a personal right in existence on August 3, 1977, which right runs to the applicant. Such a right is evaluated only at the time the potential coal operator becomes an applicant for a permit which, again, is based on a clear reading of the above language. [The language in the Ohio definition of VER]. (ODNR November 1, 1989).

Ohio argues that its "interpretation of its regulatory language is consistent with earlier OSM comments (see 44 FR 14991, March, 1979) and is entirely consistent with legislative concern with the taking of property which could have occurred at the time of the enactment of SMCRA." Under Ohio's interpretation of its program, Ohio conceptualizes prohibitions and VER as it would zoning restrictions and nonconforming uses. An owner who possesses VER but does not exercise it could be viewed as having abandoned the nonconforming use. Once abandoned, any subsequent property owner must comply with the land use restrictions imposed by chapter 1513 (ODNR November 1, 1989).

OSM will accept the Ohio policy on transferability of VER as a policy which may be more stringent than the analogous Federal provision, as provided in SMCRA section 505; and as an interpretation which is not inconsistent with the terms of the Ohio provision or with the Secretary's approval of the Ohio regulatory program. This VER determination does not reach the issue of whether VER is transferable under SMCRA section 522(e) and the Federal regulations. Ohio has requested an opinion from the Ohio attorney general as to the State's authority for the policy of nontransferability. However, OSM does not foresee the need to revisit this

specific issue, whether or not the Ohio attorney general opinion is that VER is lawfully nontransferable. That finding is unlikely to affect the outcome of this determination, as discussed below, because the determination for the three tracts is supportable on alternative bases.

VI. Application of VER Standard

OSM has determined that the appropriate criteria for VER with respect to BMC's current request is the standard in the approved Ohio program. However, OSM intends to apply the Ohio VER test on Federal lands consistent with the District Court's 1980 suggestion in *In re* that a good faith effort to obtain all permits should suffice for meeting the VER test.

VII. Conclusion

Based on a review on the title report's conclusions, OSM has determined that at the present time, there exists a dispute between the applicant and the USFS regarding the nature of the property rights held by BMC on the tracts in question. Because BMC has not documented that the property rights dispute is resolved, OSM finds that BMC has not demonstrated the necessary property rights to mine by the method intended.

OSM further has determined that even if BMC had demonstrated the necessary property rights to mine the three tracts by the method intended, BMC has not demonstrated VER because (1) BMC did not own the necessary property rights on August 3, 1977; (2) BMC had not applied for or obtained the necessary permits for a surface coal mining operation by August 3, 1977; and (3) even if VER were transferable under the Ohio VER provisions, BMC has not demonstrated that its predecessors in interest had obtained or attempted to obtain the necessary permits for a surface coal mining operation by August 3, 1977.

VIII. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* (1988) Notice of the intent to appeal must be filed within 30 days from the date of publication of this decision.

Dated: October 22, 1990.

W. Hord Tipton,

Acting Director.

[FR Doc. 90–25772 Filed 10–30–90; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[332–298]

Assessment of Rules of Origin Under the Caribbean Basin Economic Recovery Act

AGENCY: United States International Trade Commission.

ACTION: Institute of investigation and scheduling of hearing.

EFFECTIVE DATE: October 22, 1990.

FOR FURTHER INFORMATION CONTACT: Lawrence A. DiRicco, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission, Washington, DC 20436 (telephone 202–252–1592 through November 30, 1990, thereafter 202–205–2606).

BACKGROUND AND SCOPE OF INVESTIGATION: The Commission instituted investigation No. 332–298, Assessment of Rules of Origin Under the Caribbean Basin Economic Recovery Act, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), as required by section 223 of the Customs and Trade Act of 1990 (the Act) which was enacted on August 20, 1990. Section 223(a)(1) of the Act requires the Commission to conduct an investigation for the purpose of assessing whether revised rules of origin for products of countries designated as beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) are appropriate, and states that if the Commission makes an affirmative assessment, it is to develop recommended revised rules of origin. Section 223(a)(2) of the Act directs the Commission to submit a report on the results of its investigation, together with the text of recommended rules, if any, to the President and the Congress no later than 9 months after the date of the enactment of the Act.

The Commission has received a joint letter from Congressman Dan Rostenkowski, Chairman of the House Committee on Ways and Means, and from Senator Lloyd Bentsen, Chairman of the Senate Committee on Finance, which describes in greater detail the information that the Committees would like included in the report. More specifically, the Committee chairmen asked that the Commission assess the existing rules of origin with regard to their uniform and consistent application and determine the extent, if any, to which the achievement of the goals of CBERA would be furthered by appropriate improvements, and to consider modifications that would improve their predictability of result, as well as their uniform and consistent administration. The Committee chairmen also stated that the Commission should seek the views of the private sector, particularly firms which import goods from beneficiary countries, and U.S. Government agencies as well as consider holding a public hearing in Washington, DC, to facilitate the receipt of views.

The Commission will review the present rules of origin under CBERA with respect to administerability, particularly with regard to complexity of implementation, uniformity of application and consistency of determination.

The Commission will also consider whether the rules should be revised, and whether such revision should take into account other means of determining origin adopted or proposed by the United States since the enactment of CBERA. In this regard the Commission may consider whether other United States rules of origin (e.g., a change of heading rule such as that used under the U.S.-Canada Free Trade Agreement) could be adapted to or incorporated in whole or in part into the CBERA rules of origin. If the Commission determines that revised rules are necessary, it will provide recommended revised rules. The report will be submitted to President and the Congress by May 20, 1991.

PUBLIC HEARING: A public hearing in connection with this investigation will be held in the Hearing Room of the U.S. International Trade Commission, 500 E Street, SW, Washington, DC., on January 16, 1991, at 9:30 a.m. All persons shall have the right to appear by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC., 20436, not later than noon, December 18, 1990. Written prehearing comments (original and 14 copies) should be filed not later than noon, December 19, 1990. Post-hearing comments must be submitted by no later than January 30, 1991.

WRITTEN SUBMISSIONS: Interested parties (including other Federal agencies) are invited to submit written statements concerning the subject of the report. Such statements must be submitted by no later than December 19, 1990, in order to be considered by the Commission. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at

the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202–252–1809.

Issued October 24, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–25724 Filed 10–30–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–302– (Final) and 731–TA–454 (Final)]

Fresh and Chilled Atlantic Salmon From Norway

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with both the subject investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–454 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Norway of fresh and chilled Atlantic salmon,[1] provided for in subheading 0302.12.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). The Commission also gives notice of the scheduling of a hearing in connection with this antidumping investigation and with the countervailing duty investigation regarding imports of fresh and chilled Atlantic salmon from Norway, investigation No. 701–TA–302 (Final), which the Commission instituted effective June 26, 1990 (55 FR 31246, August 1, 1990). The schedules for the subject investigations will be identical, pursuant ot Commerce's alignment of the final countervailing duty and LTFV determinations (55 FR 32107, August 7, 1990). Commerce is scheduled to make its final countervailing duty and LTFV determinations on or before February 8, 1991, and the Commission will make its final injury determinations within 45 days after receipt of Commerce's final determinations (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings, (202–252–1192), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—The subject antidumping investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of fresh and chilled Atlantic salmon from Norway are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The Commission instituted the subject countervailing duty investigation on June 26, 1990. The investigations were requested in a petition filed on February 28, 1990, by the Coalition for Fair Atlantic Salmon Trade. In response to that petition the Commission conducted preliminary countervailing duty and antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 17507, April 25, 1990).

Participation in the investigations.—Any person having already filed an entry of appearance in the countervailing duty investigation is considered a party in the antidumping investigation. Any other persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any person having already been authorized to receive business proprietary information in the countervailing duty investigation need not reapply to receive such information in the antidumping investigation. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary

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[1] Atlantic salmon is the species Salmo salar. The product "fresh and chilled Atlantic salmon" refers to fresh whole or nearly whole Atlantic salmon, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on, and packed in fresh-water ice ("chilled"). Excluded are fresh Atlantic salmon that has been cut into fillets, steaks, and other cuts; Atlantic salmon that is frozen, canned, smoked, or otherwise processed; and other species of fish, including other species of salmon.

information without a certificate of service indicating that it has been served in all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on January 25, 1991, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on February 14, 1991 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 4, 1991. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on February 7, 1991 at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is also February 7, 1991. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due on February 8, 1991.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on February 20, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due February 21, 1991. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before February 20, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than February 25, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due February 26, 1991.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 24, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–25727 Filed 10–30–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–457 (Final)]

Heavy Forged Handtools From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–457 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of heavy forged handtools,[1] provided for in subheadings 8201.30.00, 8201.40.60, 8205.20.60, and 8205.59.30 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determinations on or before December 26, 1990, and the commission will make its final injury determination by February 11, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: October 15, 1990.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–252–1188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

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[1] For purposes of this investigation, the term "heavy forged handtools" covers the following products, finished or unfinished, with or without handles: (1) hammers and sledges with heads over 1.5 kilograms (3.25 pounds) each (hammers and sledges); (2) bars over 18 inches in length, track tools and wedges (bars and wedges); (3) picks and mattocks; and (4) axes, adzes and similar hewing tools (axes and adzes). This investigation does not include hammers and sledges with heads 1.5 kilograms (3.25 pounds) in weight and under, hoes and rakes, or bars 18 inches in length and under.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of heavy forged handtools from the People's Republic of China are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 4, 1990, by Woodings-Verona Tool Works, Inc., Verona, PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 22109 (May 31, 1990)).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigation must be served on all other parties to the investigation (as identfied by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. the Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on December 13, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 3, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 21, 1990. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 27, 1990, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is December 24, 1990. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due December 26, 1990.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 9, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due Janaury 10, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 9, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than January 14, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due January 15, 1991.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 23, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–25728 Filed 10–30–90; 8:45 am]

BILLING CODE 7020-02-M

Certain Pressure Transmitters; Limited Exclusion Order

[Inv. No. 337-TA-304]

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order under subsection (d) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d)) to prevent the unauthorized importation and sale of pressure sensors and pressure transmitters which are manufactured abroad by SMAR Equipment of Sao Paulo Brazil using a process that is covered by claims 1–4 of U.S. Letters Patent 3,800,413.

ADDRESSES: Copies of the limited exclusion order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 15, 1989, Rosemount, Inc. (Rosemount) filed a complaint with the Commission alleging a violation of section 337 in the importation and sale of certain pressure transmitters covered by claims 1–4 of U.S. Letters Patent 3,800,413, owned by Rosemount. Pressure transmitters are devices use to measure flow rates in industrial processes. On October 20, 1989, the Commission published notice of an investigation based on Rosemount's complaint and named SMAR Equipment of Sao Paulo, Brazil and SMAR International Corp. of Ronkonkoma, New York as respondents. 54 FR 43145.

On July 2, 1990, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding a violation of section 337 in the above-captioned investigation. The Commission adopted the ID with minor modifications. 55 FR 34627 (August 23, 1990). Having determined that there was a violation of section 337, the Commission requested that the parties and interested members of the public file submissions on the issues of remedy, the public interest, and bonding. *Id.* Complainant, respondents, and the Commission investigative attorney filed submissions.

After considering the submissions, the Commission determined that the public interest considerations listed in subsection (d) of section 337 do not preclude issuance of a limited exclusion order and that while the order is under review by the President pursuant to subsection (j) of section 337 (19 U.S.C. 1337), the excluded articles will be entitled to enter the United States under a bond in the amount of 38 percent of their entered value.

This action is taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.563 through 58 of the Commission's interim rules (19 CFR § 210.53–.58).

Issued: October 22, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–25725 Filed 10–30–90; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-465 and 468 (Final)]

Sodium Thiosulfate From the Federal Republic of Germany and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–465 and 468 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany and the United Kingdom of sodium thiosulfate, provided for in subheading 2832.30.10 of the Harmonized Tariff Schedule of the United States that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LTFV determinations on or before December 26, 1990, and the Commission will make its final injury determinations by February 12, 1991 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR parts 201).

EFFECTIVE DATE: October 16, 1990.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–252–1187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of sodium thiosulfate from the Federal Republic of Germany and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on July 9, 1990, by Calabrian Corp., Houston, TX. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (55 FR 35373, August 29, 1990).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing

the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expirationof the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigation (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order and business proprietary information service list.—Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Staff report.—The prehearing staff report in these investigations will be placed in the nonpublic record on December 18, 1990, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on January 4, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 31, 1990. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 3, 1991, at the U.S. International Trade Commission Building. Pursuant to § 207.22 of the Commission's rules (19 CFR 207.22) each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is December 28, 1990. If prehearing briefs contain business proprietary information, a nonbusiness proprietary version is due December 31, 1990.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)((2))).

Written submissions.—Prehearing briefs submitted by parties must conform with the provisions of § 207.22 of the Commission's rules (19 CFR 207.22) and should include all legal arguments, economic analyses, and factual materials relevant to the public hearing. Posthearing briefs submitted by parties must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on January 10, 1991. If posthearing briefs contain business proprietary information, a nonbusiness proprietary version is due January 11, 1991. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before January 10, 1991.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than January 15, 1991. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs. A nonbusiness proprietary version of such additional comments is due January 16, 1991.

Authority. These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 25, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–25726 Filed 10–30–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Activities Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) were submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Darlene Proctor (202) 275–7322. Comments regarding this information collection should be addressed to Darlene Proctor, Interstate Commerce Commission, room 2121, Washington, DC 20423 and to Wayne Brough, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Type of Clearance: New Collection.
Bureau/Office: Bureau of Accounts.
Title of Form: Classification Survey Form for Motor Carriers of Property which do not file an Annual Report with the Commission.
OMB Form Number: 3120–____ (to be assigned by OMB).
Agency Form No.: ACAA–21.
Frequency: Annually.
No. of Respondents: 40,656.
Total Burden Hours: 10,164.

Type of Clearance: New Collection.
Bureau/Office: Bureau of Accounts.
Title of Form: Classification Survey Form for Motor Carriers of Passengers

which do not file an Annual Report with the Commission.

OMB Form Number: 3120–____ (to be assigned by OMB).

Agency Form No.: ACAA–22.

Frequency: Annually.

No. of Respondents: 3,744.

Total Burden Hours: 936.

Sidney L. Strickland, Jr.,

Secretary.

[FR DOC. 90–25757 Filed 10–30–90; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–109]

Passenger Train Operation: Chicago Central & Pacific Railroad Co.

The National Railroad Passenger Corporation (AMTRAK) has established through passenger train service between Chicago, Illinois and Seattle, Washington, Train Nos. 7 & 8, the Empire Builder. These train operations require the use of tracks and other facilities of the Soo Line Railroad Company (SL). A portion of the SL tracks between La Crosse and Tomah, Wisconsin are out of service because of track work. An alternate route is available over the Burlington Northern Railroad Company that requires the use of the Chicago Central & Pacific Railroad Company tracks between East DuBuque and Portage, Illinois.

It is the opinion of the Commission that such an operation is necessary in the interest of the public and the commerce of the people; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

(a) Pursuant to authority vested in me by order of the Commission decided January 13, 1986, and of the authority vested in the Commission by section 402(c) of the Rail Passenger Service Act of 1970 (45 U.S.C. 562(c)), Chicago Central & Pacific Railroad Company is directed to operate trains of the National Railroad Passenger Corporation between East Dubuque and Portage, Illinois in order to permit a rerouting utilizing the Burlington Northern Railroad Company.

(b) In executing the provisions of this order, the common carriers involved shall proceed even if no agreements or arrangements may now exist between them with reference to the compensation terms and conditions applicable to said operations. The compensation terms and conditions shall be, during the time this order remains in force those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:01 a.m. (CDT), September 24, 1990.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m. (CDT), September 24, 1990, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon the Chicago Central & Pacific Railroad Company and the National Railroad Passenger Corporation, and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, DC, September 20, 1990, by Heber P. Hardy, Agent.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25758 Filed 10–30–90; 8:45 am]

BILLING CODE 7035–01–M

INTERSTATE COMMERCE COMMISSION EXEMPTION

[Finance Docket No. 31697]

BGM Equipment Co., Inc.—Acquisition Exemption—Montana Department of Commerce

The BGM Equipment Co., Inc. (BGM), has filed a notice of exemption to acquire approximately 30 miles of railroad owned by the State of Montana (through its Department of Commerce). The track consists of the following three lines in Silver Bow and Deer Lodge Counties, MT: (1) A line that extends between Butte (milepost 0.0) and Anaconda (milepost 25.29) and then extends to a point approximately 4.7 miles west of Anaconda; (2) the 0.84-mile Mill Creek Branch; and (3) the 0.42-mile Stuart Branch.[1] After the acquisition, the current operator of the line, the Rarus Railway Company, will continue to provide service over the line, which it has been operating under a lease from the State. The transaction is expected to be consummated on or before January 31, 1991.

Any comments must be filed with the Commission and served on: Stephen W. McVearry, Weiner, McCaffrey Brodsky, Kaplan & Levin, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

BGM shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470.[2]

This notice is file under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 24, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25759 Filed 10–30–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31610]

Chicago West Pullman Corp. and Chicago West Pullman Transportation Corp.—Control Exemption—Iowa Interstate Railroad Ltd.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, Chicago West Pullman Corporation's and Chicago West Pullman Transportation Corp.'s acquisition of control of Iowa Interstate Railroad Ltd., subject to standard labor protective conditions.

DATES: The exemption will be effective on November 10, 1990. Petitions for reconsideration must be filed by November 20, 1990.

ADDRESSES: Send pleadings referring to Finance Docket No. 31610 to:

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[1] BGM's owners, two noncarrier individuals, have also filed a petition for exemption from the prior review and approval requirements of 49 U.S.C. 11343 for their control of BGM, Rarus Railway Company, and Montana Western Railway Co., Inc., in Finance Docket No. 31698.

[2] Applicant certifies that it has identified for the appropriate State Historic Preservation Office all sites and structures 50 years old or older that will be transferred as a result of this transaction

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioners' representative: Peter A. Greene, 1920 N Street, NW., suite 700, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245 [TDD for hearing impaired (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

Decided: October 23, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Emmett, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25760 Filed 10–30–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31659]

Wisconsin Central Ltd.—Trackage Rights Exemption—The Baltimore and Ohio Chicago Terminal Railroad Company, Consolidated Rail Corporation, Illinois Central Railroad Company, and Chicago and North Western Transportation Company

The Baltimore and Ohio Chicago Terminal Railroad Company (B&O), Consolidated Rail Corportion (Conrail), Illinois Central Railroad Company (IC), and the Chicago and North Western Transportation Company (CNW) have agreed to grant overhead trackage rights to Wisconsin Central Ltd. (WCL), within the Chicago Terminal District.

B&O will grant rights between: (1) Its Altenheim Subdivision milepost 37.4, at Forest Park, IL, and its Blue Island Subdivision milepost 15.2, at Blue Island Junction, Chicago, IL, a distance of 22.2 miles; (2) a point 97 feet east of the east line of South Halsted Street, Chicago, and its connection with the St. Charles Air Line, a distance of 0.75 miles; and (3) over approximately 2.9 miles of its McCook Branch in Franklin Park, IL, extending between IHB mileposts 37.0 and 38.8, and thence to its connection with the Soo Line Railroad at IHB milepost 39.9.

Conrail will grant rights over its Chicago River and Indiana Branch Line Between Brighton Park, IL, at approximately milepost 2.75±, and the point of connection between Conrail and the Chicago, Western & Indiana Railroad (currently operated by Chicago Rail Link) west of Princeton Avenue, at valuation station 294+00, including the north leg of Conrail's 40th Street and Normal Avenue Wye Track, at approximately milepost 0.25±, Chicago, a distance of approximately 2.8 miles.

IC will grant rights between its Markham Yard facility in Hazel Crest, IL, and its connection with CNW near 16th Street in Chicago, a distance of approximately 22 miles.

CNW will grant rights between a point 112 feet west of Roosevelt Rd., Chicago, and its connection with the St. Charles Air Line, Chicago, a distance of 3.05 miles. The trackage rights were to become effective 7 days after filing.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commisison and served on: Janet Gilbert, Wisconsin Central Ltd., 6250 North River Road, suite 9000, Rosemont, IL 60018.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: October 23, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25630 Filed 10–30–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 16, 1990 a proposed Partial Consent Decree in *United States* v. *Bethlehem Steel Corporation*, Civil Action No. 87–5438 was lodged with the United States District Court for the Eastern District of Pennsylvania. The Complaint in this case alleged violations of the Clean Air Act ("Act") and the Indiana State Implementation Plan ("SIP") relating to visible emissions at two coke oven batteries at Bethlehem's Burns Harbor steel mill, and additional violations at steel mills in Bethlehem and Johnstown, Pennsylvania.

The proposed Partial Consent Decree, which settles claims for violations alleged at the Burns Harbor mill, requires that Bethlehem take specified actions to comply with the Act and the SIP. The proposed Decree also provides that Bethlehem will pay the United States a civil penalty of $600,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Bethlehem Steel Corporation*, DOJ Ref. No. 90–5–2–1–1023.

The proposed Consent Decree may be examined at the Offices of the United States Attorney, Eastern District of Pennsylvania, 13th Floor, 615 Chestnut Street, Philadelphia, Pa. 19106, at the Region V Office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–25711 Filed 10–30–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–24,440]

H & H Manufacturing Corp. Statham, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 27, 1990, applicable to all workers of H & H Manufacturing Corporation Statham, Georgia. The notice was published in the **Federal Register** on August 9, 1990 (55 FR 32504).

At the request of the State Agency the Department reviewed the certification for H & H Manufacturing Corporation and found that several workers were retained for close out operations after the July 31, 1990 termination date. Therefore, the certification is amended by deleting the July 31, 1990 termination date and inserting a new termination date of October 1, 1990. The amended notice applicable to TA–W–24,440 is hereby issued as follows:

"All workers of H & H Manufacturing Corporation, Statham, Georgia who became totally or partially separated from employment on or after May 16, 1989 and before October 1, 1990 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 19th day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–25742 Filed 10–30–90; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropirate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–24,751; KY and J Shake Co., Chehalis, WA

TA–W–24,652; Sue Frocks, Inc., Tamaqua, PA

TA–W–24,707; Barclay Furniture Co, Hickory Flat, MS

TA–W–24,761; Northwest Cedar, Inc., Burlington, WA

TA–W–24,722; S. Kastenbaum & Co., New York, NY

TA–W–24,708; Beloit Corp., Beloit, WI

TA–W–24,709; Beloit Corp., South Beloit, WI

TA–W–24,678; Advanced Monobloc Corp., Canbury, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–24,776; ELW, Lafayette, GA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–24,768; W & W Design Manufacturing Co., Linden, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–24,634; Bull HN, Edina, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–24,856; Land & Marine Rental Co., Vernal, UT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–24,762; Ranger Well Service, Inc., Kilgore, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–24,753; Larson Manufacturing Co., Newark, NJ

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA–W–24,766; TXO Production Corp, Corpus Christi, TX

The investigation revealed that criterion (1) has not been met. A significant number or proportion of the workers did not become totally or partically separated as required for certification. The investigation also revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–24,745; Helmerich & Payne, IDC, Oklahoma City, OK

The investigation revealed that criterion (1) has not been met. A significant number of proportion of the workers did not become totally or partially separated as required for certification. The investigation also revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–24,748; Instrumentation Laboratory, Spokane, WA

A certification was issued covering all workers separated on or after July 31, 1989.

TA–W–24,695; Patton Industries, Inc., Patton, PA

A certification was issued covering all workers separated on or after July 25, 1989.

TA–W–24,805; Taunton Silversmith, Ltd, Taunton, MA

A certification was issued covering all workers separated on or after August 16, 1989.

TA–W–24,763; RB & W Corp., Cleveland, OH

A certification was issued covering all workers separated on or after August 10, 1989.

TA–W–24,711; F.R. Knitting Mills, Inc., Fall River, MA

A certification was issued covering all workers separated on or after August 2, 1989.

TA–W–24,723; Steffy Shoe Co., Labanon, PA

A certification was issued covering all workers separated on or after August 3, 1989.

TA–W–24,743; H & H Star Energy, DBA Petrostar Energy, Traverse City, MI

A certification was issued covering all workers separated on or after January 1, 1990.

TA–W–24,746; Hodes Dress Co., Inc., Plainfield, NJ

A certification was issued covering all workers separated on or after August 9, 1989.

TA–W–24,732; Canton Sewing, Canton, OH

A certification was issued covering all workers separated on or after August 9, 1989.

TA–W–24,738; Florian Fashions, Inc., Cleveland, OH

A certification was issued covering all workers separated on or after August 9, 1989.

TA–W–24,738A; Jerrie Lurie Sewing Co., Cleveland, OH

A certification was issued covering all workers separated on or after August 9, 1989.

I hereby certify that the aforementioned determinations were issued during the month of October 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write who the above address.

Dated: October 23, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-25743 Filed 10-30-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24, 617 and TA-W-24, 627]

Oklahoma Pipe Threaders, Wynnewood, OK; Valley Enterprises, Wynnewood, OK: Dismissal of Application for Reconsideration

Pursuant of 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Oklahoma Pipe Threaders, Wynnewood, Oklahoma and at Valley Enterprises, Wynnewood, Oklahoma. The reviews indicated that the applications contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of applications were issued.

TA-W-24, 617; Oklahoma Pipe Threaders, Wynnewood, Oklahoma (October 23, 1990)

TA-W-24, 627; Valley Enterprises, Wynnewood, Oklahoma (October 23, 1990)

Signed at Washington, DC this 23rd day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-25746 Filed 10-30-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-150-C]

Peabody Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, Inc., P.O. Box 373, St. Louis, Missouri 63166, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Eagle No. 2 Mine (I.D. No. 11-00598) located in Gallatin County, Illinois. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that aircourses be examined in their entirety on a weekly basis.

2. Application of the standard would result in a diminution of safety to the miners.

3. As an alternate method, petitioner proposes to establish six evaluation points and monitor for dangerous and harmful mine gases.

4. In support of this request, petitioner states that:

(a) Examinations would occur weekly, and the results of the examinations would be recorded in a book to be maintained at each location.

(b) Persons assigned to monitor the air would be trained in the procedure for sampling and notifying appropriate officials in the event of detecting harmful or dangerous mine gases.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1990. Copies of the petition are available for inspection at that address.

Dated: October 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-25744 Filed 10-30-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-151-C]

Toney's Branch Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Toney's Branch Coal Company, P.O. Box 8, Beaver, West Virginia 25813, has filed a petition to modify the application of 30 CFR 75.1710-1 (cabs and canopies) to its Crooked Run No. 3 Mine (I.D. No. 46-07442) located in Boone County, West Virginia. The petition if filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that canopies be installed on the mine's electric face equipment at certain heights.

2. Due to changes in the coal seam and bottom conditions, the use of canopies would result in a diminution of safety because canopies would:

(a) Dislodge roof support;

(b) Decrease the operator's visibility; and

(c) Create discomfort to the operator.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 30, 1990. Copies of the petition are available for inspection at that address.

Dated: October 24, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-25745 Filed 10-30-90; 8:45 am]

BILLING CODE 4510-43-M

Office of Federal Contract Compliance Programs

Reinstatement of Feature Enterprises, Inc. (formerly Feature Ring)

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Reinstatement, Feature Enterprises, Inc. (formerly Feature Ring).

SUMMARY: This notice advises that Feature Enterprises, Inc. (formerly Feature Ring), has been reinstated as an eligible bidder on Federal contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: Cari M. Dominguez, Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW. room C-3325, Washington, DC 20210 (202-523-9475).

SUPPLEMENTARY INFORMATION: Feature Enterprises, Inc. (formerly Feature Ring), New York, New York, is, as of this date, reinstated as an eligible bidder on Federal contracts and subcontracts.

Signed: October 22, 1990, Washington, DC.

Cari M. Dominguez,

Director.

[FR Doc. 90–25741 Filed 10–30–90; 8:45 am]

BILLING CODE 4510–27–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on November 8, 1990, in room S–4215, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the Sixty-Sixth meeting of the Secretary's ERISA Advisory Council which will begin at 9:30 a.m., is to have each working group i.e., Annuities; Pension Fund Investment Behavior; Enforcement, present its report to the Council for review, discussion and finalization, and to invite public comment on any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before November 6, 1990 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals, or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202) 523–8753. Oral presentations will be limited to ten minutes, but an extended statement may be submitted for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 6, 1990.

Signed at Washington, DC, this 26th day of October, 1990.

David George Ball,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 90–35761 Filed 10–30–90; 8:45 am]

BILLING CODE 4510–29–M

MERIT SYSTEMS PROTECTION BOARD

Advisory Committee on Federal Workforce Quality Assessment; Meeting

AGENCY: Merit Systems Protection Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Merit Systems Protection Board and Office of Personnel Management are holding an open meeting of the jointly sponsored advisory committee. According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L 92–463), notice is hereby given that a meeting of the Advisory Committee on Federal Workforce Quality Assessment will be held on November 15, 1990, from 8:30 a.m. to 4 p.m. at the Office of Personnel Management, room 1350, 1900 E Street, NW., Washington, DC. The committee will review the progress of effors made by OPM and MSPB so far to assess the quality of the federal workforce and discuss a proposed quality assessment model.

FOR FURTHER INFORMATION CONTACT: Katherine Naff, Office of Policy and Evaluation, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419, (202) 653–7833.

Dated: October 26, 1990.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 90–25752 Filed 10–30–90; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 5, 1990, through October 19, 1990. The last biweekly notice was published on October 17, 1990 (55 FR 42091).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, D.C. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 30, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who

wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: January 20, 1989, as supplemented on June 30, 1989, and October 4, 1990.

Description of amendment request: The proposed changes would revise the auxiliary feedwater (AFW) actuation delay time in Technical Specification Table 3.3-5, Item 10, of the Engineered Safety Features Response Times. The proposed amendments would change the response (delay) time from less than

or equal to 54.5 seconds to less than or equal to 180 seconds. The proposed response time is applicable to the steam driven and motor-driven AFW pumps.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendments against the standards provided above and has determined that operation of the facilities in accordance with the proposed amendments would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

The longer response in AFW initiation affects only mitigative hardware, not operating hardware involving plant operation. This will not increase the likelihood of any accident. The supporting analysis demonstrates that the increased response time will not result in the depletion of the steam generator (SG) liquid inventory during a Loss of Feedwater Event. Therefore, the consequence of this event will not be significantly increased.

(2) Create the possibility of a new or different type of accident from any accident previously evaluated:

The proposed change does not affect any normal hardware involved in plant operation. The Updated Final Safety Analysis Report has been reviewed and the only accident of concern is the Loss of Feedwater Event. This change will not create any new accident sequence initiators or present any new or different challenges to safety systems. The method for operating and testing the systems will not be altered. This proposed change will not create a new or different type of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The analysis shows that the SGs do not dry out as a result of this change. No loss of heat sink will occur. Therefore, no significant reduction in a margin of safety is involved.

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: September 21, 1990

Description of amendments request: The licensee installed six cooling units in the drywells of Units 1 and 2, as part of a commitment to the NRC. This was accomplished to restore design redundancy to the drywell ventilation system. Technical Specification 3/4.8.3.2, "Primary Containment Penetration Conductor Overcurrent Protective Devices," established requirements for the operability of these devices. The licensee proposes to add to Table 3.8.3.2-1 the new overcurrent protective devices associated with the new cooling units to assure they are properly controlled and tested. Also to clarify the Bases for 3/4.8.3, "Electrical Equipment Protective Devices," it is proposed to identify the electrical devices as medium and high voltage (6.9kv, 4.16kv and 480 volt).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has provided the following analysis of no significant hazards consideration using the Commission's standards.

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

This amendment proposal is an administrative change to extend the existing technical specification requirements for primary containment penetration conductor overcurrent protection devices to the fault protection breakers for primary containment coolers installed during a recent plant modification. The modification was completed as part of a commitment to the NRC to restore the design redundancy of the primary containment cooling system. Although the installations have been seismically designed and analyzed, the modification is classified as non-safety related and does not interface with safety related equipment in a manner that has not previously been evaluated in the LaSalle Station UFSAR. The corrections to Table 3.8.3.2-1 do not change the intent of the technical specifications but merely correct the identification numbers for the primary containment ventilation supply fans.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The existing conditions and accident analysis of the UFSAR are unchanged. The single failure events and design basis accidents are not affected. Extension of the existing technical specification requirements to the new overcurrent protective devices helps to ensure that the occurrence of a new or different kind of accident from any previously evaluated will remain unlikely.

(3) Involve a significant reduction in the margin of safety because:

Extension of the existing technical specification requirements to the new overcurrent protective devices helps to maintain the margin of safety already existing.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The staff, therefore, proposes to determine that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney to licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: Richard J. Barrett

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 26, 1990

Description of amendment request: The proposed amendment would modify the Component Cooling System Technical Specification to reflect changes made to the power feeds for the Component Cooling Pumps, increase the Emergency Diesel Generator (EDG) short term rating, and increase the EDG fuel oil minimum storage requirements.

The proposed amendment would also clarify the text with respect to the EDG nameplate rating, the tanks designated to store the 7 day minimum EDG fuel oil inventory, and the 138/345 kv feeds at the Buchanan Substation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92.

The licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information:

The Commission has provided guidance concerning the application of the standards for determining whether a "Significant Hazards Consideration" exists by providing examples in 51 FR 7751 (dated March 5, 1986). Example (i) of the Commission's Examples of Amendments That Are Considered Not Likely to Involve Significant Hazards Considerations relates to an administrative change. This is the case with the proposed changes to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and Technical Specification Basis 3.7 with respect to fuel oil storage location. The existing text is erroneous, while the proposed text clearly references the location of the additional 29,000 gallons of fuel oil. The proposed change would correct the Technical Specifications wording to be consistent with IP-2 FSAR [Final Safety Analysis Report] Section 8.2.3.2. This is also the case with the proposed changes to Technical Specification 4.6.A.2 with respect to the EDG nameplate rating. Thus, the above discussed changes are similar to Example (i).

Example (ii) of the Commission's Examples of Amendments that Are Considered Not Likely to Involve Significant Hazards Considerations relates to a change which constitutes a more stringent surveillance requirement. The proposed revisions to Technical Specifications 3.3.E.1.a and 3.3.E.2.a and Technical Specification Basis 3.3 with respect to the component cooling pumps and to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and 4.6.B; and Technical Specification Basis 3.7 and 4.6 with respect to minimum required fuel oil inventory are such changes.

In accordance with the requirements of 10 CFR 50.92, the proposed changes to Technical Specifications 3.3.E.1.a and 3.3.E.2.a with respect to component cooling pump (CCPs) on busses supplied by different diesels are deemed not to involve a "Significant Hazards Consideration" because operation of Indian Point Unit No. 2 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The current power feed configuration to CCPs 21, 22 and 23 has EDG 21 feeding CCP 21 and EDG 22 feeding both CCPs 22 and 23. The subject technical specification addresses the availability of pumps, not by specific tag number, but by their EDG supply busses. Since both CCP 22 and 23 are powered off the same EDG, their operable status, should CCP 21 be out of service, would not satisfy the requirements of Technical Specification 3.3.E.1.a in its current form.

In addition, power cables for CCP 21 and 22 are routed in the same cable tray compromising the independence of having two EDGs providing power. Due to the above circumstances CCP 22 cannot be taken credit for in determining the operable status of the component cooling system, should CCP 21 or 23 be inoperable. As a result of the limitations discussed above, a modification will be performed to 1) re-route the power feed for CCP 23 from EDG 22 to 23 and 2) provide adequate separation between the feeder cables for CCP 21 and 22. This modification is an enhancement of the existing component cooling system since it increases the level of redundancy and independence of the CCPs. Technical Specification Basis 3.3 states that "following a loss-of-coolant accident, only one of the three component cooling pumps is required for minimum safeguards." The proposed modification as discussed above will enable any one of the three CCPs to be credited for in meeting minimum safeguards requirements. The proposed changes to Technical Specifications 3.3.E.1.a and 3.3.E.2.a with respect to CCPs deleting "on busses supplied by different diesels," constitutes a more stringent surveillance requirement since now, a third CCP (i.e., CCP 22) can be credited for meeting minimum safeguards. Therefore, the proposed changes to Technical Specifications 3.3.E.1.a and 3.3.E.2.a do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The modification is an enhancement of the existing component cooling system since it increases the level of redundancy and independence of the CCPs. No mechanical changes to the CCPs are required with respect to these proposed changes. All changes are electrical in nature and/or are associated with providing for the physical separation of cables. Therefore, the proposed changes to Technical Specifications 3.3.E.1.a and 3.3.E.2.a with respect to CCPs, deleting "on busses supplied by different diesels," does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The modification is an enhancement of the existing component cooling system since it increases the level of redundancy and independence of the CCPs. The re-establishment of continuous motor-driven AFW pump operation will maintain the margin of safety as defined in the FSAR with respect to minimum safeguards equipment. Technical Specification Basis 3.3 and the IP-2 FSAR define the availability of one CCP during the recirculation phase as required for minimum safeguards. The modifications to the component cooling system will not reduce the margin of safety as described in the Technical Specifications. Therefore, the proposed changes to Technical Specifications 3.3.E.1.a and 3.3.E.2.a with respect to CCPs, deleting "on busses supplied by different diesels," does not involve a significant reduction in a margin of safety.

In accordance with the requirements of 10 CFR 50.92, the proposed changes to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and 4.6.B and Technical Specification Bases 3.7 and 4.6 with respect to minimum required fuel oil inventory are deemed not to involve a "Significant Hazards Consideration" because operation of Indian Point Unit No. 2 in accordance with this change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Since this proposed change is only an increase in the minimum required amount of fuel oil stored on-site (from 41,000 gallons to 48,000 gallons), since there are no physical changes being made to the fuel oil storage tanks with respect to this proposed change and since there is no impact on IPPSS [the Indian Point Probabilistic Safety Study], there is no increase in the probability of an accident previously evaluated.

With respect to a significant increase in the consequences of an accident previously evaluated, it is important to note that the proposed change increases the minimum required amount of additional fuel oil stored at the Buchanan Substation (via the use of the most conservative calculation possible) to assure that the minimum required 2 EDGs can operate for a minimum of 7 days prior to replenishing the fuel supply. Since this is and has been the requirement of Indian Point 2, this proposed change does not increase the consequences of an accident previously evaluated.

Therefore, these proposed changes to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and 4.6.B and Technical Specification Bases 3.7 and 4.6 with respect to minimum required fuel oil inventory do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change provides for an increase in the minimum required fuel oil inventory on-site (from 41,000 gallons to 48,000 gallons). No physical changes to the fuel oil storage tanks are required with respect to these proposed changes. Therefore, the proposed changes to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and 4.6.B and Technical Specification Basis 3.7 and 4.6 with respect to the minimum required fuel oil inventory do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

At Indian Point 2, Con Edison [Consolidated Edison] is required to provide sufficient on-site fuel oil storage to power 2 EDGs (the minimum required) for 7 days (168 hours). A diesel fuel oil calculation used the maximum load profile for the 2 EDGs. This load profile assumed that the 2 EDGs ran continuously for 7 days and that the first 2 hours of every 24 hours was at 2100 kW followed by a 1/2 hour at 2300 kW and the

remaining 21.5 at 1750 kW. Since the EDGs are rated at 1750 kW continuous and 2100 kW for 2 hours in any 24 hours of operation and 2300 kW for a 1/2 hour in any 24 hours of operation, the above utilized load profile envelopes the postulated accident load profile and is thus conservative. The result of the calculation showed the need of a minimum fuel oil inventory of 44,143 gallons. Therefore, a minimum requirement of 48,000 gallons is proposed, which includes a 9 percent margin. Finally it has been determined that this increase in the fuel oil inventory from 41,000 gallons to 48,000 gallons has no impact on IPPSS.

Due to the increase in the fuel oil requirements discussed above, the minimum required inventory of the additional fuel oil stored at the Buchanan Substation has been increased from 22,000 gallons to 29,000 gallons. The fuel consumption rates were provided by the EDG manufacturer, ALCO, based upon the proposed upgraded engine and were used to determine how long the 19,000 gallons in the storage tanks and the 29,000 gallons stored at Buchanan would each last. Assuming 7 days continuous operation of 2 EDGs, with the first 2 hours of every 24 hours at 2100 kW followed by a 1/2 hour at 2300 kW and the remaining 21.5 hours at 1750 kW, it was determined that these supplies would last at least 73 hours and 112 hours respectively.

Thus, based on the conservative assumptions used in the diesel fuel oil calculation the margin of safety has either been maintained (i.e., the 7 day fuel oil supply requirement) or has been increased (i.e., the 41,000 gallons to 48,000 gallons increase in the minimum required diesel fuel oil inventory). Therefore, the proposed changes to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and 4.6.B and Technical Specification Bases 3.7 and 4.6 with respect to minimum required fuel oil inventory do not involve a significant reduction in a margin of safety.

Based on the above discussion, Con Edison has determined that the proposed changes to Technical Specifications 3.3.E.1.a and 3.3.E.2.a with respect to the component cooling pumps and to Technical Specifications 3.7.A.5, 3.7.D.1.e, 3.7.D.2.f and 4.6.B and Technical Specification Bases 3.7 and 4.6 with respect to minimum required fuel oil inventory are similar to Example (ii) and do not involve a "Significant Hazards Consideration."

Therefore, since these proposed changes to Technical Specification 3.3.E, 3.7.A, 3.7.D, 4.6.A and 4.6.B and Technical Specification Bases 3.7 and 4.6 satisfy the criteria specified in 10 CFR 50.92, are similar to examples for which "No Significant Hazards Consideration" exists, and are not similar to examples for which "Significant Hazards Consideration" exists, Con Edison has determined that these changes to not involve a "Significant Hazards Consideration."

The staff has reviewed and agrees with the licensee's analysis of the significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 21, 1990

Description of amendment request: The proposed amendment would replace the specific requirements in Technical Specification (TS) 4.5.1 with a general statement which states that the Integrated Leak Rate Test (ILRT) will meet the 10 CFR 50, Appendix J, type A test requirements or approved exemptions. A minor related correction to the TS basis is also proposed.

TS Section 4.5.1 contains ILRT requirements. Currently, a half pressure test is required by TS. This change will allow the ILRT to be conducted at full pressure in accordance with 10 CFR 50, Appendix J. The licensee plans on conducting a full pressure test during their current refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application:

1. This change to the Technical Specification will not affect the probability or consequences of an accident previously evaluated. The Technical Specifications change does not affect the integrated leak rate testing program except to allow the option for the test to be conducted at calculated peak containment pressure instead of requiring a reduced pressure test at about 28 psig. The surveillance test will still meet 10 CFR 50, Appendix J requirements. Removal of the requirement to report results of the leak test of the recirculation heat removal (RHR) systems, and the changes to the Basis Statements also have no affect on probability or consequences of an accident.
2. As above, the change to the Technical Specifications will allow the option for the ILRT to be conducted at peak containment pressure in accordance with 10 CFR 50, Appendix J requirements. The ILRT will be conducted in accordance with appropriate test procedures. Therefore, the change will not create a new or different type of accident. Furthermore, the change to the RHR systems leak test reporting requirement and the changes to the Basis do not create a new or different type of accident.
3. The change to the ILRT surveillance test requirements by allowing the option for a test at peak containment pressure in accordance with 10 CFR 50, Appendix J requirements, the minor Basis changes and the deletion of the RHR systems leak test reporting requirement do not affect the margin of safety. The ILRT results provide the assurance that the containment is meeting its design leakage rate requirement thus assuring that the margin of safety has not been reduced.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Consumer's Power Company, Docket No. 50-255, Palisades Plant, Van Buren County Michigan

Date of amendment request: August 31, 1990

Description of amendment request: The proposed amendment would allow the use of both the ANFP DNB correlation (Departure for Nucleate Boiling correlation for high thermal performance fuel) and the XNB DNB correlation (Exxon Nuclear DNB correlation for PWR fuel designs) for the cycle 9 fuel reload. The upcoming fuel reload is high thermal performance fuel design. The spacer grids and intermediate flow mixers increase subchannel mixing. Therefore, a new DNB correlation is necessary to represent the thermal performance of the new fuel design.

Specifically, TS 2.1 would be updated to reference the new DNB correlation

and the Minimum Departure from Nucleate Boiling Ratio (MDNBR). Additionally, the basis of TS 2.1 and 3.1 would be revised to reflect the new correlation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application:

1. This change only allows use of a different DNB correlation and MDNBR. It does not effect plant hardware, plant operation limits nor limiting conditions of operation. Therefore, it does not increase the probability or consequences of an accident previously evaluated.
2. This change does not effect plant operations or hardware. Therefore it does not create the possibility of a new or different kind of accident from any accident previously evaluated.
3. The existing margin of safety is a 95% probability that 95% of the fuel rods in the core are protected against experiencing transition heat transfer conditions. The DNB correlation safety limits for both the previously used XNB DNB correlation and the ANFP DNB correlation will assure, with a 95% probability, that 95% of the fuel rods will be protected against experiencing transition heat transfer conditions. Thus, the margin of safety is not reduced.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Robert Pierson.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: October 31, 1989, as supplemented August 10, 1990.

Description of amendment request: With respect to the present Technical Specifications (TS), the proposed amendment would add a limiting condition for operation (LCO) for low temperature overpressurization protection (LTOP) features, allow two high pressure injections pumps to be deactivated in Modes 3 and 4, and add a note to the power operated relief valve (PORV) TS to indicate that PORV operability is required by the LTOP TS. The application also proposes to modify the improved TS which are not yet in place, and therefore those proposed changes will not be addressed here.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change request against the standards provided above, as follows:

Florida Power Corporation (FPC) proposes the addition of a Low Temperature Overpressurization Protection (LTOP) Features Technical Specification does not involve a significant hazards consideration. The addition of a Technical Specification requirement to maintain the LTOP features ensures the reactor coolant pressure boundary is protected against a non-ductile failure at low reactor coolant temperatures.

Based on the above, FPC concludes this change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated since there are currently no LTOP requirements in the Technical Specifications. This change represents additional requirements necessary to preclude an LTOP event from occurring. These additional requirements also provide protection for all pressure and temperature combinations for which an LTOP event may be postulated. Overall, these requirements provide a level of protection greater than or equivalent to existing requirements.
2. Create the possibility of a new or different kind of accident from any previously evaluated because the addition of an LTOP Technical Specification does not require modification to the plant nor does it create a new mode of plant operation, with the exception of the small increase in reactor coolant temperature at which the high pressure injection system is deactivated. This is considered acceptable based on the small amount of time the plant is operated in this temperature region and the low probability of a loss of coolant accident (LOCA) requiring immediate high pressure injection flow at the reactor coolant temperatures in this region. In the unlikely event a LOCA does occur, high pressure injection would be available following operator restoration of the system. Reactor coolant makeup flow would be available in the interim to provide core cooling requirements.
3. Involve a significant reduction in the margin of safety. Any reduction in the margin of safety will be insignificant and offset by the safety benefit gained through the additional requirements placed on plant operation to preclude a low temperature overpressurization event.

In addition, the note added to the PORV TS simply alerts the operator that the PORV operability is also required by the new LTOP TS, and is not a change to the PORV TS itself.

The NRC staff has reviewed the licensee's no significant hazards determination and agrees with the licensee's analysis. Therefore, the staff purposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: August 20, 1990

Description of amendment request: The amendments would modify the Technical Specifications (TSs) and Environmental Technical Specifications (ETSs), Appendices A and B, respectively, to the operating licenses for Hatch Units 1 and 2 to make the following editorial changes: (1) Unit 2 TS

Table 3.3.2-1, replace the master parts list (MPL) for Item 1.f from 2U61-R001 through R004 to 2U61-P001 through P004, and for Item 4.g from 2E41 to 2E51; (2) Unit 1 TS Table 4.2-2, correct the spelling of "Emergency" under Reference No. 8; Unit 2 TS Table 3.3.6.1-1, correct the measurement range for the off-gas post-treatment monitors from 10^{-1} to 10^{-6} cps to 10^{-1} to 10^{6} counts per second; change surveillance requirement 4.6.6.1.1.d.3 to incorporate a plus/minus sign for the range of heat dissipated by the standby gas treatment subsystem heaters (18.5 27 1.5 kW); and delete the list of Figures in the ETS Table of Contents for Units 1 and 2 since Figure 5.2-1 is the only figure listed, and it was deleted in Amendments 145 and 80 for Units 1 and 2, respectively; and (3) Unit 2 TS 3.8.2.5, replace the word "Circuit" with "Breaker," for Items a, b, and c, change breaker number 26 and 32 to 28 and 34, respectively, for Item c, and change "Compartment" to "Frame" for Item d; TS Table 3.8.2.6-1, relocate items c.3 and c.4 to another page in the table, correct the labels for drywell cooling unit breakers, correct table sequential lettering for Type 6 and Type 7, and make other editorial corrections to reflect current equipment designation and make the terminology consistent with other plant design documents.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendments would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee's August 20, 1990, submittal provided an evaluation of the proposed changes with respect to these three standards.

Proposed change 1: This proposed change would allow editorial revisions to Unit 2 TS Table 3.3.2-1, Items 1.f and 4.g. The licensee has provided the following evaluation:

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change is administrative in nature and does not affect the operation of the turbine building area temperature switches/indicators, the suppression pool area temperature timer relays, or any other plant component or system.

The plant will continue to operate as it did prior to the implementation of change; therefore, all FSAR analyses will remain valid and bounding. This change reflects a change in panel MPL numbers; however, the temperature switches in the new panels will continue to operate as designed, with the same number of switches. The suppression pool area temperature timer relays will also continue to operate as they did prior to the implementation of the change. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged, as will the probability of occurrence of such accidents.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as a result of this change.

The proposed change does not significantly reduce a margin of safety, since changing the MPL numbers is an editorial change. The systems and components will continue to operate as they did prior to the implementation of the change.

Proposed change 2: This proposed change would make editorial changes to the Unit 1 and Unit 2 TSs and ETSs to correct typographical errors and to delete a list which could have been deleted with Amendments 145 and 80. The licensee has provided the following evaluation:

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change is editorial in nature and involves no physical alteration of the plant or changes to setpoints or operating parameters. The change does not affect plant operation, and the response of the plant to previously evaluated accidents will remain unchanged.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the design, operation, maintenance, or testing of the plant, a new mode of failure is not created. Therefore, a new or different kind of accident will not occur as the result of this change.

The proposed change does not significantly reduce a margin of safety, since the change is editorial in nature. Safety analysis assumptions and equipment performance are not changed in any way.

Proposed change 3: This proposed change would make editorial changes to Unit 2 TS 3.8.2.5 and Table 3.8.2.6-1. The licensee has provided the following evaluation:

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The change is editorial in nature and involves no physical alteration of the plant or changes to setpoints or operating parameters. The change does not affect operation, maintenance, or testing of the plant. For these reasons, the response of the plant to previously evaluated accidents will remain unchanged.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. Since no change is being made to the operation, maintenance, or testing of the plant, a new mode of failure is not created. The design changes reflected in this revision were approved and implemented previously. Therefore, a new or different kind of accident will not occur as the result of this change.

The proposed change does not significantly reduce a margin of safety, since the change is editorial in nature. Safety analysis assumptions and equipment performance are not changed in any way.

The Commission's staff has considered the proposed changes and agrees with the licensee's evaluations with respect to the three standards.

On this basis, the Commission has determined that the requested amendments meet the three standards and, therefore, has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: September 28, 1990

Description of amendment request: The proposed amendment would modify the approval requirements for procedures and programs important to nuclear safety in Technical Specification (TS) 6.5.2.1, "Technical Review and Control." The proposed amendment would allow the manager/department head responsible for the program or activity to approve procedures. Currently only the Plant Manager, Assistant Plant Managers, and the Director-Radiological Programs are allowed to approve procedures.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a

significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed change would not increase the probability or consequences of a previously evaluated accident because:

The proposed changes are administrative in nature and do not affect assumptions contained in any safety analyses nor do they affect Technical Specifications that preserve safety analysis assumptions. Additionally, these changes do not modify the physical design or operation of the plant.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

These proposed changes affect administrative controls on the River Bend Station Technical Specifications and do not affect plant equipment or physical features. Specific operational requirements are required elsewhere in the Technical Specifications that bear more directly on operational safety than procedure approvals.

3. The proposed change would not involve a significant reduction in the margin of safety because:

The changes being proposed are administrative in nature and do not relate to or modify the safety margin defined in or required and maintained by Technical Specifications. The provision to allow managers/department heads to approve procedures within their own area of responsibility will not decrease the effectiveness of these procedure reviews.

The staff has reviewed the amendment request and the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, DC 20005

NRC Project Director: James C. Linville, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 1990

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.3.3.6 regarding the action to be taken in the event that one of the four steam generator level, narrow range post-accident monitoring channels is inoperable. The change would eliminate the requirement to shut down the plant if one of the four channels is inoperable. The shutdown requirement would be retained for the condition of two operable channels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Eliminating the shutdown requirement in the action statement for loss of one of four channels of post-accident monitoring instrumentation does not affect the probability of an accident because monitoring instrumentation does not contribute to accident probability. The accident mitigation function of the subject instrumentation is addressed by other Technical Specifications, which are unaffected by this proposed change. Additionally, three channels of Steam Generator Level, narrow range instrumentation can monitor the steam generator level in a post-accident mode and provides one more channel than the redundancy specified in Regulatory Guide 1.97. The consequences of an accident are not affected by the proposed change.
2. The proposed change does not create the possibility of a new or different kind of accident from that previously evaluated. The proposed change involves no changes to the station or its design bases nor does it impose any new accident scenarios.
3. The proposed change does not involve a significant reduction in a margin of safety. There is no change to the margin of safety since there is no change to the station or its design bases.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: James C. Linville, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 1990

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.3.3.6 regarding the action to be taken in the event of one of the four containment pressure post-accident monitoring channels becoming inoperable. The change would eliminate the requirement to shut down the plant if one of the four channels is inoperable. The shutdown requirement would be retained for the condition of two inoperable channels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Eliminating the shutdown requirement in the action statement for loss of one of four channels of post-accident monitoring instrumentation does not affect the probability of an accident because monitoring instrumentation does not contribute to

accident probability. The accident mitigation function of the subject instrumentation is addressed by other Technical Specifications, which are unaffected by this proposed change. Additionally, three channels of Containment Pressure Instrumentation can monitor the Containment pressure in a post-accident mode and provides one more channel than the redundancy specified in Regulatory Guide 1.97. The consequences of an accident are not affected by the proposed change.

2. The proposed change does not create the possibility of a new or different kind of accident from that previously evaluated. The proposed change involves no changes to the station or its design bases nor does it impose any new accident scenarios.
3. The proposed change does not involve a significant reduction in a margin of safety. There is no change to the margin of safety since there is no change to the station or its design bases.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards condition.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: James C. Linville, Acting

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 1990

Description of amendment request: The proposed amendment would change Technical Specification (TS) 3.3.3.6 regarding the action to be taken in the event of one of the four steamline pressure post-accident monitoring channels becoming inoperable. The change would eliminate the requirement to shut down the plant if one of the four channels is inoperable. The shutdown requirements would be retained for the condition of two inoperable channels.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. Eliminating the shutdown requirement in the ACTION statement for loss of one of four channels of post-accident monitoring instrumentation does not effect the probability of an accident because monitoring instrumentation does not contribute to accident probability. The accident mitigation function of the subject instrumentation is addressed by other Technical Specifications, which are unaffected by this proposed change. Additionally, three channels of Steam Line Pressure Instrumentation can monitor the Steam Generator pressure in a post-accident mode and provides one more channel than the redundancy specified in Regulatory Guide 1.97. The consequences of an accident are not affected by the proposed change.
2. The proposed change does not create the possibility of a new or different kind of accident from that previously evaluated. The proposed change involves no changes to the station or its design bases nor does it impose any new accident scenarios.
3. The proposed change does not involve a significant reduction in a margin of safety. There is no change to the margin of safety since there is no change to the station or its design bases.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards determination.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: James C. Linville, Acting

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 28, 1990

Description of amendment request: The amendment proposes to revise Cooper Nuclear Station Technical Specification 3.9.A.1.a to include the 161 kV line from the Omaha Public Power District as an off-site power source available to Cooper to power the auxiliary electrical equipment.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

1. Does the proposed license amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Evaluation

The proposed amendment would revise the Technical Specifications to recognize an additional existing source of off-site power, available to supply the emergency buses. This additional full capacity, independent source of off-site power significantly improves the reliability and flexibility of the Cooper Nuclear Station auxiliary electrical system. The probability of a loss of voltage or degraded voltage to the station emergency buses is significantly reduced. The proposed amendment will require the availability of at least one off-site source prior to allowing reactor criticality. In addition the 69 kV emergency line will still be required to be operational as currently specified in the existing Technical Specifications. Therefore, this change has no effect on the probability of loss of off-site power or reliability of the power supply to plant emergency buses and equipment, and there is no increase in the probability or the consequences of an analyzed accident.

2. Does the proposed [license] amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed Technical Specification change deals exclusively with the off-site electrical power sources for the Cooper Nuclear Station. This proposed change reflects the addition of a full capacity, independent off-site source of electrical power to the plant. Cooper Nuclear Station is designed to respond to design basis accidents assuming the coincident loss of off-site power, and analyses contained in Section XIV of the Updated Safety Analysis Report (USAR) reflect this assumption.

The intent of the additional full capacity, independent off-site source is to improve the reliability of off-site power. No new or different kind of accident from any accident previously evaluated would be created since the loss of off-site power is already assumed.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation

The proposed Technical Specification wording change will recognize the addition to the plant of another full capacity, independent, source of off-site electrical power. This source will significantly improve the reliability and availability of off-site power sources capable of supplying power to the emergency buses. However, Cooper Nuclear Station is designed to respond to design basis accidents assuming a coincident loss of all off-site power. Therefore, this proposed change will not involve a reduction in the margin of safety.

As previously described, the Technical Specification change reflects the addition of the 161 kV electrical source which will provide an additional source of off-site power available to the plant. The installation process for the AC power source involved standard industry practices related to transmission system equipment. The overall effect of the change is to improve plant safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay, Acting

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 28, 1990

Description of amendment request: This proposed amendment adds Limiting Conditions for Operation and Surveillance Requirements for the reactor vessel overfill protection system.

Basis for proposed no significant hazards consideration determination: In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation:

CNS currently has in place a feedwater pump trip system that provides protection against reactor vessel overfill. This system actuates on a 2-out-of-3 initiation logic sensed by three reactor vessel level transmitters. The District performs appropriate surveillance to ensure availability of this system; however, no Limiting Conditions for Operation and surveillance requirements for this function presently exist in the CNS Technical Specifications.

This change consists only of adding to the CNS Technical Specifications, the existing surveillance schedule as well as Limiting Conditions for Operation. No design changes [or] hardware modifications are associated with this change. Therefore, this proposed change does not in any way involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility for a new or different kind of accident from any accident previously evaluated?

Evaluation:

As discussed above, this proposed license amendment does not involve any plant modifications. This proposed amendment incorporates existing surveillance requirements into the CNS Technical Specifications, and adds Limiting Conditions for Operations. Therefore, this proposed change does not create the possibility for a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Evaluation:

This proposed change includes in the CNS Technical Specification requirements for administering appropriate surveillance procedures and adds Limiting Conditions for Operation to provide an acceptable time limit for operation with less than two of three feedwater trip channels available. This proposed change would serve only to improve the margin of safety. Therefore, this change does not result in a significant reduction in the margin of safety.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability of a new or different kind of accident from any accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: Theodore R. Quay, Acting

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: October 4, 1990

Description of amendment request: The proposed amendment would revise the Technical Specifications to (a) correct editorial and typographical errors made in previous amendments, and (b) update bases to reflect previous actions.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment does not involve a significant hazards consideration if it does not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

In accordance with the requirements of 10 CFR 50.91(a), the licensee has provided an analysis, using the standards of 10 CFR 50.92, of the issue of no significant hazards consideration. The licensee's analysis states that the proposed changes are administrative changes serving only to correct editorial and administrative errors in the Technical Specifications.

The staff has reviewed the licensee's analysis and made a proposed determination that no significant hazards considerations exist.

Because no Limiting Conditions for Operation, Safety Limits, Surveillance Requirements, Limiting Safety Systems Settings or Administrative Controls will be affected, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert C. Pierson

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: Septebmer 28, 1990

Description of amendment request: The proposed amendment would revise the Fort Calhoun Station, Unit 1, Technical Specifications by deleting in their entirety, Specifications 3.6(3) Pumps and 3.6(4) Valves. The proposed changes would delete redundant surveillance requirements and an error contained in the Technical Specifications. In addition, Specification 3.6(5) is renumbered to reflect the deletion of Specifications 3.6(3) and 3.6(4).

The redundancy comes from the fact that Specification 3.3(1)a states that inservice testing of ASME Code Class 1, Class 2, and Class 3 pumps and valves shall be in accordance with Section XI of the ASME Boiler and Pressure Vessel Code as required by 10 CFR Part 50, Section 50.55a(g), except where specific relief has been granted by the Commission. For both the pump and valves, Specifications 3.6(3) and 3.6(4) surveillance requirements are met by the requirements of Specification 3.3(1)a. Therefore, the surveillance requirements required by the Technical Specifications are redundant and Specifications 3.6(3) and 3.6(4) are being deleted.

The error in the Technical Specifications is that Specification 3.6(3) requires the starting of the pumps be alternated between the control room panel and the local panel. The problem is that there is no local panel installed at the Fort Calhoun Station and there is no current design requirement or licensing basis for a local panel. Therefore, this statement is being deleted.

Finally, since Specifications 3.6(3) and 3.6(4) are being deleted, Specification 3.6(5) is renumbered to 3.6(3) to account for these deletions.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee provided an analysis that addressed the above three standards in the amendment application.

The proposed change does not involve a significant hazards consideration because operation of Fort Calhoun Station Unit 1 in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

This change merely eliminates redundant administrative requirements contained within the Technical Specifications concerning the surveillance requirements of the safety injection and containment cooling pumps and valves and corrects an error concerning a requirement for a panel which is not present at the Station. Therefore[,] this change cannot increase the probability or consequences of an accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that no new or different kind of accident will be possible due to this change. No new or different modes of operation are proposed for the plant as a result of this change. The elimination of redundant administrative requirements and deletion of a requirement for equipment that is not present at the Station does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

Elimination of redundant administrative requirements and the deletion of a requirement for equipment that is not present at the Station will not reduce the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, DC 20036

NRC Project Director: Theodore R. Quay, Acting

Virginia Electric and Power Company, Docket No. 50-281, Surry Power Station, Unit No. 2, Surry County, Virginia.

Date of amendment request: September 14, 1990

Description of amendment request: The proposed changes add an administrative footnote to the Unit 2 Technical Specifications Surveillance Requirements. The footnote documents a one-time exemption from local leak rate testing (LLRT) surveillance interval requirements for certain valves tested under 10 CFR Part 50, Appendix J, Section III.D.3. This section requires LLRT at intervals no greater than 2 years. An exemption to this requirement was granted on September 26, 1990 (55 FR 40488). The exemption extends the permitted surveillance interval from September 18, 1990 to April 30, 1991.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Virginia Electric and Power Company (VEPCO, or the licensee) has provided a significant hazards evaluation that operation of the Surry Power Station, Unit No. 2 in accordance with the proposed change will not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident or malfunction of equipment which is important to safety and which has been evaluated in the UFSAR because extending the LLRTs does not affect the probability of occurrence of accidents, nor does projected degradation of equipment occur that would change the consequences of an accident.
2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. Physical plant modifications are not being made and plant operations are not being changed. Consequently the systems' ability to perform its intended function will be maintained, no new accident precursors are being generated and therefore no new or different kind of accident is created.
3. Involve a significant reduction in the margin of safety. Plant operations are not being changed nor are any of the accident analysis assumptions being modified or exceeded by this change. The deferral of the LLRTs will not result in significant degradation of equipment in that the equipment will be in service for about the same time as a normal 18 month operating cycle. The projected leakage rate (92 [standard cubic feet per

hour] SCFH) is well below the 0.6 La (180 SCFH) acceptance criterion. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

Furthermore, the proposed change is administrative. The change documents the exemption granted on September 26, 1990, and is consistent with the Safety Evaluation provided for that exemption.

Based on the staff's review of the licensee's evaluation, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: October 12, 1990

Brief description of amendment request: The proposed amendment would revise Technical Specification Table 3.8.4.1-1, "Primary Containment Penetration Conductor Overcurrent Protection Devices," Sections C.1 and C.4 to reflect the removal of a load from Section C.1 and the addition of the load to Section C.4. The new circuit breaker in Section C.4 will provide primary containment penetration conductor overcurrent protection for the larger Reactor Water Cleanup (RWCU) precoat pump which is being installed to improve RWCU filter and system performance.

Date of individual notice in **Federal Register:** October 18, 1990 (55 FR 42295)

Expiration date of individual notice: November 19, 1990

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 10, 1987, as supplemented on August 31, 1989, and August 3, 1990.

Brief description of amendments: These amendment add Technical Specifications (TS) relating to surveillance, operability, and reporting requirements for the reactor vessel level monitoring system (RVLMS) to the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, TS 3/4.3.3.6, "Post Accident Instrumentation," including TS Tables 3.3-10 and 4.3-10, and TS 6.9.2, "Special Reports." In addition, the applicable Bases sections of the TS are updated to reflect the proposed changes.

Date of issuance: September 28, 1990

Effective date: September 28, 1990

Amendment Nos.: 147, Unit 1; 128, Unit 2

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Initially noticed May 18, 1988, (53 FR 17777) and renoticed on August 22, 1990 (55 FR 34364). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 28, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: June 16, 1988, as supplemended on September 20, 1989, and August 3, 1990.

Brief description of amendments: The initial request, as supplemented, proposes the addition of Technical Specifications (TS) operability and surveillance requirements for the core exit thermocouple (CET) systems at the Calvert Cliffs Nuclear Power Plant, Units 1 and 2, TS Table 3.3-10, "Post-Accident Monitoring Instrumentation" and Table 4.3-10, "Post Accident Monitoring Instrumentation Surveillance Requirements."

Date of issuance: October 12, 1990

Effective date: October 12, 1990

Amendment Nos.: Unit 1 No. 148; Unit 2 No. 129

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Initially noticed October 19, 1988 (53 FR 40998), and renoticed on September 5, 1990 (55 FR 36338). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 12, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: March 8, 1990

Brief description of amendment: This amendment changes the technical specification for the Logic System Function Testing (LSFT) surveillance interval from 6 months to 18 months. The bases for Section 4.2 are also changed.

Date of issuance: October 15, 1990

Effective date: Effective as of the date of issuance and shall be implemented within 30 days.

Amendment No.: 130

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18407) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1990.

No significant hazards consideration comments received: Yes - Mr. Joseph Kriesberg, Director, Massachusetts Citizens for Safe Energy, Boston, Massachusetts responded to Federal Register Notice in the form of seven questions on the Logic System Functional Testing Surveillance. NRC responded to this inquiry by letter dated August 9, 1990 in question and answer format.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 9, 1990, as supplemented August 16, August 21 and September 18, 1990.

Brief Description of amendments: The amendment add a footnote to Action Requirement 3.8.1.1a that allows the flexibility required to perform extended maintenance on an offsite circuit. Additional changes to Technical Specifications (TS) 3.8.1.1 and 3.8.1.2 are also being made to clarify the existing AC source operability requirements.

Date of issuance: October 5, 1990

Effective date: October 5, 1990

Amendment Nos.: 145 and 176

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1990 (55 FR 35971) The September 18, 1990, letter provided clarifying information that did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 5, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 28, 1990, as supplemented May 8, 1990, September 21, and September 27, 1990.

Brief Description of amendments: The amendments revise the Technical Specifications (TS) Section 3.7.1.2 to clarify and expand the service water pump operability requirements during various plant operational conditions, thereby reflecting the plant design in a clearer manner. A change to the Bases Section 3/4.7.1 are also made reflecting the proposed change. The February 28, 1990, submittal required at least two operable nuclear service water pumps per site while in Operational Condition 4 or 5. The May 8, 1990, revision corrected discrepancies in the earlier submittal between the letter, the proposed bases and the proposed TS. The correction changed the required number of nuclear service water pumps from two to three when the units are in Operational Condition 4 or 5.

Date of issuance: October 11, 1990

Effective date: October 11, 1990

Amendment Nos.: 146 and 177

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18410) and August 8, 1990 (55 FR 32323). The September 21, 1990, and September 27, 1990, submittals provided updated Technical Specification pages and did not change the initial determination of no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 11, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: April 20, 1990 (published in the **Federal Register** as April 26, 1990).

Brief description of amendments: The amendments to Technical Specification 3/4.6.3, Containment Isolation Valves, would delete the requirement for Type C leakage testing for specified steam generator blowdown isolation valves and insert a requirement for the Type C leakage test for the 1/2 SI 8968 safety injection valves.

Date of issuance: October 17, 1990

Effective date: October 17, 1990

Amendment Nos.: For Byron, 39 and 39; for Braidwood, 26 and 26

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 13, 1990 (55 FR 23995) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 17, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P. O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: January 10, 1990 and January 23, 1990 and supplemented August 22, 1990.

Brief description of amendment: This amendment revises Technical Specification Section 4.1.1(i)4 by providing specific reference to Figures 4-1(a), 4-1(b), and 4-1(c). The figures were revised to satisfy the requirements of 10 CFR Part 50, Appendix G by incorporating the methodology of Regulatory Guide 1.99, Revision 2.

Date of issuance: October 11, 1990

Effective date: October 11, 1990

Amendment No.: 103

Facility Operating License No. DPR-6. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 21, 1990 (55 FR 6104). The August 22, 1990 submittal provided clarifying information and did not change the initial nonsignificant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: December 22, 1988, as supplemented May 31, 1989.

Brief description of amendment: This amendment revises the Technical Specification (TS) by adding Section 3/4.3.11 to the TS with Limiting Conditions for Operation and Surveillance Requirements for the Alternative Shutdown System, installed to mitigate the effects of a fire in the control room complex.

Date of issuance: October 4, 1990

Effective date: October 4, 1990

Amendment No.: 59

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30294) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: February 1, 1989

Brief description of amendment: This amendment revises the Technical Specification (TS) by changing Trip Setpoints and Allowable Values for Isolation Actuation Instrumentation which are listed in TS Table 3.3.2-2, Isolation Actuation Instrumentation Setpoints.

Date of issuance: October 12, 1990

Effective date: October 12, 1990

Amendment No.: 60

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34366) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 2, 1990

Brief description of amendment: The amendment added requirements to Specification 4.21.1 for surveillance testing of the Hallway El 372 (Zone 98-J) Sprinkler System and the Condensate Demineralizer Area Sprinkler System. The amendment also standardizes the surveillance requirements for all of the sprinkler systems in Specification 4.21.1.

Date of issuance: October 18, 1990

Effective date: 30 days from the date of issuance.

Amendment No.: 136

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** May 2, 1990 (55 FR 18407) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 6, 1990.

Brief description of amendment: The amendment revises the ANO-2 Technical Specification 3.4.2 to include a note which would allow both pressurizer code safety valves to be removed during Mode 5. The amendment allows the licensee to conduct testing and/or maintenance with both valves simultaneously removed from the pressurizer provided that the required overpressure protection is maintained at an equivalent level to that of the existing specification.

Date of issuance: October 17, 1990

Effective date: October 17, 1990

Amendment No.: 109

Facility Operating License No. NPF-6 Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32327). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 10, 1990 as revised August 20, 1990.

Brief description of amendment: The amendment changes the TS by adding a note to TS Table 4.8.2.1-1 "Battery Surveillance Requirements," to allow a battery charging current less than 2 amps to be used to determine battery operability when on float charge following a battery service or discharge test. The associated Bases for the TS are also changed.

Date of issuance: October 9, 1990

Effective date: October 9, 1990

Amendment No: 71

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36342). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 21, 1988

Description of amendment request: The amendment revised Table 3.3.2-1 to more accurately reflect the channel/trip logic configuration of the containment exhaust radiation trip channels listed under Part 1, Item h.

Date of issuance: October 4, 1990

Effective date: October 4, 1990

Amendment No.: 50

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 21, 1990 (55 FR 6105) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: April 27, 1990

Description of amendment request: This amendment revised the pressure-temperature limits in the Clinton Technical Specifications in response to recommendations in NRC Generic Letter 88-11.

Date of issuance: October 18, 1990

Effective date: October 18, 1990

Amendment No.: 51

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34372) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: July 19, 1990

Brief description of amendment: This amendment revises Table 3.6.3-1, "Primary Containment Isolation Valves," to permit hydrostatic leak rate testing of the Emergency Core Cooling System and Reactor Core Isolation Cooling System Suppression Pool Isolation Valves in lieu of the leak rate air testing.

Date of issuance: October 11, 1990

Effective date: October 11, 1990

Amendment No.: 22

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 1990 (55 FR 32328) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1990. Significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: November 9, 1989, as superseded April 10, 1990.

Brief description of amendment: This amendment revises Technical Specification Sections 5.3.1 and 5.3.2 on Design Features to replace the specific description of fuel assemblies and control rod assemblies design features by a more generic description. This amendment, in conjunction with Amendment No. 117 issued on June 19, 1990, addresses in its entirety the changes requested by the licensee in the April 10, 1990, application.

Date of issuance: October 12, 1990

Effective date: October 12, 1990

Amendment No.: 23

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 16, 1990 (55 FR 20362) and renoticed August 22, 1990 (55 FR 34375). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1990. Significant hazards considertion comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: June 26, 1990 as supplemented August 1, 1990.

Brief description of amendment: The amendment modifies Technical Specifications that have cycle-specific paramenter limits by replacing the values of those limits with a reference to a Core Operating Limits Report (COLR) for the values of those limits. The changes also include the addition of the COLR to the Definitions section and to the reporting requirements of the Administrative Controls section of the Technical Specifications.

Date of issuance: October 12, 1990

Effective date: October 12, 1990

Amendment No.: 148

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30304) The August 1,1990 submittal provided additional clarifying information and did not change our initial determination of the significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: July 31, 1990

Brief description of amendment: The amendment revises the minimum diesel oil storage level from 26,250 gallons to 32,500 gallons and clarifies that a diesel generator full load is 2500 KW.

Date of issuance: October 12, 1990

Effective date: October 12, 1990

Amendment No.: 75

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36347) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 26, 1990, as supplemented May 10, June 18, and August 2, 1990.

Brief description of amendment: The amendment modified the Technical Specifications to: (1) Increase the refueling boron concentration from 1800 to 1900 ppm; (2) Suspend certain sampling during periods when the fuel has been removed from the reactor vessel; (3) Revise the storage requirements of the spent fuel pool Region 2; (4) Allow discharge of fuel assemblies from the core directly to the spent fuel pool Region; and (5) Delete the requirement to provide a fuel performance report at the end of each cycle.

Date of issuance: October 12, 1990

Effective date: October 12, 1990

Amendment No.: 133

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30305). The August 2, 1990 submittal made a correction to Technical Specification pages 3-18 and 3-19 to include an omitted Greek letter micro in one of its units.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 12, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: July 13, 1990

Brief description of amendments: The amendments revised the Administrative Controls section (Section 6.0) of the Technical Specifications, including the addition of a new TS Section 6.5.3, to reflect the implementation of a Station Qualified Reviewer Program for review and approval of new station programs, procedures, and changes thereto.

Date of issuance: October 4, 1990

Effective date: For Units 1 and 2, 90 days from date of issuance.

Amendment Nos. 47 and 10

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 1990 (55 FR 34380) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

United States Department of Commerce, National Institute of Standards and Technology, Docket No. 50-184, NIST Test Reactor

Date of application for amendment: July 27, 1990

Brief description of amendment: This amendment revises the Technical Specifications to delete the reference to the type and quantity of heat exchangers but leaves the reference to the need for heat exchangers intact.

Date of issuance: October 9, 1990

Effective date: October 9, 1990

Amendment No.: 7

Facility Operating License No. TR-5: This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 5, 1990 (55 FR 36357) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 9, 1990.

No significant hazards consideration comments received: No

Local Public Document Room: N/A

Virginia Electric and Power Company, Docket No. 50-280, Surry Power Station, Unit No. 1, Surry County, Virginia.

Date of application for amendment: June 26, 1990

Brief description of amendment: The amendment eliminates the present operational restrictions on the main control room and emergency switchgear room air handling units.

Date of issuance: October 11, 1990

Effective date: Prior to Cycle 11 Startup

Amendment No. 145

Facility Operating License No. DPR-32: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30321) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 11, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of application for amendments: June 25, 1990

Brief description of amendments: These amendments extend operation of Surry Units 1 and 2 to Cycle 11 with the pressurizer safety valve setpoint of 2485 psig and a tolerance of +5/-1 percent, which is currently allowed for Cycle 10 operation.

Date of issuance: October 5, 1990

Effective date: October 5, 1990

Amendment Nos. 144, 141

Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 1990 (55 FR 30321) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1990

No significant hazards consideration comments received: No

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 15, 1990

Brief description of amendment: The amendment revised the Technical Specifications (TS) 3.3.c.2, 3.6.b.1, 3.6.b.2, and 3.12.b to change the action statements for the containment cooling, shield building ventilation, auxiliary building ventilation and control room postaccident recirculation systems.

Date of issuance: October 16, 1990

Effective date: October 16, 1990

Amendment No.: 88

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 1990 (55 FR 26298) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 16, 1990. No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By November 30, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also

provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director):** petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 5, 1990

Brief description of amendment: The amendment adds a footnote to Technical Specification 3.5.3.3, Table 3.5-7, Items 3.a and 3.b, Required Action b, which provides a one time change during Refueling Outage 13 to allow continued effluent releases (purging from the reactor containment vessel with radiation monitors RMS-11 and RMS-12 and their associated backup monitors RMS-14 and RMS-34 out of service. The amendment allows containment purging only with no fuel in containment and containment integrity not required.

Date of issuance: October 16, 1990

Effective date: October 16, 1990

Amendment No. 130

Facility Operating License No. DPR-23: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 16, 1990.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535

Attorney for licensee: Mr. R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: September 27, 1990, as supplemented September 28, 1990.

Brief description of amendment: This emergency Technical Specification change request revises Surveillance Requirement 4.7.1.2.1.a.1 associated with the monthly testing on a staggered test basis of the two motor-driven auxiliary feedwater pumps (AFW). Specifically, this change revises Surveillance Requirement 4.7.1.2.1.a.1. to require that the motor-driven AFW pumps be verified to develop a differential pressure that (when temperature compensated to 70 degrees F) is greater than or equal to 1558 psid at a recirculation flow of greater than or equal to 50 gpm.

Date of issuance: October 5, 1990

Effective date: October 5, 1990

Amendment No. 22

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 5, 1990.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: Mr. R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Dated at Rockville, Maryland, this 24th day of October 1990.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 90-25613 Filed 10-30-90; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Issuance of Policy Guidance on the Acceptance of "Bonus Bids" When Contracting for Stenographic Reporting Services

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of Issuance of Policy Guidance on the Acceptance of "Bonus Bids" When Contracting for Stenographic Reporting Services, and request for comments.

Background:

Earlier this year, one of the Federal Government's regulatory commissions received an adverse decision from a U.S. District Court regarding the commission's refusal to consider a bid.

The bid in question was for stenographic reporting services of regulatory hearings in which the bidder offered to pay the Government to perform the contract. The bidder had submitted this "bonus bid" with the intent of recouping the money paid to the Government from profits earned by selling copies of transcripts to the public. The invitation for bids did not provide for the evaulation of prices charged to the public for these copies. Consequently, there was no procedure to ensure that these prices were fair and reasonable.

The commissions' refusal to consider receipt of payment and the publicity it generated prompted an inquiry from Congress regarding the extent to which "bonus bids" are, or should be, used. This Office was requested to consider establishing Government-wide guidelines to address this issue.

Research into "bonus bids" and discussions with selected Federal agencies and regulatory commissions revealed two salient facts. First, the situation appears to be unique and, second, there is no current Government-wide guidance on the acceptance of "bonus bid" in the acquisition of stenographic reporting services which involve dissemination of information to the public. However, there are existing requirements which apply to these acquisitions, such as:

- OMB Circular A–130, Management of Federal Information Resources, which requires that prices charged to the public when disseminating information are reasonable; and
- 31 U.S.C. 3302, Custodians of Money, which requires agencies to deposit any money received from outside sources into the Treasury and prohibits them from using the money for their own purposes.

In addition, this Office would like to determine whether "bonus bid" policy guidance covering more than stenographic reporting services may be required.

Accordingly, this Office has developed the following policy guidance memorandum. It provides Government-wide guidance on the acceptance of "bonus bids" when contracting for stenographic reporting services which involve dissemination of information to the public.

Although the memorandum is intended to be implemented immediately, this Office is seeking comments. Any comments should be submitted by the date specified.

DATES: Comments on the memorandum must be received on or before November 30, 1990.

ADDRESSES: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, room 9001, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stanley Kaufman, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503, telephone 202–395–6803.

Dated: October 20, 1990.

Allan V. Burman,

Administrator.

Dated: October 22, 1990.

Memorandum for Agency Procurement Executives

From: Allan V. Burman, Administrator
Subject: Acceptance of "Bonus Bids" When Contracting for Stenographic Reporting Services

Earlier this year, one of the Federal Government's regulatory commissions received an adverse decision form a U.S. District Court regarding the commission's refusal to consider a bid (U.S. District Court for the District of Columbia, Civil Action No. 90–0287). The bid in question was for stenographic reporting services of regulatory hearings in which the bidder offered to pay the Government to perform the contract. The commission's refusal to consider receipt of payment and the publicity it generated prompted an inquiry from Congress regarding the extent to which "bonus bids" are, or should be, used. This Office was requested to consider establishing Government-wide guidelines to address this issue.

The purpose of this memorandum is to provide guidelines to be used by agencies when contracting for stenographic reporting services when there is a potential for receiving "bonus bids". A "bonus bid" is a bid or offer in which the offeror would pay the Government to perform a contract which would, under normal circumstances, be expected to be paid for by the Government from appropriated funds. A "bonus bid" situation would most likely occur when the payment offered to the Government would be recouped through profits from selling transcript copies to the public.

Agency selection of the method for solicitation and evaluation when acquiring stenographic reporting services need not be arbitrarily restricted by the possibility of receiving "bonus bids." Depending on an agency's mission and the nature of the requirement, sealed bidding and negotiation are both acceptable methods for solicitation and evaluation.

While the likelihood of receiving a "bonus bid" for stenographic reporting services should not be widespread, agencies shall not determine "bonus bids" to be nonresponsive. However, when contracting with firms responding to solicitations with "bonus bids," agencies must:

(1) determine that prices of transcript copies charged to the public will be fair and reasonable, and

(2) deposit any contractor payments received into the U.S. Treasury.

When the acquisition of stenographic reporting services involves dissemination of information to the public through the sale of hearing or meeting transcripts, agencies shall comply with OMB Circular A–130, Management of Federal Information Resources. The Circular provides, in appendix IV, section 8, paragraph a.(11)(a), that "When agencies use private sector contractors to accomplish dissemination, they must take care that they do not permit contractors to exercise monopolistic controls in ways that defeat the agencies' information dissemination obligations, for example, by setting unreasonably high prices."

Therefore, agencies shall prevent contractors from recovering their "bonus bids" by charging the public excessive costs for transcript copies. Agencies shall, at a minimum, specify in the solicitation document that prices of transcript copies charged to the public will be evaluated on the basis of reasonableness, and that award will not be made to a firm that charges unreasonably high prices to the public.

For example, when sealed bidding is used, prices charged to the public can be directly evaluated by being included in the "prices" section of the invitation for bids and/or the responsibility determination required by FAR 14.407–2, Responsible Bidder—Reasonableness of Price. When negotiation is used, appropriately weighted evaluation factors and/or the determination of price reasonableness performed in accordance with FAR 15.608(a)(1) can be used to ensure prices charged to the public are reasonable. In all instances, agencies shall ensure that the prices charged to the public are incorporated into the resulting contracts.

The statute governing miscellaneous receipts, 31 U.S.C. 3302, Custodians of Money, requires agencies to deposit any money received from outside sources into the general funds of the U.S. Treasury and not into the agencies' own accounts, barring statutory authority to the contrary.

It is possible that "bonus bids" may occur in situations other than stenographic reporting services where contractors, in performing Government contracts, obtain something of value which they may, in turn, sell to other parties for a profit. For purposes of this memorandum, these could also include requirements which contractors are willing to perform for free or token amounts, but exclude contracts which do not evolve from the appropriations process (e.g., sales and concessions). Agencies shall inform this Office of any such situations involving other than stenographic reporting services. This information will be used to determine whether additional guidance is needed on this matter.

These guidelines shall be implemented immediately. Any questions, comments or information regarding this approach should be referred to Mr. Stanley Kaufman, Deputy Associate Administrator. Mr. Kaufman may be reached at (202) 395–6803.

[FR. Doc. 90–25686 Filed 10–30–90; 8: 45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—Kenneth Fogash (202) 272–2142

Upon written request copy available from: Securities and Exchange Commission, Public Reference Branch, Washington, DC 20549–1002.

Form F–7, File No. 270–331
Form F–8, File No. 270–332
Form F–9, File No. 270–333
Form F–10, File No. 270–334
Form 40–F, File No. 270–335
Form F–X, File No. 270–336
Form T–5, File No. 270–337
Sch. 14D–1F, File No. 270–338
Sch. 14D–9F, File No. 270–339
Sch. 13E–4F, File No. 270–340

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted for OMB approval revised forms and schedules under the Securities Act of 1933 (1933 Act), the Securities Exchange Act of 1934 (1934 Act), and the Trust Indenture Act of 1939, to be adopted as part of the Commission's multijurisdictional disclosure system. The reproposed forms and schedules are as follows:

Paperwork project no.

3235–0383 Form F–7, registration of securities offered upon the exercise of rights granted to existing security holders of the registrant, (1933 Act),

3235–0378 Form F–8, registration of securities to be issued in an exchange offer or in connection with a business combination, (1933 Act),

3235–0377 Form F–9, registration of investment grade debt or preferred securities, (1933 Act),

3235–0380 Form F–10, general registration of securities, (1933 Act),

3235–0379 Form F–X, appointment of agent for service of process, (1933 Act),

3235–0381 Form 40–F, registration and annual reporting form, (1934 Act)

3235–0376 Schedules 14D–1F, third-party tender offer form, (1934 Act)

3235–0382 14D–9F, tender offer target response form, (1934 Act)

3235–0375 13E–4F, issuer tender offer form, (1934 Act), and

3235–0384 Form T–5, application form for exemption filed pursuant to Rule 4d–1 under the Trust Indenture Act of 1939.

The staff estimates that up to 220 Canadian companies may avail themselves of the new forms and schedules per year at an estimated average burden of two hours per response per form or schedule. The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–6004 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: October 23, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25748 Filed 10–30–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28580; File Nos. SR–AMEX–90–20; SR–MSE–90–16; SR–NYSE–90–43· SR–PHLX–90–33]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Midwest Stock Exchange, Inc.; New York Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Filing and Order Granting Accelerated Approval to Proposed Rule Changes Relating to Market Circuit Breaker Proposals

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] the American Stock Exchange, Inc. ("Amex"), Midwest Stock Exchange, Inc. ("MSE"), New York Stock Exchange, Inc. ("NYSE"), and Philadelphia Stock Exchange, Inc. ("PHLX") (collectively, the "Exchanges") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes to extend the effectiveness of their respective rules that implement certain procedures that will be activated during volatile market conditions.

In 1988, the Commission approved circuit breaker proposals by the Exchanges.[3] In general, the circuit breaker rules provide that trading in all markets would halt for one hour if the Dow Jones Industrial Average ("DJIA") declines 250 or more points from its previous day's closing level and, thereafter, trading would halt for an additional two hours if the DJIA declines 400 points from the previous day's close.[4] Such circuit breaker proposals were an important part of the measures adopted by the Exchanges to address market volatility concerns in the wake of the October 1987 Market Break.

The Commission approved the Amex, Boston Stock Exchange ("BSE"), MSE, NYSE and PHLX as well as National Association of Securities Dealers ("NASD") circuit breaker proposals on a pilot program basis. Subsequently, in

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] *See* Securities Exchange Act Release Nos. 26386 (December 22, 1988) 53 FR 52904 (PHLX); 26218 (October 26, 1988) 53 FR 44137 (MSE); 26198 (October 19, 1988) 53 FR 41637 (Amex and NYSE).

[4] If the 250-point trigger is reached within one hour of the scheduled close of trading for a day, or if the 400-point trigger is reached within two hours of the scheduled close of the trading day, trading will halt for the remainder of the day. If, however, the 250-point trigger is reached between one hour and one-half hours before the scheduled closing, or if the 400-point trigger is reached between two hours and one hour before the scheduled closing, the Exchanges would retain the power to use abbreviated reopening procedures either to permit trading to reopen before the scheduled closing or to establish closing prices.

1989, the Exchanges and the NASD filed, and the Commission approved, proposals to extend their respective pilot programs.[5] Those proposals are nearing their expiration dates and the Exchanges have filed with the Commission proposals to extend further their respective pilot programs until October 31, 1991.[6] The circuit breaker proposals of the Chicago Board Options Exchange, Inc. ("CBOE"),[7] the Pacific Stock Exchange, Inc. ("PSE") [8] and the Cincinnati Stock Exchange, Inc. ("CSE") [9] were proposed by these exchanges, and approved by the Commission, on a permanent basis rather than as a pilot program.

The circuit breaker mechanisms were enacted in the wake of the October 1987 Market Break. Both the "Report of the Presidential Task Force on Market Mechanisms" ("Brady Report") and the Working Group's Interim Report [10] recommended that coordinated trading halts and reopening procedures be developed that would be implemented in all U.S. markets for equity and equity related products during large rapid market declines.[11] In response, the SROs submitted proposals to implement circuit breaker procedures that are designed to substitute planned trading halts for unplanned and destabilizing market closings. In addition, the stock index futures exchanges have implemented parallel circuit breakers that were approved by the Commodity Futures Trading Commission on a permanent basis.

Since the Commission approved these proposals in October 1988, the DJIA has not experienced a one day 250 point decline that would trigger a market halt. Nevertheless, the Commission continues to believe that circuit breaker procedures are desirable to deal with potential strains that may develop during periods of extreme market volatility, and, accordingly, the Commission believes that the pilot programs should be extended. The Commission also believes that circuit breakers represent a reasonable means to retard a rapid, one day market decline that can have a destabilizing effect on the nation's financial markets and participants.

Accordingly, the Commission finds that the proposed rule changes filed by the Exchanges are 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.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the **Federal Register** because there are no changes being made to the current provisions, which originally were subject to the full notice and comment procedures, and accelerated approval would enable the pilots to continue on an uninterrupted basis. Due to the importance of these circuit breakers for market confidence, soundness, and integrity, it is necessary and appropriate that these procedures continues on an uninterrupted basis.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of each respective exchange. All submissions should refer to file number SR–AMEX–90–20, SR–MSE–90–16, SR–PHLX–90–33 or SR–NYSE–90–43, and should be submitted by November 21, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule changes are approved until October 31, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Dated: October 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25750 Filed 10–30–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–28579; File No. SR–DTC–90–10]

Self-Regulatory Organizations; Amendment to a Proposed Rule Change by the Depository Trust Company Relating to the Repo Tracking System[1]

October 25, 1990.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 14, 1990, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the amendment ("Amendment No. 1") to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission previously published notice of the proposed rule change (SR–DTC–90–10) on August 1, 1990,[2] to solicit comments on the proposed rule change from interested persons. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Amendment to the Proposed Rule Change

Amendment No. 1 consists of proposed revisions to portions of DTC's Rules 9, "Money Payments," 10, "Discretionary Termination," and 12, "Insolvency."

DTC distributed the text of the proposed rule changes to its

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[5] *See* Securities Exchange Act Release No. 27370 (October 23, 1989) 54 FR 43881 (Order approving extension of Amex, BSE, MSE, NASD, NYSE AND PHLX circuit breaker rules).

[6] The BSE pilot program does not expire until October 31, 1991. Therefore, the BSE has not filed to extend its pilot program.

[7] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637.

[8] *See* Securities Exchange Act Release No. 26368 (December 16, 1988) 53 FR 51942.

[9] *See* Securities Exchange Act Release No. 26440 (January 10, 1989) 54 FR 1830.

[10] The Working Group on Financial Markets was established by the President in March 1988 to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the market break in October 1987. The Working Group consists of the chairmen of the Commission, Board of Governors of the Federal Reserve System and the Commodity Futures Trading System, and the Under Secretary for Finance of the Department of the Treasury.

[11] In particular, the Working Group recommended a one-hour trading halt if the DJIA declined 250 points from its previous day's closing level, and a subsequent two-hour trading halt if the DJIA declined 400 points below its previous day's closing level. The Working Group also recommended that the NYSE use reopening procedures, similar to those used on Expiration Fridays, that are designed to enhance the information made public about market conditions.

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30–3(a)(12) (1986).

[1] The "Repo Tracking System" ("RTS") is DTC's system to enable distributions on securities sold subject to a repurchase agreement to be paid to the proper party. For a more detailed discussion of RTS, *see* Securities Exchange Act No. 28258 (July 24, 1990), 55 FR 31262.

[2] *Id.*

Participants, Pledgees and Depository Facilities on August 24, 1990. The terms of substance are summarized below.

This Amendment No. 1 supplements File No. SR–DTC–90–10 filed June 26, 1990,[3] but does not change proposed rule change SR–DTC–90–10 in any way. That previous filing proposed a Repo Tracking System ("RTS") offering three new instructions for Participants to use to direct DTC to effect automatic allocation of distributions on securities sold pursuant to repurchase agreements: A "Repo Deliver Order," a "Repo Reclaim" instruction, and a "Repo Adjustment" instruction.[4] RTS will also provide a variety of inquiry functions and reports to Participants.

The revisions to the second paragraph of *section 1* of Rule 9.(A) authorize DTC to establish, and require it to effect, the new RTS Repo Deliver Order and Repo Reclaim instructions from Participants, subject to DTC's right to cease to act for a Participant. Similarly, the revisions to the third paragraph of *section 1* of Rule 9.(A) authorize DTC to establish, and require it to effect, the new RTS Repo Adjustment instruction from Participants, subject to DTC's right to cease to act for a Participant.[5] While it might reasonably be argued that the cited paragraphs of existing Rule 9 are sufficient to authorize the new RTS instructions, it could also be argued that the authorization in the existing second and third paragraphs is limited to instructions directing a single credit/debit pair that is netted into each of the two Participants' DTC Settlement accounts for that day without any book-entry movement of securities. DTC's Board of Directors therefore elected to approve the proposed revisions because the new RTS instructions contemplate more than one debit/credit pair,[6] will affect Settlement Accounts on dates after the instruction,[7] and sometimes include book-entry transfer of securities in the instruction.[8]

The revisions to *section 3* and to *section 4* of Rule 10 add to the existing Rule concerning DTC's ceasing to act for a Participant. The additions propose authority for DTC to establish procedures ("unwind procedures") for use after ceasing to act. The "unwind procedures" would eliminate any DTC obligations to automatically allocate future distributions created by RTS transactions with the terminated Participant (without affecting the counterparties' legal obligations or rights with respect to the terminated Participant).[9]

The revisions to *section 6* of Rule 12 add to the existing Rule concerning the Time of Insolvency of a Participant. The additions propose authority for DTC to establish "unwind procedures" for use from and after the Time of Insolvency of a Participant.

II. Self-Regulatory Organization's Statement of the Purpose of the Amendment to the Proposed Rule Change

DTC states that the purpose of the amendment is to revise DTC's Rules to provide for RTS, that Amendment No. 1 does not change the purpose of or basis for RTS, that Amendment No. 1 does not change the purpose of or basis for RTS, and that DTC's Board of Directors has approved the proposed revisions to Rules 9, 10, and 12. As mentione above, DTC distributed the text of Amendment No. 1 to its Participants, Pledgees and Depository Facilities on August 24, 1990. No written comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–90–10 (Amendment No. 1) and should be submitted by November 21, 1990.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25751 Filed 10–30–90; 8:45 am]

BILLING CODE 8010–01–M

[3] Securities Exchange Act No. 28258 (July 24, 1990), 55 FR 31262.

[4] For a more detailed discussion of RTS instructions, *see* Securities Exchange Act No. 28258 (July 24, 1990), 55 FR 31262.Capitalized terms have the meaning that they have in DTC's existing Rules.

[5] Previously, the second paragraph of *section 1* of existing Rule 9.(A) authorized DTC to establish, and required DTC to effect, instructions such as the Securities Payment Order ("SPO") and Premium Payment Order ("PPO"), where the instructing Participant causes DTC to credit its account with a cash amount debited from another Participant's account without book-entry movement of securities. The existing third paragraph of that Rule authorizes DTC to effect cash movement in the other direction (from the instructing Participant to another Participant) without securities movement.

[6] Therefore, the insertion "or amounts."

[7] Therefore, the insertions "currently or in the future," "at that time," "at the time or times specified," and "at the same time."

[8] Therefore, the insertion "in accordance with the Procedures."

[9] For a more detailed discussion of DTC's RTS "unwind procedures," *see* Securities Exchange Act No. 28258 (July 24, 1990), 55 FR 31262.

[Release No. 34–28581; File No. S7–9–90]

Self-Regulatory Organizations; Order Granting Temporary Registration as a Securities Information Processor to National Association of Securities Dealers, Inc. for Market Services, Inc.

On March 28, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 11A(b)(2) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 11Ab2–1 thereunder,[2] an application for registration of its subsidiary, Market Services, Inc. ("MSI"), as an exclusive securities information processor ("SIP") [3] for the

[1] 15 U.S.C. 78k–1 (1987).

[2] *See* letter to Jonathan G. Katz, Secretary, SEC, from Frank J. Wilson, Executive Vice-President and General Counsel, NASD, dated March 28, 1990. The Notice of Application for Registration was published in Securities Exchange Act Release No. 27957, April 27, 1990.

[3] MSI is a securities information processor within the definition of section 3(a)(22)(A) of the Act and an exclusive processor within the definition of section 3(a)(22)(B) of the Act.

operation of the PORTAL Market.[4] On April 27, 1990, the Commission granted the NASD a temporary exemption from registration as a SIP to allow the NASD to operate the PORTAL Market while the Commission completed its review of the securities information processor application.[5] In the same release the Commission requested comment on the SIP application. No comment letters were received concerning this application.

Section 11A(b)(1) of the Act provides in pertinent part that "it shall be unlawful for any securities information processor unless registered in accordance with this subsection, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a securities information processor." [6] Rule 11Ab2–1(a) provides that applications for registration as securities information processors shall be filed on Form SIP. Further, Paragraph (b) of Rule 11Ab2–1 provides that if any information contained in items 1 through 13 or item 21 of Form SIP becomes inaccurate for any reason, the securities information processor shall promptly file an amendment to Form SIP correcting such information.

The Commission has reviewed the MSI SIP application, as well as the operation of the NASD's PORTAL system. As part of its submissions, the NASD represents that it has considered the implications of the new system on the capacity of the NASD's other systems,[7] the adequacy of the PORTAL system's capacity to process the expected traffic in PORTAL itself, and the adequacy of the PORTAL system's protection against unauthorized access, computer viruses and other internal or external intrusions. The NASD represented that its capacity and security plans are designed to provide adequate protections that are comparable to those generally in use for similar systems. [8] The Commission also has examined the information and documents contained in the NASD's submissions with regard to standards and procedures for collection, processing, distribution and publication of information with respect to quotations for, and transactions in securities; personnel qualifications; financial condition; and such other matters as the Commission has determined to be germane to the provisions of the Act and the rules and regulations thereunder.

Because the PORTAL Market is the first NASD service operated on Stratus computers, the NASD stated that it has not had the opportunity to develop the drivers and traffic generators required to conduct a formalized stress test of the PORTAL Market. A capacity test was performed by simulating actual operation of the PORTAL Market through manual input of typical transactions. From this simulated production test, the NASD represented that the system has sufficient capacity to support the PORTAL Market through early expansion and growth in user traffic. It further represents that the system can be upgraded with little or no impact on continuous operation. The NASD also stated that at the initial phase of the PORTAL Market there will be no backup system available, but that all available system resources are being applied to handle potential PORTAL Market capacity. The NASD stated that it will assess, during the next year, the additional equipment and cost attendant to the implementation of a backup system.

The Commission notes with concern the lack of a back-up system for the PORTAL Market and the inability of the NASD to perform formalized stress tests of the system. The Commission believes, however, that temporary registration is appropriate in view of the low-volume that can reasonably be expected during the first year of operation. The Commission will monitor closely the development of the PORTAL Market and six-months after the date of this order will begin to assess whether the volume in PORTAL is such that it necessitates the implementation of a back-up system and stress test capabilities. At that time, the NASD will be required to submit to the Commission statistics on the volume of activity in the PORTAL system, and a plan for the implementation of a back-up system and stress test capabilities.

The Commission, therefore, finds, pursuant to section 11A(b)(3) of the Act, that, based on the NASD's representations and on the performance of the PORTAL system to date, as well as the Commission's belief that for an initial start-up phase, the PORTAL Market should experience fairly low volume, MSI is so organized, and has the capacity, to be able to assure the prompt, accurate, and reliable performance of its functions as a securities information processor, comply with the provisions of the Act and the rules and regulations thereunder, carry out its functions in a manner consistent with the purposes of section 11A, and insofar as it is acting as an exclusive processor, operate fairly and efficiently.

It is therefore ordered, pursuant to section 11A(b)(1) of the Act, that the application of the NASD for the registration of MSI as a securities information processor be, and hereby is, granted for a one-year period from the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(49).

Dated: October 25, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25749 Filed 10–30–90; 8:45 am]

BILLING CODE 8010–01–M

[4] The PORTAL Market is a screen-based system for primary placements and secondary trading of Rule 144A securities. The Commission, in separate releases, adopted Rule 144A under the Securities Act of 1933 and approved an NASD proposed rule change to implement the PORTAL Market under the Exchange Act. *See* Securities Act Release No. 6862, April 23, 1990; and Securities Exchange Act Release No. 27956, April 27, 1990.

[5] *See* Securities Exchange Act Release No. 27957, (April 27, 1990), 55 FR 19140. On July 30, 1990, the Commission granted the NASD a 60-day extension of the temporary exemption from registration. *See* Securities Exchange Act Release No. 28283, (July 30, 1990), 55 FR 31666.

[6] 15 U.S.C. 78k–1(b)(1) (1987).

[7] At present the PORTAL Market is the only NASD service operated on Stratus equipment. The NASD represented that the Stratus equipment and applications operate independently of other NASDAQ processing equipment and applications, so that the operation of the PORTAL Market cannot affect the processing capacity of the NASDAQ system. While PORTAL utilizes the same communications network used by the NASDAQ system, there is sufficient capacity in this network to handle the increase in message traffic reasonably anticipated in the near future from PORTAL market activitiy.

[8] The PORTAL market would be subject to outage in the event of total loss of the primary NASDAQ facility because the Stratus processing equipment and applications are not separately backed up. The Stratus equipment, however, is fault tolerant and the NASD's back-up power capability is fully available to support the operation of the PORTAL Market in the event of a power outage.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 90–10–39, Docket 46860]

Application of Warbelow's Air Ventures, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Warbelow's Air Ventures, Inc., fit and award it a

certificate of public convenience and necessity to engage in domestic scheduled air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than November 5, 1990.

ADDRESSES: Objections and answers to objections should be filed in Docket 46860 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: October 25, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–25730 Filed 10–30–90; 8:45 am]

BILLING CODE 4910–62–M

Maritime Administration

[Docket S–872]

American President Lines, Ltd.; Application for Written Permission Granted Pursuant to Section 805(a) of the Merchant Marine Act, 1936, as Amended

Notice is hereby given that American President Lines, Ltd. (APL) by letter dated October 18, 1990, has requested written permission under section 805(a) of the Merchant Marine Act, 1936, as amended (Act) and, Article II–13 of Operating-Differential Subsidy Agreement No. MA/MSB–417, for Samuel Zell and Rod F. Dammeyer to become members of the American President Companies, Ltd. (APC) Board of Directors. APL advises that its request arises from the requirement of section 805(a) that permission be obtained in order that a director of an operating-differential subsidy contractor may own "any pecuniary interest" in any concern that operates vessels in domestic intercoastal or coastwise service. APL states that since the "pecuniary interest" of Messrs. Zell and Dammeyer in activities that might be considered to fall within section 805(a) are wholly remote from APL, it filed the instant application to ensure that it is in full compliance with section 805(a).

Messrs. Zell and Dammeyer are, respectively, Chairman and President of Itel Corporation (Itel), a New York Stock Exchange listed corporation. In addition, Mr. Zell owns or jointly controls approximately 20% and Mr. Dammeyer owns less than 1% of the outstanding common stock of Itel. Itel also owns slightly less than 21% of the outstanding common stock of APC, which in turn owns all of the stock of APL. Itel purchased the APC stock commencing in 1988, and has continually stated that its acquisition of APC shares has been for investment purposes only. Itel, APL continues, has also stated no present intention of purchasing additional APC shares. Moreover, APC believes that it can benefit by having Messrs. Zell and Dammeyer, the principal executives of this large APC stockholder, on the APC Board.

APL, in support of its instant application, contends that the issue under section 805(a)—if one should exist—arises for Itel's ownership of all outstanding stock in Great Lakes International, Inc. ("Great Lakes"). Great Lakes owns all of the outstanding stock, or a controlling interest, in a group of companies (Great Lakes Dredge and Dock Company, North American Trailing Company, Tidewater Dredging Corporation, and Dawson Leasing Company), and a 50% interest in another company (Amboy Aggregates, Inc.), which in turn own a fleet of U.S. documented vessels, principally barges and tugs, which are used in performing marine dredging and mining, and marine construction activities, in U.S. and foreign waters. Great Lakes has been in business for 100 years, and has been a subsidiary of Itel since 1985. Attachments A and B to APL's application summarize the principal activities performed by Great Lakes and the nature of its fleet.

APL asserts that it does not believe the above referenced activities of Great Lakes to constitute domestic intercoastal or coastwise service within the meaning of section 805(a) so as to require the requested permission. However, Great Lakes has very recently commenced performing on a limited basis towing services for third parties. It employs five recently acquired tugs under long-term contracts with two distributors of rock and aggregate to tow their barges within Long Island Sound and adjacent waterways. APL goes on to say that these activities by Great Lakes could arguably constitute domestic intercoastal or coastwise service, thus necessitating section 805(a) permission in order that Messrs. Zell and Dammeyer be elected to the APC Board.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in APL's request and desiring to submit comments concerning the request must by 5 p.m. on 11/13/90 file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

Dated: October 25, 1990.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 90–25674 Filed 10–30–90; 8:45 am]

BILLING CODE 4910–81–M

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA, in conjunction with the International Regulations Committee (INTEREC) of the Hazardous Materials Advisory Council (HMAC), will conduct a public meeting to exchange views on proposals submitted to the sixteenth session of the United Nation's Committee of Experts on the Transport of Dangerous Goods.

DATES: November 27, 1990 at 9:30 a.m.

ADDRESSES: Room 3444, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held in preparation for the sixteenth session of the Committee of Experts on the Transport of Dangerous Goods to be held December 3 to 12, 1990 in Geneva. During this meeting the U.S. position on proposals submitted to the sixteenth session of the Committee will be discussed. Topics to be covered include various issues relating to explosives; classification and grouping criteria for self-reactive substances; application of performance packaging test requirements to minor variations of previously tested combination packages; requirements for infectious substances; revision of the classification and grouping criteria for gases; adoption of a generic classification system for all classes of dangerous goods; classification of specific dangerous goods; and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

Documents that will be discussed may be obtained for a nominal fee from HMAC, suite 250, 1110 Vermont Ave., NW., Washington DC 20005; (202) 728–1460.

Issued in Washington, DC, on October 25, 1990.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 90–25673 Filed 10–30–90; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 24, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: SWR–687; SWR–687–A; SWR–687–B.
Type of Review: New Collection.
Title: Forms Availability Survey.
Description: Objective: To provide taxpayers with forms, instructions, and/or publications needed to comply with Federal Tax Law Regulations. Need to know the level of public awareness concerning where they can obtain tax forms, etc. *Uses:* To make decisions concerning the channels of distribution.
Respondents: Randomly selected taxpayers telephoning in orders for tax forms, instructions, and/or publications.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 9,700.
Estimated Burden Hours Per Response: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 339 hours.
OMB Number: 1545–0416.
Form Number: 5302.
Type of Review: Extension.
Title: Employee Census.
Description: This form is used in conjunction with Forms 5300 and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code. The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 52,000.
Estimated Burden Hours Per Response/ Recordkeeping:
Recordkeeping—10 hours, 31 minutes.
Learning about the law or the form—42 minutes.
Preparing, copying, assembling, and sending the form to IRS—54 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 629,720 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 90–25682 Filed 10–30–90; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 211
Wednesday, October 31, 1990

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).

NATIONAL SCIENCE FOUNDATION

Notice of Meetings

NAME: Special Emphasis Review Panel Meetings for the Division of Materials Research (DMR) 1991 Presidential Young Investigator (PYI) Awards Program.

TYPE OF MEETING: Closed.

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.

PURPOSE OF MEETINGS: To provide advice and recommendations concerning support for DMR 1991 PYI Awards Program.

CONTACT: Dr. Robert J. Reynik, Head, Office of Special Programs in Materials, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

MEETING LOCATION: Division of Materials Research, room 408, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Meeting dates	Time	Proposal areas
Nov. 15–16, 1990	8:30 am–5:00 pm	Solid State Chemistry & Polymers.
Dec. 03–04, 1990	8:30 am–5:00 pm	Condensed Matter Physics.
Dec. 06–07, 1990	8:30 am–5:00 pm	Metals, Ceramics, Electronic Materials.
Dec. 10–11, 1990	8:30 am–5:00 pm	Materials Theory.

Dated: October 29, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–25913 Filed 10–29–90; 4:07 pm]

BILLING CODE 7555-01-M

NATIONAL SCIENCE FOUNDATION

Notice of Meetings

NAME: Special Emphasis Panel in Materials Research: MRL Site Visits.

TYPE OF MEETING: Closed.

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.

PURPOSE OF MEETINGS: To provide advice and recommendations concerning support for Materials Research Laboratories.

CONTACT: Dr. W. Lance Haworth, Program Director, Materials Research Laboratories, Division of Materials Research, Room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357–9791.

MEETING LOCATIONS AND SCHEDULES:

Massachusetts Institute of Technology	11/13/90	7 pm–8 pm
Center for Materials Science and Engineering	11/14/90	8 am–9 pm
Cambridge, MA 02139	11/15/90	8 am–5 pm
University of Massachusetts at Amherst	12/03/90	7 pm–8 pm
Materials Research Laboratory	12/04/90	8 am–9 pm
Amherst, MA 01003	12/05/90	8 am–4 pm

Dated: October 29, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90–25914 Filed 10–29–90; 4:07 pm]

BILLING CODE 7555-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session at 10 a.m. on Friday, November 2, 1990 to consider the following matters:

Summary Agenda:

No Cases

Discussion Agenda:

A. *Memorandum re:* Memorandum of Understanding Between the Resolution Trust Corporation and the U.S. Fish and Wildlife Service to authorize the Executive Director to enter into a Memorandum of Understanding establishing procedures for the U.S. Fish and Wildlife Service to act as a technical consultant on environmental wetlands, floodplains, and coastal barrier issues dealing with fish and wildlife resources.

B. *Memorandum re:* Delegations of Authority for Administrative Expenses for the Chairman, Executive Director, Division Directors, Office Directors, and Regional Directors. The delegations will cover existing budget allocations, expenditures exceeding available account balances, noncompetitive procurements, and other administrative requirements.

C. *Memorandum re:* Proposed Regulation Governing Priority of Distribution of Claims Against RTC as Receive to establish the priority of distribution for certain claims by the RTC in its corporate capacity against the RTC as receiver for failed savings associations.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: October 26, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90–25825 Filed 10–29–90; 10:00 am]

BILLING CODE 6714-01-M

federal register

Wednesday
October 31, 1990

Part II

Department of Defense

48 CFR Part 208, et al.
Department of Defense Acquisition Regulations; Miscellaneous Amendments; Proposed Rule

DEPARTMENT OF DEFENSE

48 CFR Parts 208, 216, 222, 232, 235, 236, 247, 249, 252, 253, Appendices B and R

Department of Defense Acquisition Regulations; Miscellaneous Amendments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Defense Federal Acquisition Regulation Supplement (DFARS) is being rewritten in its entirety as a result of a Defense Management Review initiative. The rewrite is designed to eliminate text and clauses that are unnecessary (e.g., duplicate FAR or other directives, add no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and rephrase remaining text and clauses in plain English. The rewrite is being published for public comment in four increments. This is the third increment. The first increment was published on August 14, 1990 (55 FR 33218). The second increment was published on September 28, 1990 (55 FR 39788).

DATES: Comments must be submitted on or before December 31, 1990.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Ms. Lucile Hughes, DAR Council, ODASD(P)/DARS, c/o OASD(P&L)(M&RS), Room 3D139, Pentagon, Washington, DC 20301–3062. Please cite DAR Case 90–743 in all correspondence concerning this proposed rule.

FOR FURTHER INFORMATION CONTACT: (703) 697–7266. Barbara Young, for parts 208, 216, 222, 235, Appendix B, Appendix R; Eric Mens for part 232; Valorie Lee for parts 236, 247; and Charles Lloyd for part 249.

SUPPLEMENTARY INFORMATION:

A. Background

The Secretary of Defense's July 1989 Defense Management Report to the President concluded that much of the stifling burden of DoD regulatory guidance, including the Defense Federal Acquisition Regulation Supplement (DFARS), is self-imposed. To correct this situation, the DoD formed a Regulatory Relief Task Force to review DFARS and lower level supplements and to recommend revisions. As a result, the Defense Acquisition Regulatory System, under the direction of the Deputy Assistant Secretary of Defense for Procurement, has undertaken the complete rewrite of DFARS. The rewrite is designed to: Eliminate text and clauses that are unnecessary (e.g., duplicate FAR or other directives, add no value, etc.); eliminate or modify, where possible, thresholds, certifications, approval levels, and other regulatory burdens on contracting officers and contractors; and rephrase remaining text and clauses in plain English.

The rewritten DFARS is being published for public comment in four monthly increments. This publication of DFARS parts 208, 216, 222, 232, 235, 236, 247, 249, their attendant clauses in part 252, their attendant forms instructions in part 253, Appendices B and R is the third increment. All public comments received in response to this notice will be considered in developing the final rule, which is planned for publication in February 1991. Parties responding to this notice are requested to separate their comments by DFARS part. Comments submitted in response to this notice are subject to release to the public under the Freedom of Information Act.

The rewritten DFARS is addressed to the contracting officer. Every attempt has been made to remove extraneous material which, though informative, was guidance addressed to others in the acquisition process, e.g., program managers, requirements personnel, small business specialists, etc. Text which was unnecessary or redundant has been removed. Some text has been moved to the FAR and some additional text in this proposed rule may be moved to the FAR before the rule is finalized. Text has been rearranged, and in some instances, moved to other parts, to more closely align the DFARS text with the FAR text it implements or supplements. The rewritten DFARS includes some policy and procedural changes. These are identified in the following discussion of revisions by part. Unless specifically identified as a change, the rewritten version of the part is not intended as a change in current policy or procedure.

Part 208, Required Sources of Supplies and Services. Subparts 208.73, 208.74, 208.75, 208.76, 208.78, and 208.79 and their attendant clauses in 252.208–7000, 252.208–7001, 252.208–7002, 252.208–7003, 252.208–7005, and 252.208–7006 have been moved to part 225. Subparts 208.70 and 208.71 have been combined, but the Coordinated Acquisition assignments which were listed in subpart 208.71 have been moved to a new Appendix B. Instructions on preparation of a military interdepartmental purchase request have been moved to part 253. Eliminated the requirement to obtain approval two levels above contracting officer before the requiring department can purchase items assigned for integrated material management, when the acquisition is between $1,000 and $5,000.

Part 216, Types of Contracts. Deleted restrictions in subpart 216.3 on use of cost-plus-fixed-fee contracts for acquisitions categorized as either engineering development or operational system development for systems or equipment which have completed the validation phase. Deleted the requirement in 216.104(S–71) for the contracting officer to include a statement in the contract file describing the rationale for contract type when awarding a contract for research and development. Deleted the requirement in 216.203–70 (a) and (b) for chief of the contracting office approval to exceed a ten percent price adjustment.

Part 222, Application of Labor Laws to Government Acquisitions. Lowered the approval level from the Deputy Assistant Secretary of Defense to the agency head for: (1) Major policy decisions on labor relations matters such as plant seizure or injunctive action on potential or actual work stoppages; (2) removal of material from a contractor's facility during a labor dispute; and (3) exclusion of all or part of the requirements of Executive Order 11246, equal employment opportunity. Added a new clause at 252.222–7000 to inform offerors that a wage determination is pending that will affect the solicitation.

Part 232, Contract Financing. Eliminated five thresholds associated with progress payments under contracts funded with FY 87 appropriations, approval of unusual, unliquidated progress payments, and transfer of contract debt. Eliminated a reporting requirement for guaranteed loans. Simplified administration of advance payment pools. Deleted three clauses: 252.232–7005, Payments Under Fixed-Price Construction Contracts; 252.232–7006, Payments Under Fixed-Price Architect-Engineer Contracts; and 252.232–7007, Progress Payments.

Part 235, Research and Development Contracting. Eliminated specific file documentation requirements associated with consideration of small businesses, historically black colleges and universities, and minority institutions. Eliminated requirement for contractor certification that animals used in research are cared for in accordance with the Animal Welfare Act. Added a new clause at 252.235–7000, Distribution of Final Scientific or Technical Report. Partially moved the list of clauses for

use in short form research contracts from 252.235–7005 to 235.015–71(i). Deleted some of the clauses currently included under 252.235–7005 and redesignated the rest as 252.235–7006, 252.235–7007, 252.235–7008, 252.235–7009, and 252.235–7010.

Part 236, Construction and Architect-Engineer Contracts. Eliminated the requirement for head of the contracting activity approval to use sealed bidding for construction overseas. Eliminated ten clauses, i.e., 252.236–7000, Composition of Contractor; 252.236–7004, Contract Prices-Bidding Schedules; 252.236–7005, Salvage Materials and Equipment; 252.236–7008, Superintendence of Subcontractors; 252.236–7012, Contractor-Prepared Network Analysis System; 252.236–7013, Government-Prepared Network Analysis System; 252.236–7014, Statement of Work; 252.236–7016, Direct Payments; 252.236–7017, Approved Construction Plant; and 252.236–7019, Accident Prevention.

Part 247, Transportation. Deleted three clauses, i.e., 252.247–7001, Schedule of Rates; 252.247–7008, Employees of Contractor; and 252.247–7108, Facilities. Combined one solicitation provision and two clauses into one clause, i.e., 252.247–7202, 252.247–7203, and 252.247–7204, which has been redesignated as 252.247–7023, Extent of Transportation of Supplies by Sea.

Part 249, Termination of Contracts. Revised follow-up reporting requirement on terminations from quarterly to semiannually.

Part 252, Solicitation Provisions and Contract Clauses. Revisions in provisions/clauses are identified in the discussion of the part which prescribes use of the provision or clause.

Part 253, Forms. Revisions in this part are identified in the discussion of the part which prescribes use of the form.

Appendix B, Coordinated Acquisition Assignments. The coordinated acquisition assignments which currently appear in DFARS Subpart 208.71 have been moved to this new appendix.

Appendix R, (an excerpt from Title 41—Public Contracts, Property Management). This appendix is deleted.

B. Regulatory Flexibility Act

Parts 208, 216, 222, 236, 247, 249, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, Appendix B and Appendix R. These proposed rules do not constitute significant revisions within the meaning of Public Law 98–577; therefore, the Regulatory Flexibility Act does not apply.

Parts 232, 235, and the provisions/clauses in part 252 prescribed by these parts. These proposed rules are not expected to have a significant economic impact on a substantial number of small entities because the basic policies remain unchanged and with few exceptions, the procedural changes are internal agency operating procedures. An Initial Regulatory Flexibility Analysis has not been performed. Comments are solicited from small business and other interested parties and will be considered in development of the final rule.

C. Paperwork Reduction Act

Parts 208, 216, 222, 249, the provisions/clauses in part 252 prescribed by these parts, the instructions in part 253 on forms prescribed by these parts, Appendix B, and Appendix R. These proposed rules do not change or impose any record keeping or information collection requirements beyond that for which OMB approval has previously been obtained.

Parts 232, 235, 236, 247, and the provisions/clauses in part 252 prescribed by these parts. These proposed rules revise recordkeeping and information collection requirements and require approval of OMB under 44 U.S.C. 3501, et seq. Requests for paperwork clearance are being prepared for submission to OMB.

List of Subjects in 48 CFR Parts 208, 216, 222, 232, 235, 236, 247, 249, 252, and 253.

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulatory System.

Adoption of Amendments

Therefore, it is proposed that 48 CFR Parts 208, 216, 222, 232, 235, 236, 247, 249, 252, 253, and Appendices B and R be amended as follows:

1. Part 208 is revised to read as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

208.001 Priorities for use of Government supply sources.
208.002 Use of other Government supply sources.

Subpart 208.3—Acquisition of Utility Services

208.300 Scope of subpart.

Subpart 208.4—Ordering from Federal Supply Schedules

208.404 Using schedules.
208.404–1 Mandatory use.
208.404–2 Optional use.
208.405 Ordering office responsibilities.
208.405–2 Order placement.

Part 208.7—Acquisition from the Blind and Other Severely Handicapped.

208.705 Procedures.

Subpart 208.70—Coordinated Acquisition.

208.7000 Scope of subpart.
208.7001 Definitions.
208.7002 Assignment authority.
208.7002–1 Acquiring department responsibilities.
208.7002–2 Requiring department responsibilities.
208.7003 Applicability.
208.7003–1 Assignments under integrated material management (IMM).
208.7003–2 Assignments under coordinated acquisition.
208.7004 Procedures.
208.7004–1 Purchase authorization from requiring department.
208.7004–2 Acceptance by acquiring department.
208.7004–3 Use of advance MIPRs.
208.7004–4 Cutoff dates for submission of Category II MIPRs.
208.7004–5 Notification of inability to obligate on Category II MIPRs.
208.7004–6 Cancellation of requirements.
208.7004–7 Termination for default.
208.7004–8 Transportation funding.
208.7004–9 Status reporting.
208.7005 MIPRs.
208.7006 Coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

208.7100 Authorization.
208.7101 Policy.
208.7102 Procedures.
208.7103 Purchase request and acceptance.
208.7104 Changes in estimated total prices.
208.7105 Inquiries.
208.7106 Payments.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.
208.7202 General.
208.7203 Procedures.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.
208.7302 Policy.
208.7303 Procedures.
208.7304 Refined precious metals.
208.7305 Contract clause.

Authority: 5 U.S.C. 301,10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

208.001 Priorities for use of Government supply sources.

(a)(1)(v) See subparts 208.70 and 208.71.

(2)(iii) Information on General Services Administration (GSA) schedules for maintenance, repair, and rehabilitation of personal property is in Section I of the GSA supply catalog. The types of personal property for which

GSA, Federal Supply Service has schedule contracts for maintenance, repair, and/or rehabilitation are—

(1) Furniture (office, household, quarters, institutional, and hospital type);

(2) Typewriters (manual, electric, and electronic);

(3) Repair and maintenance of Government owned vehicles; and

(4) Tire retreading and repair (except aircraft).

208.002 Use of other Government supply sources.

(f) Detailed information on strategic and critical materials in excess of national stockpile requirements (e.g., metals, ores, chemicals) is available from the Defense National Stockpile Center, 18th and F Streets, NW., Washington, DC 20405.

(g) Acquire helium (Pub. L. 87–777)—

(i) In bulk from—

(A) The Department of Interior (Bureau of Mines); or

(B) Eligible private helium distributors. A list of eligible private helium distributors is maintained by the Bureau of Mines, Helium Field Operations, 1100 South Fillmore Street, Amarillo, 79101.

(ii) In cylinders or trailers, from—

(A) The Department of Interior (Bureau of Mines); or

(B) Through GSA Federal Supply Schedule contracts.

Subpart 208.3—Acquisition of Utility Services

208.300 Scope of subpart.

DoD policies and procedures are in DFARS Supplement 5.

Subpart 208.4—Ordering from Federal Supply Schedules

208.404 Using schedules.

208.404-1 Mandatory use.

The DoD will not be a mandatory user of any schedule unless individual DoD activities elect to provide annual requirements estimates to GSA and become mandatory users.

Examples of areas where this approach may be applied are:

(1) Group 68-gases and chemicals;

(2) Group 26-pneumatic tires and inner tubes;

(3) Maintenance, repair, and/or rehabilitation of personal property; and

(4) "Just-in-time" arrangements for delivery of material directly from vendors to users.

208.404-2 Optional use.

Use the schedules unless competition would be in the best interest of the Government in terms of quality, responsiveness, or cost.

208.405 Ordering office responsibilities.

208.405-2 Order placement.

(1) Ordering offices may use DD Form 1155, Order for Supplies or Services, to order items from schedules.

(2) Orders may be placed orally if—

(i) The order does not exceed the small purchase threshold at FAR 13.000;

(ii) The contractor agrees to furnish a delivery ticket for each shipment under the order (in the number of copies required by the ordering office). The ticket must include the—

(A) Contract number;

(B) Order number under the contract;

(C) Date of order;

(D) Name and title of person placing order;

(E) Itemized listing of supplies or services furnished; and

(F) Date of delivery or shipment.

(iii) Invoicing procedures are agreed upon. Optional methods of submitting invoices for payment are permitted, such as—

(A) An individual invoice with a receipted copy of the delivery ticket;

(B) A summarized monthly invoice covering all oral orders made during the month, with receipted copies of the delivery tickets (this option is preferred if there are many oral orders); or

(C) A contracting officer statement that the Government has received the supplies.

(3) For purchases where cash payment is an advantage, the use of imprest funds (see FAR subpart 13.4) is authorized when—

(i) The order does not exceed the threshold at FAR 13.404(a); and

(ii) The contractor agrees to the procedure.

Subpart 208.7—Acquisition From the Blind and Other Severely Handicapped

208.705 Procedures.

Ordering offices may use DD Form 1155, Order for Supplies or Services, to place orders with central nonprofit agencies or workshops.

Subpart 208.70—Coordinated Acquisition

208.7000 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of items for which contracting responsibility is assigned to one or more of the departments/agencies or the General Services Administration. Contracting responsibility is assigned through—

(a) The Coordinated Acquisition Program (assignments are listed in Appendix B); or

(b) The Integrated Material Materiel Management Program (assignments are in DoD 4140.26–M, Integrated Materiel Management for Consumable Items).

208.7001 Definitions.

For purposes of this subpart—

Acquiring department means the department, agency, or General Services Administration which has contracting responsibility under the Coordinated Acquisition Program.

Integrated materiel management means assignment of acquisition management responsibility to one department, agency, or the General Service Administration for all of DoD's requirements for the assigned item. Acquisition management normally includes computing requirements, funding, budgeting, storing, issuing, cataloging, standardizing, and contracting functions.

Requiring department means the department or agency which has the requirement for an item.

208.7002 Assignment authority.

(a) Under the DoD Coordinated Acquisition Program, contracting responsibility for certain commodities is assigned to a single department, agency, or the General Services Administration (GSA). Commodity assignments are made—

(1) To the departments and agencies, by the Assistant Secretary of Defense (Production and Logistics);

(2) To the GSA, through agreement with GSA, by the Assistant Secretary of Defense (Production and Logistics);

(3) Outside the continental U.S., by the Unified Commanders; and

(4) For acquisitions to be made in the U.S. for commodities not assigned under paragraphs (a) (1), (2), or (3) of this section, by department or agency heads (10 U.S.C. 2308).

(i) Agreement may be on either a one-time or a continuing basis. The submission of a military interdepartmental purchase request (MIPR) by a requiring activity and its acceptance by the contracting activity of another department, even though based on an oral communication, establishes a one-time agreement

(ii) Consider repetitive delegated acquisition responsibilities for coordinated acquisition assignment. If not considered suitable for coordinated acquisition assignment, formalize continuing agreements and distribute them to all activities concerned.

(b) Under the Integrated Materiel Management Program, assignments are made by the Assistant Secretary of Defense (Production and Logistics)—

(1) To the departments and agencies; and

(2) To the GSA, through agreement with GSA.

208.7002–1 Acquiring department responsibilities.

The acquiring department generally is responsible under coordinated acquisition for—

(a) Acquisition planning (Phasing the submission of requirements to contracting, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders to avoid unnecessary production fluctuations and meet the needs of requiring departments at the lowest price);

(b) Purchasing;

(c) Performing or assigning contract administration, including follow up and expediting of inspection and transportation; and

(d) Acquiring licenses under patents and settling patent infringement claims arising out of the acquisition. (Acquiring departments must obtain approval from the department whose funds are to be charged for acquiring licenses or settling claims.)

208.7002–2 Requiring department responsibilities.

The requiring department is responsible for—

(a) Ensuring compliance with the order of priority in FAR 8.001 for use of Government supply sources before submitting a requirement to the acquiring department for contracting action.

(b) Providing the acquiring department—

(1) The complete certified documentation required by FAR 6.303–2(b). A requiring department official, equivalent to the appropriate level in FAR 6.304, must approve the documentation before submission of the military interdepartmental purchase request (MIPR) to the acquiring department;

(2) Any additional supporting data which the acquiring department contracting officer requests (e.g., the results of any market survey or why none was conducted, and actions the requiring department will take to overcome barriers to competition in the future);

(3) The executed determination and findings specified in FAR 6.302–7(c)(1), when applicable;

(4) When a requiring department requests an acquiring department to contract for supplies or services using full and open competition after exclusion of sources, all data required by FAR 6.202(b)(2);

(5) When the requiring department specifies a foreign end product, the applicable exception, and the determination that a domestic source end product is not available, if required by FAR 25.108 or FAR 25.302;

(6) A list (or copies) of specifications, drawings, and other data required for the acquisition. The requiring department need not furnish Federal, military, departmental, or other specifications or drawings or data which are available to the acquiring department;

(7) Justification for any option quantities included in the MIPR;

(8) A statement as to whether used or reconditioned material, former Government surplus property, or residual inventory will be acceptable, and if so—

(i) A list of any supplies that need not be new; and

(ii) The basis for determining the acceptability of such supplies, including an analysis of the factors at FAR 10.010(b);

(9) A statement as to whether the acquiring department may exceed the total MIPR estimate, and if so, by what amount;

(10) Unless otherwise agreed between the departments, an original and six copies of each MIPR and its attachments (except specifications, drawings, and other data); and

(11) A list of all persons who have had access to proprietary or source selection information (see FAR 3.104–9(f)).

208.7003 Applicability.

208.7003–1 Assignments under integrated material management (IMM).

(a) All items assigned for IMM must be acquired from the IMM manager except—

(1) Items the IMM manager assigns a supply system code for local purchase;

(2) When purchase by the requiring department is in the best interest of the Government in terms of the combination of quality, timeliness, and cost that best meets the requirement. This exception does not apply to items—

(i) Necessary for war reserve or war mission requirements, required for unit deployment, or to support the industrial base;

(ii) Directly related to the operation of a weapon system or its support equipment;

(iii) With special security characteristics; or

(iv) Which are dangerous (e.g., explosives, munitions);

(b) When an item assigned for IMM is to be acquired by the requiring department under one of the exceptions in paragraphs (a)(2) of this subsection, the contracting officer must—

(1) Document the contract file for an acquisition over $100 per line item; and

(2) Obtain a waiver from the IMM manager for an acquisition over $5,000 per line item, if the IMM assignment is to GSA, the Defense Logistics Agency (DLA), or the Army Tank-Automotive Command (TACOM). Submit requests for waiver to—

(i) For GSA: Commissioner (F), Federal Supply Service, Washington, DC 20406.

(ii) For DLA: Director, Defense Logistics Agency, ATTN: DLA–OS, Alexandria, VA 22305–6100.

(iii) For TACOM: U.S. Army Tank-Automotive Command, ATTN: AMSTA–FHC, Warren, MI 48397–5000.

208.7003–2 Assignments under coordinated acquisition.

Requiring departments must submit to the acquiring department all contracting requirements for items assigned for coordinated acquisition, except—

(a) Items obtained through the sources in FAR 8.001(a)(1) (i) through (vii);

(b) Items obtained under 208.7003–1(a);

(c) Small dollar requirements not in excess of the small purchase threshold in FAR 13.000, when contracting by the requiring department is in the best interest of the Government;

(d) In an emergency. When an emergency purchase is made, the requiring department must send one copy of the contract and a statement of the emergency to the contracting activity of the acquiring department;

(e) Requirements for which the acquiring department's contracting activity delegates contracting authority to the requiring department;

(f) Items in a research and development stage (as described in FAR part 35). Under this exception, the military departments may contract for research and development requirements, including quantities for testing purposes and items undergoing in-service evaluation (not yet in actual production, but beyond prototype). Generally, this exception applies only when research and development funds are used.

(g) Items peculiar to nuclear ordnance material where design characteristics or test-inspection requirements are

controlled by the Department of Energy (DoE) or by DoD to ensure reliability of nuclear weapons.

(1) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of agency control, or to any item which requires test or inspection conducted or controlled by DoE or DoD.

(2) This exception does not cover items used for both nuclear ordnance and other purposes if the items are not subject to the special testing procedures.

(h) Items to be acquired under FAR 6.302–6 (national security requires limitation of sources);

(i) Items to be acquired under FAR 6.302–1 (supplies available only from the original source for follow-on contract);

(j) Items directly related to a major system and which are design controlled by and acquired from either the system manufacturer or a manufacturer of a major subsystem;

(k) Items subject to rapid design changes, or to continuous redesign or modification during the production and/or operational use phases, which require continual contact between industry and the requiring department to ensure that the item meets the requirements:

(1) This exception permits the requiring department to contract for items of highly unstable design. For use of this exception, it must be clearly impractical, both technically and contractually, to refer the acquisition to the acquiring department. Neither a number of design changes nor a negotiated contract is valid reason for using this exception.

(2) This exception also applies to items requiring compatibility testing, provided such testing requires continual contact between industry and the requiring department;

(l) Containers acquired only with items for which they are designed;

(m) One-time buy of a noncataloged item.

(1) This exception permits the requiring departments to contract for a nonrecurring requirement for a noncataloged item. This exception could cover a part or component for a prototype which may be stock numbered at a later date.

(2) This exception does not permit acquisitions of recurring requirements for an item, based solely on the fact that the item is not stock numbered, nor may it be used to acquire items which have only slightly different characteristics from previously cataloged items.

208.7004 Procedures.

208.7004–1 Purchase authorization from requiring department.

(a) Requiring departments send their requirements to acquiring departments for contracting action on either a DD Form 448, Military Interdepartmental Purchase Request (MIPR), or a DD Form 416, Requisition for Coal, Coke or Briquettes. A MIPR or a DD Form 416 is the acquiring department's authority to acquire the supplies or services on behalf of the requiring department.

(b) The acquiring department is authorized to create obligations against the funds cited in a MIPR without further referral to the requiring department. The acquiring department has no responsibility to determine the validity of a stated requirement in an approved MIPR, but it should bring apparent errors in the requirement to the attention of the requiring department.

(c) Changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. The requiring department may initially transmit changes electronically or by some other expedited means, but must confirm changes by a MIPR amendment.

(d) The requiring department must submit requirements for additional line items of supplies or services not provided for in the original MIPR as a new MIPR. The requiring department may use a MIPR amendment for increased quantities only if—

(1) The original MIPR requirements have not been released for solicitation; and

(2) The acquiring department agrees.

208.7004–2 Acceptance by acquiring department.

(a) Acquiring departments formally accept a MIPR by DD Form 448–2, Acceptance of MIPR, as soon as practicable, but no later than 30 days after receipt of the MIPR. If the 30 day time limit cannot be met, the acquiring department must inform the requiring department of the reason for the delay, and the anticipated date the MIPR will be accepted. The acquiring department must accept Category I MIPRs in writing before expiration of the funds.

(b) The acquiring department in accepting a MIPR will determine whether to use Category I or Category II methods of funding.

(1) Category I method of funding is used under the following circumstances and results in citing the funds of the acquiring department in the contract—

(i) Delivery is from existing inventories of the acquiring department;

(ii) Delivery is by diversion from existing contracts of the acquiring department;

(iii) Production or assembly is through Government work orders in Government-owned plants;

(iv) Production quantities are allocated among users from one or more contracts, and the identity of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(v) Acquisition of the end items involves separate acquisition of components to be assembled by the acquiring department;

(vi) Payments will be made without reference to deliveries of end items (e.g., cost-reimbursement type contracts and fixed price contracts with progress payment clauses); or

(vii) Category II method of funding is not feasible and economical.

(2) Category II method of funding is used in circumstances other than those in paragraph (b)(1) of this subsection. Category II funding results in citation of the requiring department's funds and MIPR number in the resultant contract.

(c) When the acquiring departments accepts a MIPR for Category I funding—

(1) The DD Form 448–2, Acceptance of MIPR, is the authority for the requiring department to record the obligation of funds;

(2) The acquiring department will annotate the DD Form 448–2 if contingencies, price revisions, or variations in quantities are anticipated. The acquiring department will periodically advise the requiring department, prior to submission of billings, of any changes in the acceptance figure so that the requiring department may issue an amendment to the MIPR, and the recorded obligation may be adjusted to reflect the current price;

(3) If the acquiring department does not qualify the acceptance of a MIPR for anticipated contingencies, the price on the acceptance will be final and will be billed at time of delivery;

(4) Upon receipt of the final billing (SF 1080, Voucher for Transferring Funds), the requiring department may adjust the fiscal records accordingly without authorization from or notice to the acquiring department.

(d) When the MIPR is accepted for Category II funding, a conformed copy of the contract is the authority to record the obligation. When all awards have been placed to satisfy the total MIPR requirement, any unused funds remaining on the MIPR become excess to the acquiring department. The acquiring department will immediately

notify the requiring department of the excess funds by submitting a MIPR amendment (DD Form 448–2). This amendment is authorization for the requiring department to withdraw the funds. The acquiring department is prohibited from further use of such excess funds.

(e) When the acquiring department requires additional funds to complete the contracting action for the requiring department, the request for additional funds must identify the exact items involved, and the reason why additional funds are required. The requiring department shall act quickly to—

(1) Provide the funds by an amendment of the MIPR; or

(2) Reduce the requirements.

(f) The accepting activity of the acquiring department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for action by other contracting activities.

208.7004–3 Use of advance MIPRs.

(a) An advance MIPR is an unfunded MIPR provided to the acquiring department in advance of the funded MIPR so that initial steps in planning the contract action can begin at an earlier date.

(b) In order to use an advance MIPR, the acquiring department and the requiring department must agree that its use will be beneficial. The departments may execute a blanket agreement to use advance MIPRs.

(c) The requiring department shall not release an advance MIPR without obtaining proper approval of the requirement.

(d) When advance MIPRs are used, mark "ADVANCE MIPR" prominently on the DD Form 448.

(e) For urgent requirements, the advance MIPR may be transmitted electronically.

(f) On the basis of an advance MIPR, the acquiring department may take the initial steps toward awarding a contract, such as obtaining internal coordination and preparing an acquisition plan. Acquiring departments may determine the extent of these initial actions but shall not award contracts on the basis of advance MIPRs.

208.7004–4 Cutoff dates for submission of Category II MIPRs.

(a) Unless otherwise agreed between the departments, May 31 is the cutoff date for the receipt of MIPRs citing expiring appropriations which must be obligated by September 30 of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the requiring department will communicate with the acquiring department before submission to find out whether the acquiring department can execute a contract or otherwise obligate the funds by the end of the fiscal year. Acquiring departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the acquiring department that all such funds will be obligated.

(b) Nothing in these instructions is intended to restrict the processing of MIPRs when the acquiring department is capable of executing contracts or otherwise obligating funds before the end of the fiscal year.

(c) The May 31 cutoff date does not apply to MIPRs citing continuing appropriations.

208.7004–5 Notification of inability to obligate on Category II MIPRs.

On August 1, the acquiring department will advise the requiring department of any Category II MIPRs on hand citing expiring appropriations they will be unable to obligate prior to the fund expiration date. If an unforeseen situation develops after August 1 which will prevent execution of a contract, the acquiring department will notify the requiring department as quickly as possible and return the MIPR. The letter of transmittal returning the MIPR will authorize purchase by the requiring department and state the reason that the acquisition could not be accomplished.

208.7004–6 Cancellation of requirements.

(a) *Category I MIPRs.* The requiring department will notify the acquiring department by electronic or other immediate means when cancelling all or part of the supplies or services requested in the MIPR. Within 30 days, the acquiring department will notify the requiring department of the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the requiring department will issue a MIPR amendment to reduce the quantities and funds accordingly.

(b) *Category II MIPRs.* The requiring department will notify the acquiring department electronically or by other immediate means when cancelling all or any part of the supplies or services requested in the MIPR.

(1) If the acquiring department has not entered into a contract for the supplies or services to be cancelled, the acquiring department will immediately notify the requiring department. Upon receipt of such notification, the requiring department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the cancelled items.

(2) If the items to be cancelled have already been placed under contract—

(i) As soon as practicable, but in no event more than 45 days after receipt of the cancellation notice from the requiring department, the contracting officer shall issue a termination data letter to the requiring department (original and four copies) containing, as a minimum, the following information:

SUBJECT: Termination Data Re:
Contract No._____
Termination No. _____
Contract_____

(a) As termination action is now in progress on the above contract, the following information is submitted:

(1) Brief Description of items terminated.

(2) You are notified that the sum of $____ is available for release under the subject contract. This sum represents the difference between $____, the value of items terminated under the contract, and $____, estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:
MIPR NO.____ ACCOUNTING CLASSIFICATION____ AMOUNT____
Total available for release at this time $____

(b) Request you forward an amendment to MIPR____ on DD Form 448–2 to reflect the reduced quantity and amount of funds available for release.

(c) Periodic reviews (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

_____
Contracting Officer

(ii) The termination contracting officer (TCO) will review the proceedings at least every 60 days to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required for settlement, the TCO will promptly notify the contracting office which will amend the termination data letter. The requiring department will process a MIPR amendment to reflect the reinstatement of funds within 30 days after receiving the amended termination data letter.

(iii) Upon receipt of a copy of the termination settlement agreement, the requiring department will prepare a MIPR amendment, if required, to remove any remaining excess funds.

208.7004–7 Termination for default.

(a) When the acquiring department terminates a contract for default, they will ask the requiring department if the

supplies or services to be terminated are still required so that repurchase action can be started.

(b) The requiring department will not obligate funds on a contract terminated for default until receipt of a settlement modification or other written evidence from the acquiring department authorizing release of funds.

(c) On the repurchase action, the acquiring department will not exceed the unliquidated funds on the defaulted contract without receiving additional funds from the requiring department.

208.7004–8 Transportation funding.

The requiring department will advise the acquiring department or the transportation officer in the contract administration office of the fund account to be charged for transportation costs. The requiring department may cite the fund account on each MIPR or provide the funding cite to the transportation officer at the beginning of each fiscal year for use on Government bills of lading. When issuing a Government bill of lading, show the requiring department as the department to be billed and cite the appropriate fund account.

208.7004–9 Status reporting.

(a) The acquiring department will maintain a system of MIPR follow up to inform the requiring department of the current status of its requests. In addition, the contract administration office will maintain a system of follow up in order to advise the acquiring department on contract performance.

(b) If requested by the requiring department, the acquiring department will furnish the requiring department a copy of the solicitation when the MIPR is satisfied through Category II funding.

(c) Any reimbursement billings, shipping document, contractual documents, project orders, or related documentation furnished to the requiring department will identify the requiring department's MIPR number, quantities of items, and funding information.

208.7005 MIPRs.

Instructions on preparation and use of DD Form 448, Military Interdepartmental Purchase Request, and DD Form 448–2, Acceptance of MIPR, are in 253.208.

208.7006 Coordinated acquisition assignments.

See Appendix B for coordinated acquisition assignments.

Subpart 208.71—Acquisition for National Aeronautics and Space Administration (NASA)

208.7100 Authorization.

NASA is authorized by Pub. L. 85–568 to use the acquisition services, personnel, equipment, and facilities of DoD departments and agencies with their consent, with or without reimbursement, and on a similar basis to cooperate with the departments/agencies in the use of acquisition services, equipment, and facilities.

208.7101 Policy.

Departments and agencies will—

(a) Cooperate fully with NASA in making acquisition services, equipment, personnel, and facilities available on the basis of mutual agreement.

(b) Not claim reimbursement for administrative costs incident to acquisitions for NASA, unless agreed otherwise prior to the time services are performed.

208.7102 Procedures.

(a) When contracting or performing field service functions for NASA, the departments and agencies will use their own methods, except when otherwise required by the terms of the agreement.

(b) Departments and agencies normally will use their own funds when contracting for or performing services for NASA and will not cite NASA funds on any defense obligation or payment document.

208.7103 Purchase request and acceptance.

(a) NASA will use NASA Form 523, NASA-Defense Purchase Request, to request acquisition of supplies or services.

(b) Except as provided in paragraph (d) of this section, departments and agencies will respond within 30 days to a NASA purchase request by forwarding DD Form 448–2, Acceptance of MIPR. Forward each DD Form 448–2 in quadruplicate and indicate action status as well as the name and address of the DoD acquisition activity for future use by the NASA initiator.

(c) To the extent feasible, all documents related to the NASA action will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(d) Departments and agencies are not required to accept NASA-Defense Purchase Requests for common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

208.7104 Changes in estimated total prices.

When a department or agency determines that the estimated total price (Block 6F, NASA Form 523) for NASA items is not sufficient to cover the required reimbursement, or is in excess of the amount required, the department/agency will forward a request for amendment to the NASA originating office. Indicate in the request a specific dollar amount, rather than a percentage, and include justification for any upward adjustment requested. Upon approval of a request, NASA will forward an amendment of its purchase request to the contracting activity.

208.7105 Inquiries.

Departments and agencies will direct inquiries and correspondence regarding the NASA purchase to the NASA originating office.

208.7106 Payments.

Departments and agencies will submit SF 1080, Voucher for Transferring Funds, billings to the NASA office designated in Block 9 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Departments and agencies will support billings in the same manner as billings between departments and agencies.

Subpart 208.72—Industrial Preparedness Production Planning

208.7201 Definitions.

As used in this subpart—

Industrial base means that part of the total privately-owned and Government-owned industrial production and maintenance capacity of the U.S. and Canada, which will be available during national emergencies to manufacture and repair items required by the departments.

Industrial preparedness production planning means planning designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

National emergency means a condition declared by the President or congress which authorizes certain emergency action in the national interest, including partial or total mobilization of national resources.

Planned item means any item selected for industrial preparedness planning under the criteria of DoDI 4005.3, Industrial Preparedness Planning.

Planned producer means an industrial firm which has shown its willingness to produce specified military items in a national emergency by completing DD

Form 1519, Industrial Preparedness Program Production Planning Schedule.

208.7202 General.

(a) Under the Industrial Preparedness Production Planning (IPPP) program, DoD components and industry work together to ensure essential military items are available during an emergency.

(b) Departments and agencies select weapon systems and items for planning in accordance with DoDI 4005.3, Industrial Preparedness Planning. Planning is conducted only with U.S. or Canadian sources.

(c) The use of privately-owned facilities is preferred to minimize the need for Government investment. Departments and agencies will include Government-owned production facilities in the industrial base only when—

(1) Private industry is unable to provide the facilities necessary to support DoD requirements; or

(2) The facilities are necessary—

(i) For reasons of national security; or

(ii) To ensure a quick response capability to meet fluctuating demands.

208.7203 Procedures.

(a) Planned producers shall be solicited for all acquisitions of their planned items, when the acquisition is over the small purchase threshold in FAR 13.000, except as provided in FAR subpart 19.5.

(b)The contracting officer may contract for industrial planning efforts for selected essential military items. These efforts may include, but are not limited to, the maintenance of Government-owned industrial facilities (real and personal property) or production data packages. These planning efforts may be acquired through an individual service contract or as a line item on a contract for a planned item.

Subpart 208.73—Use of Government-Owned Precious Metals

208.7301 Definitions.

As used in this subpart—

Defense Industrial Supply Center (DISC) means the Defense Logistics Agency field activity located at 700 Robbins Avenue, Philadelphia, PA 19111–5096, which is the assigned commodity integrated material manager for refined precious metals and is responsible for the storage and issue of such material.

Dual pricing evaluation procedure means a procedure where offerors submit two prices for precious metals bearing items—one based on Government-furnished precious metals and one based on contractor-furnished precious metals. The contracting officer evaluates the prices to determine which is in the Government's best interest.

Precious Metals Indicator Code (PMIC) means a single digit, alpha-numeric code assigned to national stock numbered items in The Defense Integrated Data System Total Item Record used to indicate the presence or absence of precious metals in the item. PMICs and the content value of corresponding items are listed in DoDD 4100.39M, Defense Integrated Data System (DIDS) Procedures Manual, Chapter 10, Table 160.

Refined precious metal means recovered silver, gold, platinum, palladium, iridium, rhodium, or ruthenium, in bullion, granulation or sponge form, which has been purified to at least .999 percentage of fineness.

208.7302 Policy.

DoD policy is for maximum participation in the Precious Metals Recovery Program (PMRP). DoD components shall furnish recovered precious metals contained in the DISC inventory to production contractors rather than use contractor-furnished precious metals whenever the contracting officer determines it to be in the Government's best interest. (See DoDD 4160.22, Recovery and Utilization of Precious Metals, and DoDI 4140.41, Government-Owned Material Assets Utilized as Government-Furnished Materiel for Major Acquisition Programs.)

208.7303 Procedures.

(a) Item managers and contracting officers will use the PMIC and/or other relevant data furnished with a purchase request to determine the applicability of this subpart.

(b) When an offeror advises of a precious metals requirement, the contracting officer shall use the procedures in Chapter X of DoD 4160.21–M, Defense Utilization and Disposal Manual, to determine availability of required precious metal assets and current government-furnished materiel (GFM) unit prices. If the precious metals are available, the contracting officer shall evaluate offers and award the contract on the basis of the offer which is in the best interest of the Government.

(c) When the clause prescribed by 208.7305 is included in a solicitation, the contracting officer will ensure that Section B, Schedule of Supplies or Services and Prices, is structured to—

(1) Permit insertion of alternate prices for each deliverable contract line item number that uses precious metals; and

(2) Use dual pricing evaluation procedures.

208.7304 Refined precious metals.

The following refined precious metals are currently managed by DISC:

Precious metal	National stock number (NSN)
Silver Bullion/Granules	9660–00–106–9432
Gold Bullion/Granules	9660–00–042–7733
Platinum Granules	9660–00–042–7768
Platinum Sponge	9660–00–151–4050
Palladium Granules	9660–00–042–7765
Rhodium Sponge	9660–01–011–2625
Iridium Sponge	9660–01–011–1937
Ruthenium Sponge	9660–01–039–0313

208.7305 Contract clause.

(a) Use the clause at 252.208–7000, Intent to Furnish Precious Metals as Government-Furnished Material, in all solicitations and contracts except—

(1)When the contracting officer has determined that the required precious metals are not available from DISC;

(2) When the contracting officer knows that the items being acquired do not require precious metals in their manufacture; or

(3) For acquisitions below the small purchase threshold in FAR 13.000.

(b) To make the determination in paragraph (a)(1) of this section, the contracting officer shall consult with the end item inventory manager and comply with the procedures in Chapter X, DoD 4160.21–M, Defense Utilization and Disposal Manual.

2. Part 216 is revised to read as follows:

PART 216—TYPES OF CONTRACTS

Sec.

Subpart 216.1—Selecting Contract Types

216.104 Factors in selecting contract types.
216.104–70 Research and development.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.
216.203–4 Contract clauses.
216.203–4–70 Additional clauses.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.
216.402–2 Technical performance incentives.
216.403 Fixed-price incentive contracts.
216.403–2 Fixed-price incentive (successive targets) contracts.
216.404 Cost-reimbursement incentive contracts.
216.404–1 Cost-plus-incentive-fee contracts.
216.404–2 Cost-plus-award-fee contracts.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.
216.506 Ordering.

Subpart 216.6—Time-And-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.
216.603–3 Limitations.

Subpart 216.7—Agreements

216.702 Basic agreements.
216.703 Basic ordering agreements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 216.1—Selecting Contract Types

216.104 Factors in selecting contract types.

(d) Design stability may also influence subordinate considerations, such as the adequacy and firmness of specifications, the availability of historical pricing data, prior production experience, and the adequacy of the contractor's estimating system.

216.104–70 Research and development.

(a) *General.* (1) There are several categories of research and development (R&D) contracts: research, exploratory development, advanced development, engineering development, and operational systems development (see 235.001 for definitions). Each category has a primary technical or functional objective. Different parts of a project may fit several categories. The contract type must fit the work required, not just the classification of the overall program.

(2) Obtain the recommendations of cognizant technical personnel before selecting contract type.

(3) Where appropriate, R&D solicitations should permit offerors to propose an alternative contract type. The offeror must provide rationale to support any alternative proposed.

(b) *Research and exploratory development.* (1) Price is not necessarily the primary factor in determining the contract type.

(2) The nature of the work to be performed will usually result in a cost-plus award fee, cost-plus fixed fee term, cost-no-fee, or cost-sharing contract.

(3) If the Government and the contractor can identify and agree upon the level of contractor effort required, the contracting officer may select a firm fixed-price level-of-effort contract.

(4) If the Government and the contractor agree that an incentive arrangement is desirable and capable of being evaluated after completion of the work, the contracting officer may use an incentive type contract.

(c) *Advanced development.* (1) The nature of the work to be performed often results in a cost-plus fixed fee completion type contract.

(2) Contracting officers may select incentive contracts if—

(i) Realistic and measurable targets are identified; and

(ii) Program success is predictable with a reasonable degree of accuracy.

(3) Contracting officers should not use contracts with only cost incentives where—

(i) There will be a large number of major technical changes; or

(ii) Actions beyond the control of the contractor may influence the determination of the contractor's achievement.

(d) *Engineering development and operational systems development.* (1) When selecting contract types, also consider—

(i)The definitiveness of the project and the impact of the type of contract on the accuracy of cost estimates;

(ii) The need for effort that will overlap that of earlier stages;

(iii) The need for firm technical direction by the Government; and

(iv) The degree of configuration control the Government will exercise.

(2) For development efforts, particularly for major defense systems, the preferred contract type is cost reimbursement.

(3) Contracting officers should use fixed-price type contracts when risk has been reduced to the extent that realistic pricing can occur; e.g., when a program has reached the final stages of development and technical risks are minimal, except see 235.006.

Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203–4 Contract clauses.

(a) *Adjustment based on established prices-standard supplies.* Generally, use the clause at FAR 52.216–2, Economic Price Adjustment-Standard Supplies only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(b) *Adjustment based on established prices-semistandard supplies.* Generally, use the clause at FAR 52.216–3, Economic Price Adjustment-Semistandard Supplies, only when—

(i) The total contract price is over the small purchase threshold in FAR 13.000; and

(ii) Delivery will not be completed within 6 months after the contract date.

(c) *Adjustments based on actual cost of labor or material.* (i) Limit use of the clause at FAR 52.216–4, Economic Price Adjustment-Labor and Material, to contracts in which the price exceeds $50,000 and the period of performance exceeds 6 months, unless otherwise approved by the chief of the contracting office. Use an appropriate modification of the clause in sealed bidding. The contracting officer may increase the 10 percent limit on aggregate increases specified in paragraph (c)(4) of the clause upon approval of the chief of the contracting office.

(d) *Adjustments based on cost indexes of labor or material.* Use the following guidelines—

(i) Do not make the clause unnecessarily complex.

(ii) Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics—

(A) Producer Price Index;

(B) Employment Cost Index wages and salaries, benefits, and compensation costs for aerospace industries; or

(C) Wage and Income Series by Standard Industrial Classification (Labor).

(iii) Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

(iv) The clause must accurately identify the index(es) upon which adjustments will be based.

(A) It also must provide appropriate economic fluctuation in the event publication of the movement of the designated index is discontinued. This might include the substitution of another index if the time remaining would justify doing so and an appropriate index is reasonably available, or some other method for repricing the remaining portion of work to be performed.

(B) Normally, there should be no need to make an adjustment if computation of the identified index is altered. However, it may be appropriate to provide for adjustment of the economic fluctuation computations in the event there is such a substantial alteration in the method of computing the index that the original intent of the parties is negated.

(C) When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause must specify that any economic price adjustment will be based on the revised index.

(v) Construct the index to encompass a large sample of relevant items while still bearing a logical relationship to the

type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to contract performance, but it must be broad enough to minimize the effect of any single company, including the anticipated contractors.

(vi) Construction of an index is largely dependent upon three general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the—

(A) Industrial Commodities portion of the Producer Price Index;

(B) Employment Cost Index wages and salaries, benefits, and compensation costs for aerospace industries; and

(C) Wage and Income Series by Standard Industrial Classification (Labor). Since there is no BLS published series currently available that relates directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., it will be necessary to construct composite indices from major portions of the three series identified.

(vii) Normally, do not use more than two indices, i.e., one for labor (direct and indirect) and one for material (direct and indirect).

(viii) The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

(ix) The clause should not provide for an adjustment beyond the original contract performance period. The start date for the adjustment may be the beginning of the contract or a later time, as appropriate, based on the projected rate of expenditures.

(x) The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to the total contract price) in lieu of actual cost incurred.

(A) If the clause is to be used in a competitive acquisition, determine the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited so that all companies may compete on an equal basis.

(B) If the clause is to be used in a noncompetitive acquisition, the labor and material allocations may be subject to negotiation and agreement.

(C) For multiyear contracts, establish predetermined expenditure profile tables for each of the annual increments in the multiyear buy. Each of the second and subsequent year tables must be cumulative to reflect the total expenditures for all increments funded through the latest multiyear funding.

(xi) The clause should state the percentage of the contract price subject to price adjustment.

(A) Normally, do not apply adjustments to the profit portion of the contract.

(B) Examine the labor and material portions of the contract to exclude any areas that do not require adjustment. For example, it may be possible to exclude—

(*1*) Subcontracting for short periods of time during the early life of the contract which could be covered by firm priced subcontracting;

(*2*) Certain areas of overhead, e.g., depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges;

(*3*) That portion of labor for the period of time for which a definitive union agreement exists; and

(*4*) Those costs not likely to be affected by fluctuation in the economy.

(C) Allocate the portion of the contract determined proper for economic fluctuation protection to specific periods of time (e.g., quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

(xii) The clause should provide for definite times or events that trigger price adjustments. Adjustments should be of a frequency to afford the contractor appropriate economic relief without creating a burdensome administrative effort. The adjustment period should normally range from quarterly to annually.

(xiii) When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions must be subtracted from the total of the contractor's allowable costs for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges, rather than dollar ranges, above and below target costs, structure the economic price adjustment clause to maintain the original contract incentive range in dollars.

(xiv) The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and shall not be modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provisions for economic price adjustment.

(xv) Consistent with the factors in paragraph (d) (i) through (xiv) of this subsection, it may also be appropriate to provide in the prime contract for certain economic price adjustment arrangements between the prime contractor and subcontractors to allocate risks properly.

(xvi) When economic price adjustment clauses are included in contracts that do not require submission of cost or pricing data as provided for in 215.804–3, the contracting officer must obtain adequate information to establish the baseline from which adjustments will be made. The contracting officer may require verification of the data submitted to the extent necessary to permit reliance upon the data as a reasonable baseline.

216.203–4–70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1) The price adjustment clause at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products, may be used in fixed-price supply contracts for basic steel, aluminum, brass, bronze, or copper mill products, such as sheets, plates, and bars, when an established catalog or market price—

(i) Exists for the particular product being acquired; and

(ii) Has been verified in accordance with the criteria at 215.804–3(c).

(2) Do not make an adjustment under this clause until the adjustment has been verified in accordance with the criteria set forth in FAR 15.804–3 and paragraph (d)(4) of the clause.

(b) *Price adjustment for nonstandard steel items.* (1) The price adjustment clause at 252.216–7001, Economic Price Adjustment—Nonstandard Steel Items, may be used in fixed-price supply contracts when—

(i) The contractor is a steel producer and actually manufacturers the standard steel mill item referred to in the "base steel index" definition of the clause; and

(ii) The items being acquired are nonstandard steel items made wholly or in part of standard steel mill items.

(2) When this clause is included in invitations for bids, omit Note 6 of the clause and all references to Note 6.

(3) Solicitations shall instruct offerors to complete all blanks in accordance with the applicable notes.

(4) When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (f) and Note 6 of the clause), verify

the established price before contract award in accordance with 215.804–3.

(5) When the clause is to provide for adjustment on a basis other than "established price" (see Note 6 of the clause), that price must be verified.

(6) Make no adjustment in contract price under this clause until the requested adjustment has been verified in accordance with the criteria in FAR 15.804–3 (but see Note 6 of the clause) and as required by paragraph (f) of the clause.

Subpart 216.4—Incentive Contracts

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

(1) "Performance" includes not only the performance of the article being acquired, but also the performance of the contractor.

(2) Contractor performance incentives should relate to specific performance areas of milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

216.403 Fixed-price incentive contracts.

(b) *Application.* (3) Individual line items may have separate incentive provisions; e.g., when dissimilar work calls for separate formulas.

(c) *Limitations.* The contractor's accounting system must furnish reliable financial information for preparing the quarterly limitation on payments statement required under the clauses at FAR 52.216–16, Incentive Price Revision-Firm Target, and 52.216–17, Incentive Price Revision-Successive Targets. In computing overpayments or underpayments, use the following formula when—

(i) Actual costs for individual items delivered are not available; and

(ii) The necessary cost data are available from an accounting system that meets the cost schedule control systems criteria.

FORMULA FOR COMPUTING OVERPAYMENT/UNDERPAYMENT

COID = Cost of items delivered
TCID = Target cost of items delivered
ACWP = Actual cost of work performed
BCWP = Budgeted cost of work performed
BMR = Budgeted management reserve
BTD = Billings to date
TEP = Total estimated price of the contract
TP = Target profit on items delivered
IP = Incentive profit on items delivered
COID = TCIDxACWP/BCWP+(BMRxBTD/TEP)
Adjusted price = COID +TP+IP
Overpayment/Underpayment = Amount Invoiced—Adjusted Price

216.403–2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1)(iii) The formula does not apply for the life of the contract. It is used to fix the firm target profit for the contract. To provide an incentive consistent with the circumstances, the formula should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset.

216.404 Cost-reimbursement incentive contracts.

216.404–1 Cost-plus-incentive-fee contracts.

(a) *Application.* (3) Give appropriate weight to basic acquisition objectives in negotiating the range of fee and the fee adjustment formula. For example—

(A) In an initi•al product development contract, it may be appropriate to provide for relatively small adjustments in fee tied to the cost incentive feature, but to provide for significant adjustments if the contractor meets or surpasses performance targets.

(B) In subsequent development and test contracts, it may be appropriate to negotiate an incentive formula tied primarily to the contractor's success in controlling costs.

216.404–2 Cost-plus-award-fee contracts.

The "award amount" portion of the fee may be used in other types of contracts under the following conditions—

(1) The Government wishes to motivate and reward a contractor for management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

(2) The "base fee" (fixed amount portion) is not used.

(3) The chief of the contracting office approves the use of the "award amount."

(4) An award review board and procedures are established for conduct of the evaluation.

(5) The administrative costs of evaluation do not exceed the expected benefits.

(b) *Application.* (1) The cost-plus-award-fee (CPAF) contract is also suitable for level of effort contracts where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement.

(2)(A) The contract shall identify the criteria to be used in evaluating the contractor's performance to arrive at the award fee.

(B) The contract must explicitly exclude from the operation of the Disputes clause any dispute over the amount of the award fee.

(3) The contracting activity may—

(A) Establish a board to—

(*1*) Evaluate the contractor's performance; and

(*2*) Determine the amount of the award; or

(*3*) Recommend an amount to the contracting officer.

(B) Afford the contractor an opportunity to present information on its own behalf.

(c) *Limitations.* The CPAF contract shall not be used—

(i) To avoid—

(A) Establishing CPFF contracts when the criteria for CPFF contracts apply, or

(B) Developing objective targets so a CPIF contract can be used.

(ii) For either engineering development or operational system development acquisitions which have undergone contract definition, except a CPAF contract may be used for individual engineering development or operational system development acquisitions ancillary to the development of a major weapon system or equipment, where—

(A) It is more advantageous; and

(B) The purpose of the acquisition is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2)(A) Do not apply the weighted guidelines method to CPAF contracts for either the base (fixed) fee or the award fee.

(B) The base fee shall not exceed 3 percent of the estimated cost of the contract exclusive of the fee. The maximum fee (base fee plus award fee) shall not exceed the limitations of FAR 15.903.

Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

(a)(i) For items with a shelf-life of less than 6 months, consider the use of indefinite delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) by central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting

responsibilities under 204.670–2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(c) If fast pay is desired, the contracting officer shall modify the clause at FAR 52.213–1, Fast Payment Procedure, to apply only to delivery orders of less than $25,000.

216.506 Ordering.

Orders placed under indefinite delivery contracts may be issued on DD From 1155, Order for Supplies or Services.

Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.603 Letter contracts.

216.603–3 Limitations.

See 217.75 for additional limitations on the use of letter contracts.

Subpart 216.7—Agreements

216.702 Basic agreements.

(a) *Description.* Basic agreements shall contain a set of "General Provisions." These general provisions shall include two groups of clauses, which shall be separately identified.

(i) "Part A" shall include all clauses required for negotiated contracts by statute, executive order, the FAR, and DFARS.

(ii) "Part B" shall include other clauses prescribed in DFARS or agency supplements that the parties agree to include, as applicable to the particular acquisition.

(iii) Adapt the following format to fit the circumstances:

BASIC AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND _____

This Agreement is entered into on the _____ day of _____, 19 ____, between the United States of America (the "Government"), represented by (*contracting officer*), and _____ (the "Contractor"), a corporation organized and existing under the laws of the State of _____.

The parties agree to include the clauses and provisions of Parts A and B in negotiated _____ type contracts and in letter contracts contemplating conversion to _____ type contracts entered into on or after the date of this Agreement and prior to its termination.

The clauses and provisions in Part A are mandatory clauses. They shall be incorporated in each contract awarded under this Agreement by reference or by attachment.

The clauses and provisions in Part B will be incorporated only when applicable and as agreed by the parties for each individual contract.

This Agreement may be amended only by mutual agreement of the parties. The Agreement may be terminated by either party upon 30 days written notice to the other party. The Government may terminate this Agreement at any time if the parties fail to agree upon any change to this Agreement that is required by statute, executive order, the FAR, or the Defense FAR Supplement. Neither any change to, nor the termination of, this Agreement shall affect any contracts incorporating this Agreement by reference that were entered into before the date of the change or termination.

This Agreement shall be reviewed at least annually, before the anniversary of its effective date, and revised to conform to all requirements of statutes, executive orders, the FAR, or the Defense FAR Supplement. Any revision will be reflected either by modifying this Basic Agreement or by issuing a superseding Basic Agreement.

The Contractor shall not refer to this Agreement in response to invitations for bids. No contract placed as a result of that process shall incorporate this Agreement.

IN WITNESS WHEREOF, the parties named above have executed this Agreement as of the date stated:

UNITED STATES OF AMERICA

By _____

(Contracting Officer)

_____

(Name of Company)

By _____

_____

(Title)

(b) *Application.* (i) If a letter contract is entered into under a basic agreement which is later superseded or supplemented, incorporate the superseding basic agreement or the supplemental agreement, as applicable, in the definitized contract.

(ii) If the basic agreement has been terminated without being superseded or has expired, incorporate the clauses required by statute, executive order, or regulation in the definitized contract.

(d) *Contracts incorporating basic agreements.* (1) Do not use the reference "Basic Agreement No. ____, as amended."

§ 216.703 Basic ordering agreements.

(c) *Limitations.* The period during which orders may be placed against a basic ordering agreement may not exceed 3 years. The contracting officer, with the approval of the chief of the contracting office, may grant extensions for up to 2 years. No single extension shall exceed 1 year.

(1)(vi) When fast pay is desired on orders less than $25,000, modify the clause at FAR 52.213–1 to apply only to orders of less than $25,000. See subpart 217.75 for additional limitations on undefinitized orders under basic ordering agreements.

(d) *Orders.* (i) The contracting officer issuing an order under a basic ordering agreement shall be responsible for ensuring compliance with the provisions and limitations of this section.

(ii) Individual orders under a basic ordering agreement shall be individually closed following completion of the orders (see FAR 4.804).

(1)(iii) The office issuing the agreement shall furnish all authorized ordering offices—

(*1*) Sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670–2 or, in the case of civilian agencies, the Federal Procurement Data System reporting requirement. Data furnished to civilian agencies must contain uncoded information about the data elements and the meanings of the codes to permit these users to translate the data into the federal format. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within 3 working days of the order.

(*2*) If a contract administration office is authorized to issue orders (see FAR 42.202(c))—

(*i*) A copy of the synopsis required by FAR 5.201(a); or

(*ii*) A copy of the exception determination specified at FAR 5.202 (a) or (b); and

(*iii*) A copy of the justification and approvals required by FAR 6.303 and 6.304.

(2)(i) Any activity named may issue orders on DD Form 1155, Order for Supplies or Services, or Standard Form 26, Award/Contract.

(3) Incentive provisions consistent with this part are permitted.

3. Part 222 is revised to read as follows:

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

222.001 Definition.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.
222.101–1 General.
222.101–3 Reporting labor disputes.
222.101–3–70 Impact of labor disputes on Defense programs.
222.101–4 Removal of items from contractors' facilities affected by work stoppages.
222.101–70 Acquisition of stevedoring services during labor disputes.
222.102 Federal and State labor requirements.
222.102–1 Policy.
222.103 Overtime.
222.103–4 Approvals.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.403 Statutory and regulatory requirements.
222.403–4 Department of Labor regulations.
222.404 David-Bacon Act wage determinations.
222.402–2 General requirements.
222.404–3 Procedures for requesting wage determinations.
222.404–11 Wage determination appeals.
222.406 Administration and enforcement.
222.406–1 Policy.
222.406–6 Payrolls and statements.
222.406–8 Investigations.
222.406–9 Withholding from or suspension of contract payments.
222.406–10 Disposition of disputes concerning construction contract labor standards enforcement.
222.406–13 Semiannual enforcement reports.
22.407 Contract clauses.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.
222.604–2 Regulatory exemptions.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative action programs.
222.804–2 Construction.
222.806 Inquiries.
222.807 Exemptions.

Subpart 222.10—Service Contract Act of 1965, as Amended

222.1003 Applicability.
222.1003–7 Questions concerning applicability of the Act.
222.1006 Clauses for contracts over $2,500.
222.1008 Procedures for preparing and submitting Notice (SF 98/98a).
222.1008–2 Preparation of SF 98a.
222.1008–7 Required time of submission of Notice.
222.1014 Delay of acquisition dates over 60 days.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.
222.1306 Complaint procedures.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.
222.1406 Complaint procedures.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.
222.7000–1 General.
222.7002 Waivers.
222.7003 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

222.001 Definition.

Labor advisor, as used in this part, means the departmental or agency headquarters, labor advisor.

Subpart 222.1—Basic Labor Policies

222.101 Labor relations.

222.101–1 General.

(a) Contracting offices shall—

(i) Obtain departmental approval before contacting a national office of a labor organization, a Government agency headquarters, or any other organization on a labor relations matter;

(ii) Notify departmental headquarters as required in departmental procedures when contacted by the national office of any labor organization or Government agency headquarters;

(iii) Obtain the approval of the agency head on major policy decisions regarding labor relations matters such as recommendations for plant seizure or injunctive action relating to potential or actual work stoppages; and

(iv) Address questions involving FAR part 22 or other contractor labor relations matters to the labor advisor.

222.101–3 Reporting labor disputes.

The contract administration office shall—

(1) Notify the labor advisor, the contracting officer, and the head of the contracting activity when interference is likely;

(2) Disseminate information on labor disputes in accordance with departmental procedures; and

(3) File an initial labor dispute report using DD Form 1507, Work Stoppage Report, when a work stoppage is imminent or when a work stoppage occurs. File a follow-up report when a significant change occurs in the dispute. This reporting requirement is assigned RCS DD I&L (AR) 1153.

222.101–3–70 Impact of labor disputes on Defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. In making these determinations, consider, for example—

(1) Whether the dispute involves a product, project (including construction), or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; and

(2) Whether alternative sources of supply for the product, project, or service are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Each contracting activity involved shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining the impact, the head of the contracting activity shall submit a report of findings and recommendations to the labor advisor. The report must be in narrative form and include—

(1) Location of dispute and name of contractor or subcontractor involved;

(2) A description of the impact, including how the specific items or services affect the specific programs or requirements;

(3) Identity of alternate sources available to furnish the supply or service within the time required; and

(4) A description of any action taken to reduce the impact.

(c) Submit impact reports to the agency head when—

(1) Specifically requested; or

(2) The department or agency considers the impact to be of sufficient urgency to warrant the attention of the agency head.

(d) The labor advisor will expand the report submitted under paragraph (c) of this subsection by addressing the following, as appropriate—

(1) *Description of military program, project, or service.* Identify item, project, or service which will be or is being affected by the work stoppage. Describe its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials, identify the end item(s) for which they are used.

(2) *Requirements and assets.* Identify requirements and assets in appropriate detail in terms commonly used by the DoD component.

(i) For production programs, include requirements for each using military service. Where applicable, state in detail production schedule, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

(ii) For projects, describe the potential adverse effects of a delay in meeting schedules, and its impact on the national security.

(iii) For services, describe how a loss or interruption affects the ability to support Defense operations in terms of traffic requirements, assets, testing programs, etc.

(3) *Possible measures to minimize strike impact.* Describe—

(i) Capabilities, if any, to substitute items or to use alternate sources and indicate the number of other facilities available and the relative capabilities of

such facilities in meeting total requirements;

(ii) How much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(iii) The feasibility of transferring assets from theater to theater to relieve deficits in some areas of urgency.

(4) *Conclusion.* (i) Describe the impact on operations of a 15–30, 30–60, and a 60–90 day work stoppage.

(ii) Project the degree of criticality of a program, project, or service resulting from a work stoppage on a calender basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the number of days required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the direction of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include the following information in the request—

(A) Contract number;

(B) A statement as to the urgency and criticality of the item needed;

(C) A description of the items to be moved (nature of the item, amount, approximate weight and cubic feet, item number, etc.);

(D) Mode of transportation by which the items are to be moved, if different than in the contract, and whether by Government or commercial bill of lading; and

(E) Destination of the material, if different than in the contract.

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a)(i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a)(i) through (iv) of this subsection, refer the matter to the labor advisor with the information required by 222.101–3–70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a nondelegable basis, may order removal of the items from the facility.

222.101-70 Acquisition of stevedoring services during labor disputes.

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

222.102 Federal and State labor requirements.

222.102-1 Policy.

(1) The Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act (OSHA). Contracting officers shall—

(i) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of the OSHA regulations to the Department of Labor; and

(ii) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(2) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor.

222.103 Overtime.

222.103-4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

Subpart 222.4—Labor Standards for Contracts Involving Construction

222.403 Statutory and regulatory requirements.

222.403-4 Department of Labor regulations.

Direct all questions regarding Department of Labor regulations to the labor advisor.

222.404 Davis-Bacon Act wage determinations.

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of $500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

(3) The report control number is 1671–DOL–AN.

222.404–2 General requirements.

(c)(5) Information concerning the proper application of wage rate schedules to the type or types of construction involved shall be obtained from the appropriate district commander, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command division for the Navy; from the appropriate Regional Industrial Relations Office for the Air Force; and from the appropriate Defense Contract Management District, ATTN: Industrial Labor Relations Office, for the Defense Logistics Agency.

222.404–3 Procedures for requesting wage determinations.

(b) *Requests for project wage determinations.* Submit requests for project wage determinations directly to the Department of Labor.

222.204–11 Wage determination appeals.

Send a copy of a petition for review filed by the contracting agency to the labor advisor.

222.406 Administraton enforcement.

222.406–1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(*1*) Davis-Bacon Act;

(*2*) Contract Work Hours and Safety Standards Act;

(*3*) Copeland (Anti-Kickback) Act;

(*4*) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(*5*) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(*1*) Employment of foremen, laborers, mechanics, and others;

(*2*) Wages and fringe benefits payments, payrolls, and statements;

(*3*) Differentiation between subcontractors and suppliers;

(*4*) Additional classifications;

(*5*) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(*6*) Penalties and sanctions for violations of the labor standards provisions; and

(*7*) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(ii) Before construction begins, the contracting officer shall confer with the prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406–2.

222.406–6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

222.406–8 Investigations.

(a) The following guidance and procedures apply to investigations conducted by the contracting activity.

(i) *Beginning of the investigation.* The investigator shall—

(A) Inform the contractor of the investigation in advance;

(B) Verify the exact legal name of the contractor, its address, and the names and titles of its principal officers;

(C) Inform the contractor that the names of the employees to be interviewed will not be divulged to the contractor;

(D) Outline the general scope of the investigation and that it includes examining pertinent records and interviewing employees; and

(E) When requested, provide a letter from the contracting officer verifying the investigator's authority.

(ii) *Conduct of the investigation.—(A) Review of the contract.* (*1*) Ensure that all required labor standards and provisions and the wage determination are included in the contract.

(*2*) Review the following items in the contract file, if applicable—

(*i*) List of subcontractors;

(*ii*) Payroll statements for the contractor and subcontractors;

(*iii*) Approvals of additional classifications;

(*iv*) Data regarding apprentices and trainees as required by FAR 22.406–4;

(*v*) Daily inspector's report or other inspection reports;

(*vi*) Employee interview statements; and

(*vii*) SF 1413, Statement and Acknowledgment.

(B) *Interview of the complainant.* Interview the complainant except when this is impractical. The interview shall cover all aspects of the complaint to ensure that all pertinent information is obtained. Whenever an investigation does not include an interview of the complainant, explain such omission in the investigator's report.

(C) *Interview of employees and former employees.* (*1*) Interview a sufficient number of employees or former employees, who represent all classifications, to develop information regarding the method and amount of payments, deductions, hours worked, and the type of work performed.

(*2*) Interview employees at the job site if the interviews can be conducted privately and in such a manner so as to cause the least inconvenience to the employer and employees.

(*3*) Former employees may be interviewed elsewhere.

(*4*) Do not disclose to any employee any information, finding, recommendation, or conclusion relating to the investigation except to the extent necessary to obtain required information.

(*5*) Do not disclose any employee's statement to anyone, except a Government representative working on the case, without the employee's written permission.

(*6*) Obtain information by mail when personal interviews are impractical.

(*7*) Use SF 1445, Labor Standards Interview, for employee interviews.

(*8*) Request employees to sign their statements and to initial any changes.

(*9*) Provide an evaluation of each employee's credibility.

(D) *Interview of foremen.* Interview foremen to obtain information concerning the contractor's compliance with the labor standards provisions with respect to employees under the

foreman's supervision and the correctness of the foreman's classification as a supervisory employee. All procedures established for the conduct of employee interviews, and the recording and use of information obtained, apply to foremen interviews.

(E) *Interview of the contractor.* (*1*) Interview the contractor whenever the investigation indicates the possibility of a violation.

(*2*) Inform the contractor that—

(*i*) The interview does not mean that a violation has been found or that a requirement for corrective action exists; and

(*ii*) The purpose of the interview is to obtain only such data as the contractor may desire to present in connection with the investigation.

(*3*) Do not disclose the identity of any individual who filed a complaint or was interviewed.

(F) *Review of contractor and subcontractor records.* (*1*) Review contractor and subcontractor records such as basic time cards, books, cancelled payroll checks, fringe benefits, and payment records. Compare them with submitted payrolls. When discrepancies are found, include pertinent excerpts or copies of the records in the investigation report with a statement of the discrepancy and any explanation the investigator obtains. When wages include contributions or anticipated costs for fringe payments requiring approval of the Secretary of Labor, examine the contractor records to ensure such approval has been obtained and that any requirements specified in the approval have been met. (See FAR 22.406–2(a)(3)).

(*2*) Review contractor's and subcontractor's weekly payrolls and payroll statements for completeness and accuracy regarding the following—

(*i*) Identification of employees, payroll amount, the contract, contractor, subcontractor, and payroll period;

(*ii*) Inclusion of only job classifications and wage rates specified in the contract specifications, or otherwise established for the contract or subcontract;

(*iii*) Computation of daily and weekly hours;

(*iv*) Computation of time-and-one half for work in excess of 40 hours per week in accordance with FAR 22.406–2(c);

(*v*) Gross weekly wages;

(*vi*) Deductions;

(*vii*) Computation of net weekly wages paid to each employee;

(*viii*) Ratio of helpers, apprentices, and trainees to laborers and mechanics;

(*ix*) Apprenticeship and trainee registration and ratios; and

(*x*) Computation of fringe benefits payments.

(*3*) Transcribe the contractor's records whenever they contain information at variance with payrolls or other submitted documents.

(*i*) Make the transcriptions in sufficient detail to permit them to be used to check computations of restrictions and to determine amounts to be withheld from the contractor.

(*ii*) Follow the form used by the contractor.

(*iii*) Place comments or explanations concerning the transcriptions on separate memoranda or in the narrative report.

(*iv*) Determine whether the wage determination, any modifications of the determination, and any additional classifications are posted as required.

(iii) *Submission of the report of investigation.* The investigator shall submit a report of the investigation in accordance with agency procedures. Each report shall include at least the—

(A) Basis for the investigation, including the name of the complainant;

(B) Names and addresses of prime contractors and subcontractors involved, and names and titles of their principle officers;

(C) Contract number, date, dollar value of prime contract, and date and number of wage determination included in the contract;

(D) Description of the contract and subcontract work involved;

(E) Summary of the findings with respect to each of the items listed in 222.406–8(a);

(F) Concluding statement concerning—

(*1*) The types of violations, including the amount of kickbacks under the Copeland Act, underpayments of basic hourly rates and fringe benefits under the Davis-Bacon Act, or underpayments and liquidated damages under the Contract Work Hours and Safety Standards Act;

(*2*) Whether violations are considered to be willful or due to the negligence of the contractor or its agent;

(*3*) The amount of funds withheld from the contractor; and

(*4*) Other violations found.

(G) Exhibits indexed and appropriately tabbed, including copies of the following, when applicable—

(*1*) Complaint letter;

(*2*) Contract wage determination;

(*3*) Preconstruction letter and memorandum of preconstruction conference;

(*4*) Payrolls and statements indicating violations;

(*5*) Transcripts of pertinent records of the contractor, and approvals of fringe benefit payments;

(*6*) Employee interview statements;

(*7*) Foreman interview statements;

(*8*) Statements of others interviewed, including Government personnel;

(*9*) Detailed computations showing kickbacks, underpayments, and liquidated damages;

(*10*) Summary of all payments due to each employee or to a fund plan or program, and liquidated damages; and

(*11*) Receipts and cancelled checks.

(c) *Notification to the contractor.* (*1*) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards Act (CWHSSA) and that it has 60 days after receipt of such notice to appeal the assessment of the liquidated damages. Process the appeal in accordance with agency regulations and ensure that it demonstrates that the violations did not occur, occurred inadvertently notwithstanding the exercise of due care, or that the assessment was computed improperly.

(d) *Contracting officer's report.* (1) In accordance with agency procedures, the contracting officer shall forward a detailed enforcement report or summary report in duplicate. These reports shall include at least the following—

(A) SF 1446, Labor Standards Investigation Summary Sheet;

(B) Contracting officer's findings;

(C) Statement as to the disposition of any contractor rebuttal to the findings;

(D) Statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;

(E) Statement as to the disposition of funds available;

(F) Recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction, waiver, or assessment of liquidated damages, whether the contractor should be debarred, and whether the file should be referred for possible criminal prosecution); and

(G) When applicable the following exhibits—

(*1*) Investigator's report;

(*2*) Copy of the contractor's written rebuttal or a summary of the contractor's oral rebuttal of the contracting officer's findings;

(*3*) Copies of correspondence between the contractor and contracting officer, including a statement of specific violations found, corrective action requested, and the contractor's letter of acceptance or rejection;

(4) Evidence of the contractor's payment of restitution or liquidated damages. (Copies of receipts, cancelled checks, or supplemental payrolls); and

(5) Letter from the contractor requesting relief from the liquidated damage provisions of the CWHSSA.

222.406-9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Davis-Bacon or CWHSSA wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended.*—(1) *Forwarding wage underpayments to the Comptroller General.* Send SF 1093, Schedule of Withholdings Under the Davis-Bacon Act (40 U.S.C. 276a) and/or The Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), to: U.S. General Accounting Office, Claims Group/GGD, Payment Branch, 441 G Street, NW., Washington, DC 20548.

(3) *Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.* (A) The agency head may adjust liquidated damages of $500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor or its agent.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages over $500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the contractor's exercise of due care.

222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

222.406-13 Semiannual enforcement reports.

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and the CWHSSA—

(1) Period covered;

(2) Number of prime contracts awarded;

(3) Total dollar amount of prime contracts awarded;

(4) Number of contractors/subcontractors against whom complaints were received;

(5) Number of investigations conducted;

(6) Number of contractors/subcontractors found in violation;

(7) Amount of wage restitution found due under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(8) Number of employees due wage restitution under—

(i) Davis-Bacon Act

(ii) CWHSSA;

(9) Amount of liquidated damages assessed under the CWHSSA—

(i) Total amount

(ii) Number of contracts involved;

(10) Number of employees and amount paid/withheld under—

(i) Davis-Bacon Act

(ii) CWHSSA

(iii) Copeland Act; and

(11) Preconstruction activities—

(i) Number of compliance checks performed

(ii) Preconstruction letters sent.

222.407 Contract clauses.

In contracts with a State or political subdivision, use the contract clauses prescribed in FAR 22.407, but preface these clauses with the following:

The contractor agrees to comply with the requirements of the Contract Work Hours and Safety Standards Act and to insert the following clauses in all subcontracts under this contract with private persons or firms.

Subpart 222.6—Walsh-Healey Public Contracts Act

222.604 Exemptions.

222.604-2 Regulatory exemptions.

(c) Submit all applications for such exemptions through contracting channels to the labor advisor.

Subpart 222.8—Equal Employment Opportunity

222.804 Affirmative actions programs.

222.804-2 Construction.

(b) Contracting officers forward requests for instructions directly to the servicing Office of Federal Contract Compliance Programs (OFCCP) regional office.

222.806 Inquiries.

(b) Refer inquiries through the labor advisor.

222.807 Exemptions.

(c) Submit the request for exemption with a justification through contracting channels to the labor advisor who will forward them to the agency head. If the request is submitted under FAR 22.807(a)(1), the agency head shall act on the request. If the exemption is granted, the agency head shall notify the Director, OFCCP of such action within 30 days. If the request is submitted under FAR 22.807(a)(2) or (b)(5), the agency head will forward it to the Director, OFCCP for action.

Subpart 222.10—Service Contract Act of 1965, As Amended

222.1003 Applicability.

222.1003-7 Questions concerning applicability of the Act.

Contracting officers may contact the labor advisor by telephone for informal advice. Submit requests for formal determinations as to the Act's applicability to the labor advisor in writing through appropriate channels.

222.1006 Clauses for contracts over $2,500.

Use the clause at 252.222-7000, Wage Determination Information, in all solicitations for which the Department of Labor has not issued a wage determination in time for inclusion in the solicitation. Use the basic clause or its Alternate I, as appropriate.

222.1008 Procedures for preparing and submitting Notice (SF 98/98a).

222.1008-2 Preparation of SF 98a.

(b)(1) The contracting officer shall secure the assistance of cognizant customer/technical personnel to ensure maximum use of the Service Contract Act Directory of Occupations (Directory) and incorporation of all service employee classes (Directory and nondirectory) expected to be utilized.

(2)(A) When the statement of work job title, for which there is a Directory equivalent, differs from the Directory job title, make a written cross-reference

either directly on the SF 98a file copy or on an attached sheet to the SF 98a file copy.

(B) Include and note as such any classifications and minimum hourly wage rates conformed under any predecessor contract. Where a previously conformed classification is not included in the Directory, attach the job description to the SF 98a.

222.1008-7 Required time of submission of Notice.

(d) Submit requests for immediate wage determination responses for emergency acquisitions through the labor advisor. If the request is justified, the labor advisor will contact Department of Labor headquarters officials.

222.1014 Delay of acquisition dates over 60 days.

Send update requests in writing directly to the Wage and Hour Division and provide a copy to the labor advisor. The update request shall—

(1) State that one or more dates on the original notice have been delayed more than 60 days;

(2) List the new dates; and

(3) Include a copy of the original notice and SF 98a as enclosures.

Subpart 222.13—Special Disabled and Vietnam Era Veterans

222.1303 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1303(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1303(b).

222.1306 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1306; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

Subpart 222.14—Employment of the Handicapped

222.1403 Waivers.

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a); or

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

222.1406 Complaint procedures.

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1406 (see FAR 22.609 for a listing of Department of Labor regional/area offices); and

(2) Notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the name of the complaint, or the fact that the complaint was received.

Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction/Service Contracts in Alaska and Hawaii

222.7000 Scope of subpart.

(a) This subpart implements Section 8078 of the 1986 Defense Appropriations Act, Pub. L. 99-190, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole in part within the states of Alaska or Hawaii; and

(2) When the unemployment rate in the state is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

222.7001 General.

A contractor awarded a contract subject to this subpart must employ for the purpose of performing that portion of the contract work within the state, individuals who are residents of that state, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

222.7002 Waivers.

Waivers may be granted at a level no lower than the Assistant Secretary of any department.

222.7003 Contract clause.

Use the clause at 252.222-7001, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart.

4. Part 232 is revised to read as follows:

PART 232—CONTRACT FINANCING

Subpart 232.1—General.

Sec.
232.102 Description of contract financing methods.
232.102-70 Provisional delivery payments.
232.108 Financial consultation.
232.170 Responsibilities.
232.171 Contract Finance Committee.
232.172 Financial responsibility of contractors.
232.172-1 Required financial reviews.
232.172-2 Appropriate information.
232.172-3 Cash flow forecasts.

Subpart 232.2—Loan Guarantees for Defense Production

232.302 Authority.

Subpart 232.4—Advance Payments

232.404 Exclusions.
232.409 Contracting officer action.
232.409-1 Recommendation for approval.
232.410 Findings, determination, and authorization.
232.412 Contract clause.
232.412-70 Additional clauses.
232.470 Advance payment pool.

Subpart 232.5—Progress Payments Based on Costs

232.501 General.
232.501-1 Customary progress payment rates.
232.501-2 Unusual progress payments.
232.501-3 Contract price.
232.502 Preaward matters.
232.502-1 Use of customary progress payments.
232.502-1-70 Customary foreign military sale progress payments.
232.502-1-71 Customary flexible progress payments.
232.502-4 Contract clauses.
232.502-4-70 Additional clauses.
232.503 Postaward matters.
232.503-6 Suspension or reduction of payments.
232.503-15 Application of Government title terms.

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.
232.606 Debt determination and collection.
232.610 Demand for payment of contract debt.
232.616 Compromise actions.
232.617 Contract clause.
232.670 Transfer of responsibility for debt collection.
232.671 Bankruptcy reporting.

Subpart 232.8—Assignment of Claims

232.803 Policies.
232.806 Contract clause.

Subpart 232.9—Prompt Payment

232.905 Invoice payments.
232.906 Contract financing payments.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 232.1—General

232.102 Description of contract financing methods.

(e)(2) Progress payments based on percentage or stage of completion are authorized only for contracts for construction (as defined in FAR 36.102), shipbuilding, and ship conversion, alteration, or repair.

232.102-70 Provisional delivery payments.

(a) The contracting officer may establish provisional delivery payments to pay contractors for the costs of supplies and services delivered to and accepted by the Government under the following undefinitized contract actions—

(1) Letter contracts contemplating a fixed-price contract;

(2) Orders under basic ordering agreements;

(3) Spares provisioning documents annexed to contracts; and

(4) Unpriced equitable adjustments on fixed-priced contracts.

(b) Provisional delivery payments shall be—

(1) Used sparingly;

(2) Priced conservatively; and

(3) Reduced by liquidating previous progress payments.

(c) Provisional delivery payments shall not—

(1) Include profit;

(2) Exceed funds obligated for the undefinitized contract action; or

(3) Influence the definitized contract price.

232.108 Financial consultation.

Department/agency contract financing offices are—

(1) Army—Chief of Contract Financing, Office of the Comptroller;

(2) Navy—Executive comptroller for Banking, Cash Management, Contract Financing and Compensation Systems, Assistant Comptroller of the Navy for Financial Management;

(3) Air Force—Chief of Banking and Contract Financing, Directorate of Accounting, Air Force Accounting and Finance Center;

(4) Defense Logistics Agency—Comptroller; and

(5) Other Defense agencies—Office of the agency comptroller.

232.170 Responsibilities.

(a) The Deputy Assistant Secretary of Defense (Procurement) (DASD(P)) is responsible for ensuring uniform administration of DoD contract financing, including DoD contract financing policies and important related procedures.

(b) The departments and agencies are responsible for their day-to-day contract financing operations. Refer specific cases involving financing policy or important procedural issues to DASD(P) for consideration (see also 201.24 for deviation request and approval procedures).

232.171 Contract Finance Committee.

(a) The Contract Finance Committee consists of—

(1) A representative of the DASD(P), serving as chairman;

(2) A representative of the Assistant Secretary of Defense (Comptroller); and

(3) Two representatives of each military department and the Defense Logistics Agency (one representing the contracting and one representing the contract finance office).

(b) The Committee—

(1) Advises and assists the DASD(P) in ensuring proper and uniform application of policies, procedures, and forms;

(2) Is responsible for formulating, revising, and promulgating uniform contract financing regulations;

(3) May recommend to the Secretary of Defense through the DASD(P) further policy directives on financing; and

(4) Meets at the request of the Chair or a member.

232.172 Financial responsibility of contractors.

Use the policies and procedures in this section in determining the financial capability of current or prospective contractors.

§ 232.172-1 Required financial reviews.

The contracting officer shall perform a financial review—

(a) Prior to award of a contract, when—

(1) The contractor is on a list requiring preaward clearance or other special clearance before award;

(2) The contractor is listed on the Consolidated List of Contractors Indebted to the Government (Hold-Up List), or is otherwise known to be indebted to the Government;

(3) The contractor may receive Government assets such as contract financing payments or Government property;

(4) The contractor is experiencing performance difficulties on other work;

(5) The contractor is a new company or a new supplier of the item; or

(6) The contracting officer does not otherwise have sufficient information to make a positive determination of financial responsibility.

(b) At periodic intervals after award of a contract, when—

(1) Any of the conditions of paragraph (a) (2) through (5) of this subsection are applicable; or

(2) There is any other reason to question the contractor's ability to finance performance and completion of the contract.

§ 232.172-2 Appropriate information.

(a) The contracting officer shall obtain whatever type and depth of financial and other information is required to establish a contractor's financial capability or disclose a contractor's financial condition. While the contracting officer should not request information that is not necessary for the protection of the Government's interests, the contracting officer must insist upon obtaining that information which is necessary. The unwillingness or inability of a contractor to present reasonably requested information in a timely manner, especially information that a prudent business person would be expected to have and use in the professional management of a business, may be a material fact in the determination of the contractor's responsibility and prospects for contract completion.

(b) Obtain the following information to the extent required to protect the Government's interest. In addition, if the contracting officer concludes that information not listed below is required to comply with 232.172-1, that information should be requested. The information must be for the person(s) who are legally liable for contract performance. If the contractor is not a corporation, obtain the required information for each individual/joint venturer/partner—

(1) Balance sheet and income statements for the most recent fiscal year and preferably, for the two preceding fiscal years. This should be certified by an independent public accountant or by an appropriate officer of the firm;

(2) Summary history of the contractor and its principal managers, disclosing any previous insolvencies—corporate or personal, and describing its products or services;

(3) Statement of all affiliations disclosing—

(i) Material financial interests of the contractor;

(ii) Material financial interest in the contractor;

(iii) Material affiliations of owners, officers, directors, major stockholders; and

(iv) The major stockholders if the contractor is not a widely-traded, publicly-held corporation;

(4) Statement of all forms of compensation of each officer, manager,

partner, joint venturer, or proprietor, as appropriate—

(i) Planned for the current year; and

(ii) Paid during the past 2 years.

(5) Business base and forecast which—

(i) Shows, by significant markets, existing contracts and outstanding offers, including those under negotiation; and

(ii) Is reconcilable to indirect cost rate projections.

(6) Cash forecast for the duration of the contract (see 232.172–3).

(7) Financing arrangement information which discloses—

(i) Availability of cash to finance contract performance;

(ii) Contractor's exposure to financial crisis from creditor's demands;

(iii) Degree to which credit security provisions could conflict with Government title terms under contract financing;

(iv) Clearly stated confirmations of credit with no unacceptable qualifications; and

(v) Unambiguous written agreement by a creditor if credit arrangements include deferred trade payments or creditor subordinations/repayment suspensions.

(8) Statement of all state, local, and Federal tax accounts, including special mandatory contributions, e.g., environmental superfund.

(9) Description and explanation of the financial effect of issues such as—

(i) Leases, deferred purchase arrangements, patent or royalty arrangements;

(ii) Insurance, when relevant to the contract;

(iii) Contemplated capital expenditures, changes in equity, or contractor debt load;

(iv) Pending claims either by or against the contractor;

(v) Contingent liabilities such as guarantees, litigation, environmental, or product liabilities;

(vi) Validity of accounts receivable and actual value of inventory, as assets; and

(vii) Status and aging of accounts payable.

232.172–3 Cash flow forecasts.

(a) A contractor must be able to sustain a sufficient cash flow to perform the contract. Whenever there is a doubt about the sufficiency of a contractor's cash flow, the contracting officer should require the contractor to submit a cash flow forecast covering the duration of the contract.

(b) A contractor's inability or refusal to prepare and provide cash flow forecasts or to reconcile actual cash flow with previous forecasts is a strong indicator of serious managerial deficiencies or potential contract cost or performance problems.

(c) Single or one-time cash flow forecasts are of limited forecasting power. As such, they should be limited to preaward survey situations. Satisfactory reliability on cash flow forecasts can be achieved only by comparing a series of previous actual cash flows with the corresponding forecasts and examining the causes of any differences.

(d) Cash flow forecasts must—

(1) Show the origin and use of all material amounts of cash within the entire business unit responsible for contract performance, period by period, for the length of the contract (or until the risk of a cash crisis ends); and

(2) Provide an audit trail to the data and assumptions used to prepare it.

(e) The contracting officer should review the assumptions underlying the cash flow forecasts. In determining the reasonableness and realism of the assumptions, the contracting officer should consult with—

(1) The contractor;

(2) Government personnel in the areas of finance, engineering, production, cost, and price analysis; or

(3) Prospective supply, subcontract, and loan or credit sources.

(f) Cash flow forecasts can be no more reliable than the assumptions on which they are based. Most important of these assumptions are—

(1) Estimated amounts and timing of purchases and payments for materials, parts, components, subassemblies, and services;

(2) Estimated amounts and timing of payments for purchase or production of capital assets, test facilities, and tooling;

(3) Amounts and timing of fixed cash charges such as debt installments, interest, rentals, taxes, and indirect costs;

(4) Estimated amounts and timing of payments for projected labor, both direct and indirect;

(5) Reasonableness of projected manufacturing and production schedules;

(6) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(7) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(8) Estimated amounts and timing of cash receipts from other sources.

Subpart 232.3—Loan Guarantees for Defense Production

232.302 Authority.

(a) The use of guaranteed loans as a contract financing mechanism requires the availability of certain congressional authority. The DoD has not requested such authority in recent years, and none is now available.

Subpart 232.4—Advance payments

232.404 Exclusions.

(a)(9) The requirements of FAR Subpart 32.4 do not apply to advertisements in high school and college publications for military recruitment efforts under 10 U.S.C. 503 when the contract cost does not exceed $500.

232.409 Contracting officer action.

232.409–1 Recommendation for approval.

To ensure uniform application of this subpart (see FAR 32.402(e)(1)), the departmental/agency contract financing office shall prepare the documents required by FAR 32.409–1 (e) and (f)

232.410 Findings, determination, and authorization.

(b) If an advance payment procedure is used without a special bank account, replace paragraph (a)(4) of the Findings, Determination, and Authorization for Advance Payments at FAR 32.410 with: "(4) The proposed advance payment clause contains appropriate provisions as security for advance payments. These provisions include a requirement that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor. This security is considered adequate to protect the interest of the Government."

232.412 Contract clause.

232.412–70 Additional clauses.

(a) Use the clause at 252.232–7000, Advance payment Pool, in any contract that will be subject to the terms of an advance payment pool agreement with a nonprofit organization or educational institution. Normally, use the clause in all cost reimbursement type contracts with the organization or institution.

(b) Use the clause at 252.232–7001, Disposition of Payments, in contracts when payments under the contract are to be made by a disbursing office not designated in the advance payment pool agreement.

232.470 Advance payment pool.

(a) An advance payment pool agreement—

(1) Is a means of financing the performance of more than one contract held by a single contractor;

(2) Is especially convenient for the financing of cost-type contracts with nonprofit educational or research institutions for experimental or research and development work when several contracts require financing by advance payments. When appropriate, pooled advance payments may also be used to finance other types of contracts held by a single contractor; and

(3) May be established—

(i) Without regard to the number of appropriations involved;

(ii) To finance contracts for one or more department(s) or contracting activity(ies); or

(iii) In addition to any other advance payment pool agreement at a single contractor location when it is more convenient or otherwise preferable to have more than one agreement.

Subpart 232.5—Progress Payment Based on Costs

232.501 General.

In DoD, customary progress payments may be either uniform or flexible (FAR 32.501–1(a)). See also 232.501–1 and 232.502–1–71.

232.501–1 Customary progress payment rates.

(a)(i) For single contracts using multiple progress payment rates, see FAR 32.502–4(d). For contracts funded with FY87 and other fiscal year appropriations, the contracting officer may—

(A) Apply the customary uniform progress payment rate for FY87 appropriations to all contract line items (see Table at 232.205–1–71(a)(7)); or (B) Apply the customary uniform rate for FY87 appropriations to only those contract line items funded with FY87 appropriations, applying the different customary uniform rate to all other line items, provided the requirements of FAR 32.502–4(d) are met.

(ii) For foreign military sales, apply either the DoD customary uniform or flexible progress payment rate.

(iii) For customary flexible progress payments, determine the appropriate rate using the appropriate CASH computer program (see 232.502–1–70).

232.501–2 Unusual progress payments.

(a) Contracting officers shall submit all unusual progress payment provisions to the department or agency contract financing office for approval and coordination with the Contract Finance committee (232.171).

232.501–3 Contract price.

(b) The contracting officer may approve progress payments when the contract price exceeds the funds obligated under the contract; provided, the contract contains an appropriate Limitation of Funds clause. However, the contracting officer shall limit such payments to the lesser of—

(i) The applicable percentage of the contract (i.e., the progress payment rate, the liquidation rate, or the loss-ratio adjusted rate); or

(ii) 100 percent of the funds obligated.

232.502 Preaward matters.

232.502–1 Use of customary progress payments.

232.502–1–70 Customary foreign military sale progress payments.

(a) Foreign military sale (FMS) progress payments apply to DoD acquisitions on behalf of foreign governments or international organizations (Section 22 of the Arms Export Control Act).

(b) FMS progress payments do not apply to acquisitions—

(1) For replenishing U.S. Government inventories or stocks; and

(2) Made under DoD cooperative logistic support arrangements.

232.502–1–71 Customary flexible progress payments.

(a) *General.* (1) Progress payments reduce contractor investment in work in process inventory. In addition to progress payments, other factors influence a contractor's actual investment in work in process inventory, e.g., delivery schedules, cash management practices, and Government payment practices.

(2) Progress payment amounts that are determined by using customary uniform rates are insensitive to the other factors influencing contractor investment in work in process inventory. Consequently, contractor investments in work in process inventory vary among contractors and contracts.

(3) Flexible progress payment rates are designed to tailor the progress payment rate to more closely match the contractor's cash needs for financing contract performance. The flexible rate is expressed as a percentage which is applied to costs to determine the amount payable as a progress payment, in the same manner as customary uniform rates are applied.

(4) For flexible progress payments cash needs are measured and projected based on the investment required for the work in process inventory over the life of the contract. Total investment is measured by a weighted average of total costs paid by the contractor. The contractor's investment is the weighted average of the amount not paid by the Government.

(5) DoD, as a matter of policy, requires contractors to retain a minimum investment level in work in process inventory over the life of the contract (see table at 232.502–1–71(a)(7)). This minimum investment level is based on the customary uniform progress payment rate and its related investment percentage. Accordingly, the DoD will make progress payments at the rate (expressed as a whole number) that is the highest rate which yields a corresponding investment by the contractor in work in process inventory of not less than the minimum investment percentage.

(6) The customary flexible progress payment rate will be determined by using the DoD Cash Flow Computer Model. The rate computed shall not—

(i) Exceed 100 percent; or

(ii) Be less than the customary uniform progress payment rate that would have been applied to the contract in the absence of customary flexible progress payments.

(7) The following table shows the customary uniform progress payment rates, minimum contractor investment (except for contracts funded with FY87 appropriations), and the applicable DoD Cash Flow Computer Model. For contracts funded with FY87 appropriations, a contractor must retain at least a 25 percent investment in work in process inventory over the life of the contract.

Contract award date	Uniform rate (percent)	Investment percentage	Cash flow model
Prior to May 1, 1985.	90	5	CASH–II.
May 1, 1985 to October 18, 1986.	80	15	CASH–III.
October 19, 1986 to October 1, 1988.	75	25	CASH–IV.
After October 1, 1988.	80	20	CASH–V.

(b) *Using customary flexible progress payments.* (1) Use a flexible progress payment rate instead of the customary uniform rate if—

(i) The contractor requests flexible progress payments;

(ii) The contractor agrees to the requirements of this section; and

(iii) The criteria in paragraphs (b) (2) and (3) of this subsection are met.

(2) Do not use flexible progress payments for—

(i) Sealed bid contracts;

(ii) Undefinitized contract actions; or

(iii) Contracts awarded and performed entirely outside of the U.S., its possessions and territories.

(3) Contractors who submit certified cost or pricing data, as defined in FAR 15.804–2, for negotiated fixed-price contracts in excess of $1 million may request flexible progress payments.

(4) Subcontractors who request flexible progress payments, meet the criteria in paragraph (b)(3) of this subsection, and agree to the requirements of this subsection are to receive flexible progress payments. The prime contractor determines the flexible progress payment rate without regard to the rate in the prime contract. In determining the appropriate customary flexible rate, the prime contractor will use the DoD Cash Flow Computer Model and review the cash flow data provided by the subcontractor.

(5) Prior to contract award, determine the customary flexible progress payment rate by applying the appropriate version of the DoD Cash Flow Computer Model. The model takes into account key cash flow factors including contract cost profile, delivery schedules, subcontractor progress payments, liquidation rates, and payment/reimbursement cycles. For contracts funded with FY87 appropriations, use the CASH–IV model.

(c) *Contractor cash flow and cost information.* (1) Contractors shall furnish to the contracting officer cash flow data in the form and context specified for use in the DoD Cash Flow Computer Model. This data includes—

(i) Actual and projected incurred cost, broken down by element of cost and by month, for the duration of the contract;

(ii) Float times for each element of cost;

(iii) Dates and lag times of actual and projected progress payment and delivery payment receipts; and

(iv) Associated contract price and profit percentage.

(2) Contracting officers shall verify the cash flow data using the procedures normally used to verify contractor cost and pricing data, and establish the customary flexible progress payment rate during the negotiation of the contract price.

(3) If any customary flexible progress payment rate is later determined to be overstated because factual data submitted in support of the rate computation was not current, accurate, or complete at the time the rate was established, the flexible progress payment clause at 252.232–7003 provides for—

(i) Reduction of the flexible progress payment rate; and

(ii) Contractor payment of interest.

(4) The contracting officer will assess the interest charge on the amount of the overpayment resulting from facts that were not current, accurate, or complete, whether or not the overpayment has been liquidated. Calculate the interest from the date of the overpayment to the date of liquidation of the overpayment. In determining the amount of interest, the contracting officer may determine an average overpayment amount and duration as the basis for the interest computation. Interest rates change periodically; therefore, calculate average amounts and durations separately for each interest period that has a different interest rate.

(5) Administrative contracting officers are encouraged to establish advance agreements at contractor locations for payment float and lag times which are common to several contracts. Float and lag times may vary significantly at different payment offices due to variances in efficiency at different payment offices or due to differing procedures for high dollar versus low dollar value contracts. It may, therefore, be appropriate to establish advance agreements on several different float and lag profiles to suit different contract situations.

(d) *Rate review.* (1) The flexible progress payment clause at 252.232–7003 provides for redetermination of the customary flexible progress payment rate whenever the computed investment percentage is more than two points above or below the specific minimum investment in work in process inventory (see Table at 232.502–1–71(a)(7)). When such a redetermination is made—

(i) Apply the new customary flexible progress payment rate to the next contractor progress payment request; and

(ii) Adjust the unliquidated progress payment balance.

(2) Either the Government or the contractor may request a rate review at any time to determine if the computed investment percentage in work in process inventory is outside of the investment tolerance in paragraph (d)(1) of this subsection. For contracts funded with FY87 appropriations, the investment range is 23 to 27 percent with a target of 25 percent.

(3) The administrative contracting officer shall assess changes in the following factors during each periodic review required by FAR 32.503–5 and shall review the customary flexible progress payment rate whenever there has been—

(i) A significant change in the float or lag factors;

(ii) A significant change in the delivery schedule; or

(iii) Substantial work added to or deleted from the contract.

232.502–4 Contract clauses.

232.502–4–70 Additional clauses.

(a) Use the clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, in any contract that provides for progress payments and contains foreign military sale requirements.

(b) Use the clause at 252.232–7003, Flexible Progress Payments, in contracts using a customary flexible progress payment rate.

232.503 Postaward matters.

232.503–6 Suspension or reduction of payments.

(g) *Loss contracts.* Use the following loss ratio adjustment procedures for making adjustments required by FAR 32.503–6 (f) and (g)—

(i) Except as provided in paragraph (g)(ii) of this subsection, prepare a supplementary analysis of the contractor's request for progress payments and calculate the loss ratio adjustment using the procedures in FAR 32.503–6(g).

(ii) The contracting officer may request the contractor to prepare the supplementary analysis as an attachment to the progress payment request when the contracting officer determines that the contractor's methods of estimating the "Costs to Complete" are reliable, accurate, and not susceptible to improper influences.

(iii) To maintain an audit trail and permit verification of calculations, do not make the loss ratio adjustments by altering or replacing data on the contractor's original request for progress payment (SF 1443, Contractor's Request for Progress Payment, or computer generated equivalent).

232.503–15 Application of Government title terms.

(d) An administrative contracting officer (ACO) determination that the contractor's material management and accounting system conforms to the standard at 242.7206(b)(7) constitutes the contracting officer approval requirement of FAR 32.503–15(d). Prior to granting blanket approval of cost transfers between contracts, the ACO should determine that—

(i) The contractor retains records of the transfer activity that took place in the prior month;

(ii) The contractor prepares, at least monthly, a summary of the transfer activity that took place in the prior month; and

(iii) The summary report includes as a minimum, the total number and dollar value of transfers.

Subpart 232.6—Contract Debts

232.605 Responsibilities and cooperation among Government officials.

(b) Disbursing officers are those officials designated to make payments under a contract or to receive payments of amounts due under a contract. At installations where integrated accounting is in effect, the finance and accounting officer is a disbursing officer. The disbursing officer is responsible for determining the amount and collecting contract debts whenever overpayments or erroneous payments have been made. The disbursing officer also has primary responsibility when the amounts due and dates for payments are contained in the contract, and a copy of the contract has been furnished to the disbursing officer with notice to collect as amounts become due.

232.606 Debt determination and collection.

(c)(9)(vii) Upon transfer of a case to the contract financing office, the contracting officer shall close the debt record by reference to the date of transfer.

232.610 Demand for payment of contract debt.

(a)(i) For contract debts resulting from other than a termination for default, the office which first determines an amount due, whether it be the contract administration office, the contracting office, the disbursing office, or the selling office/agency, shall—

(A) Make a demand for payment; and

(B) Provide a copy of the demand to the payment office cited in the contract.

(ii) For contract debts resulting from a termination for default, the contracting officer shall make the demand and direct the debtor to make payment to an office of the contracting department or agency. When payment to other than the payment office cited in the contract is required, the administrative contracting officer shall modify the contract to designate the new payment office.

(b)(3) The contracting office shall forward deferment requests to the contract financing office of the contracting department or agency for a decision on granting the deferment.

232.616 Compromise actions.

Only the department/agency contract financing offices (232.108) are authorized to compromise debts covered by this subpart.

232.617 Contract clause.

(a) The DoD Contract Finance Committee, with the approval of the DASD(P), may exempt the contracts in FAR 32.617(a)(2) through (5) and other contracts, in exceptional circumstances, from the administrative interest charges required by this subpart.

(a)(7) Other exceptions—

(A) Contracts for instructions of military or ROTC personnel at civilian schools, colleges, and universities;

(B) Basic agreements with telephone companies for communications services and facilities, and purchase under such agreements; and

(C) Transportation contracts with common carriers for common carrier services.

232.670 Transfer of responsibility for debt collection.

Disbursing officers will transfer responsibility for debt collection to departmental/agency contract financing offices in accordance with comptroller regulations. Notwithstanding the transfer of the debt collection responsibility, contracting officers shall continue to provide assistance as requested by the debt collection office.

232.671 Bankruptcy reporting.

(a) For those debts covered by this subpart, the department or agency which awarded the contract shall furnish the Department of Justice any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement. Furnish claims which—

(1) Have been transferred to a contract financing office;

(2) Are on the way to a contract financing office at the inception of bankruptcy or insolvency proceedings;

(3) Are pending and not forwarded to a contract financing office at the inception of bankruptcy or insolvency proceedings; and

(4) Are the result of bankruptcy or insolvency proceedings.

(b) The contract financing office or other office designated within a department or agency will furnish proof of claims to the Department of Justice.

(c) The office of origin of a debt will provide, as soon as possible, information on a bankruptcy, insolvency, reorganization, or rearrangement to the office designated within a department/agency to receive this information.

(d) The information and proof of claim requirements in paragraphs (b) and (c) of this section do not apply to debts of less than $600

Subpart 232.8—Assignment of Claims

232.803 Policies.

(b) Only contracts for personal services may prohibit the assignment of claims.

(d) Under 50 U.S.C. 1651(a)(4) and (5), a national emergency exists for contract purposes. Nevertheless, if departments/agencies decide it is in the Government's interest, they may exclude the no-setoff commitment.

(e) The assignee shall forward the notice and instrument of assignment—

(i) To the administrative contracting officer (ACO), a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The ACO shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

(A) File the true copy of the instrument of assignment and the original of the notice in the contract file;

(B) Forward two copies of the notice to the disbursing officer of the payment office cited in the contract;

(C) Return a copy of the notice to the assignee; and

(D) Advise the contracting officer of the assignment.

(ii) To the surety or sureties, if any, a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee, who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer of the payment office cited in the contract, a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

232.806 Contract clause.

(a)(2) The contracting officer shall use Alternate I with the clause at FAR 52.232–23, Assignment of Claims, unless otherwise authorized under 232.800(d).

Subpart 232.9—Prompt Payment

232.905 Invoice payments.

In most cases, Government acceptance or approval can occur within the 7 day constructive acceptance period or for construction contract

progress payments, within the 14 day constructive acceptance period, specified in the respective FAR Prompt Payment clauses. While the contracting officer may specify a longer period because the period specified in the contract is not reasonable or practical, such change should be coordinated with the Government office responsible for the acceptance or approval function. Reasons for specifying a longer period include but are not limited to: the nature of the work or supplies or services, inspection or testing requirements, shipping and acceptance terms, and resources available at the acceptance activity. A constructive acceptance period of less than the cited 7 or 14 days is not authorized.

232.906 Contract financing payments.

(a)(i) DoD policy is to make contract financing payments as quickly as possible. Generally, the contracting officer shall insert the standard due dates of 7 days for progress payments and 14 days for interim payments on cost type contracts in subparagraphs (b)(2) of the Prompt Payment clauses at FAR 52.232–25, 52.2322–26, and 52.232–27.

(ii) The contracting officer should coordinate payment terms with offices that will be involved in the payment process to ensure that terms specified can be met. Where justified, the contracting officer may insert a due date greater than but not less than the standard. In determining payment terms, consider—

(A) Geographical separation;

(B) Workload;

(C) Contractor ability to submit a proper request; and

(D) Other factors that could affect timing of payment.

5. Part 235 is revised to read as follows:

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

235.001 Definitions.
235.002 General.
235.003 Policy.
235.006 Contracting methods and contract type.
235.007 Solicitations.
235.010 Scientific and Technical Reports.
235.010–70 Contract clause.
235.015 Contracts for research with educational institutions and nonprofit organizations.
235.015–70 Special use allowances for research facilities acquired by educational institutions.
235.015–71 Short form research contract (SFRC).
235.016 Broad agency announcement.
235.070 Indemnification against unusually hazardous risks.
235.070–1 Indemnification under research and development contracts.
235.070–2 Indemnification under contracts involving both research and development and other work.
235.070–3 Contract clauses.
235.071 Contract clauses.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

235.001 Definitions.

As used in this part, the terms relating to "research and development" have the meaning given in DoD 7110–1–M, Budget Guidance Manual, as follows—

Advanced development means all effort directed toward projects which have moved into the development of hardware for test. The prime proof of this type of effort is proof of design concept rather than the development of hardware. Projects in this category have a potential military application.

Engineering development means those projects in full-scale engineering development but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects where program control is exercised by review of individual projects.

Exploratory development means all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming, and planning efforts. It would thus include studies, investigations, and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

Management and support means all effort directed toward support of installations and operations required for general research and development use. This includes military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contracted, would be assigned to projects or as a line item in the research, exploratory development, or advanced development program areas, as appropriate. Management and support is not "research and development" except in exceptional cases. For example, construction of recreational facilities at an installation is not "research and development" work, even if the installation is used only for research and development work.

Operational system development means those projects still in full-scale engineering development, but which have received approval for production through Defense Acquisition Board or other action, or production funds have been included in the DoD budget submission for the budget or subsequent year. All items in this area are major line item projects which appear as RDT&E costs of weapons systems elements in other programs. Program control is exercised by review of the individual projects.

Research means all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental, and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for—

(1) Subsequent exploratory and advanced developments in Defense related technologies; and

(2) New or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

Research and development ordinarily covers only the following categories—

(1) Research;

(2) Exploratory development;

(3) Advanced development;

(4) Engineering development; and

(5) Operational systems development.

235.002 General.

Contracts for services or the use of facilities for research or development may be for a term of not more than 5 years and may be extended for a term of not more than 5 years.

235.003 Policy.

(b) *Cost sharing.* Consider cost sharing—

(i) Unless the Government, rather than the contractor, specifies the research goal or scope of the effort

(ii) When the research effort or results are likely to enhance the contractor's capability, expertise, or competitive position

(iii) For either direct or indirect costs

235.006 Contracting methods and contract type.

(b)(i) A fixed-price type contract shall not be awarded for a development program effort unless—

(A) The level of program risk permits realistic pricing;

(B) The use of a fixed-price type contract permits an equitable and sensible allocation of program risk between the Government and the contractor; and

(C) A written determination that the criteria of paragraphs (b) (i) and (ii) of this section have been met is executed—

(*1*) By the Under Secretary of Defense for Acquisition (USD(A)) for—

(*i*) Research and development, if the contract is a fixed-price type contract over $25,000,000;

(*ii*) The lead ship of a class;

(*iii*) The development of a major system (as defined in FAR 34.001) or subsystem thereof, if the contract is over $10,000,000 and is a fixed-price type funded with FY 90 funds (Pub. L. 101–165, section 9048).

(*2*) By the contracting officer for all fixed-price type contracts for any development not covered by paragraphs (b)(i)(C)(*1*) of this section.

(ii) Before award, submit the Government's prenegotiation position, and the proposed (and unexecuted) agreement with the contractor to the USD(A) for any action which is—

(A) An increase of more than $250,000,000 in the price of a fixed-price type development contract, or a fixed-price type contract for the lead ship of a class;

(B) A reduction in the amount of work under a fixed-price type development contract or a fixed-price type contract for the lead ship of a class, when the contract action is valued at more than $100,000,000; or

(C) A repricing of fixed-price type production options to a development contract, or a contract for the lead ship of a class, which increases the price by more than $250,000,000 for equivalent quantities.

(iii) Notify the USD(A) of an intent not to exercise a fixed-price production option on a development contract for a major weapon system reasonably in advance of the expiration of the option exercise period.

235.007 Solicitations.

(g) To ensure that prospective offerors fully understand the details of the work, the contracting officer may include the Government's estimate of the man-year effort under a research contract.

235.010 Scientific and Technical Reports.

(b) The Defense Technical Information Center (DTIC)—

(A) Has eligibility requirements for use of its services. Requests for information on eligibility should be addressed to DTIC-FDRB.

(B) Requires registration for use of its services. Instructions for registration are in Defense Logistics Agency Regulation 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information.

235.010–70 Contract clause.

Use the clause at 252.235–7000, Distribution of Final Scientific or Technical Report, in solicitations and contracts for research or development.

235.015 Contracts for research with educational institutions and nonprofit organizations.

(b) *Basic agreements.* (1)(A) The Office of Naval Research has responsibility on behalf of all of DoD for negotiating these basic agreements, except for basic agreements with Federally Funded Research and Development Centers;

(B) When using a basic agreement—

(*1*) Incorporate it by reference in section I of the contract; and

(*2*) Incorporate any special clause requirements in Section H.

235.015–70 Special use allowances for research facilities acquired by educational institutions.

(a) *Definitions.* As used in this subsection—

(1) *Research facility* means—

(i) Real property, other than land; and

(ii) Includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with departments and agencies of the DoD.

(2) *Special use allowance* means a negotiated direct or indirect allowance—

(i) For construction or acquisition of buildings, structures, and real property, other than land; and

(ii) Where the allowance is computed at an annual rate exceeding the rate which normally would be allowed under FAR subpart 31.3.

(b) *Policy* (1) Educational institutions are to furnish the facilities necessary to perform Defense contracts. FAR subpart 31.3 governs how much the Government will reimburse the institution for the research programs. However, in extraordinary situations, the Government may give special use allowances to an educational institution when the institution is unable to provide the capital for new laboratories or expanded facilities needed for Defense contracts.

(2) Decisions to provide a special use allowance must be made on a case-by-case basis, using the criteria in paragraph (c) of this subsection.

(c) *Authorization for special use allowance.* The head of a contracting activity may approve special use allowances only when all of the following conditions are met—

(1) The research facility is essential to the performance of DoD contracts;

(2) Existing facilities, either Government or nongovernment, cannot meet program requirements practically or effectively;

(3) The proposed agreement for special use allowances is a sound business arrangement;

(4) The Government's furnishing of Government-owned facilities is undesirable or impractical; and

(5) The proposed use of the research facility is to conduct essential Government research which requires the new or expanded facilities.

(d) *Application of the special use allowance.* (1) In negotiating a special use allowance—

(i) Compare the needs of DoD and of the institution for the research facility to determine the amount of the special use allowance;

(ii) Consider rental costs for similar space in the area where the research facility is or will be located to establish the annual special use allowance;

(iii) Do not include or allow—

(A) The costs of land; or

(B) Interest charges on capital;

(iv) Do not include maintenance, utilities, or other operational costs;

(v) The period of allowance generally will be—

(A) At least 10 years; or

(B) A shorter period if the total amount to be allowed is less than the construction or acquisition cost for the research facility;

(vi) Generally, provide for allocation of the special use allowance equitably among the Government contracts using the research facility;

(vii) Special use allowances apply only in the years in which the Government has contracts in effect with the institution. However, if in any given year there is a reduced level of Government research effort which results in the special use allowance being excessive compared to the Government research funding, a separate special use allowance may be negotiated for that year;

(viii) Special use allowances may be adjusted for the period before construction is complete if the facility is

partially occupied and used for Government research during that period.

(2) A special use allowance may be based on either total or partial cost of construction or acquisition of the research facility.

(i) When based on total cost neither the normal use allowance nor depreciation will apply—

(A) During the special use allowance period; and

(B) After the educational institution has recovered the total construction or acquisition cost from the Government or other users.

(ii) When based on partial cost, normal use allowance and depreciation—

(A) Apply to the balance of costs during the special use allowance period to the extent negotiated in the special use allowance agreement; and

(B) Do not apply after the special use allowance period, except for normal use allowance applied to the balance.

(3) During the special use allowance period, the research facility—

(i) Shall be available for Government research use on a priority basis over nongovernment use; and

(ii) Cannot be put to any significant use other than that which justified the special use allowance, unless the head of the contracting activity, which approved the special use allowance, consents.

(4) The Government will pay only an allocable share of the special use allowance when the institution makes any substantial use of the research facility for parties other than the Government during the period when the special use allowance is in effect.

235.015–71 Short form research contract (SFRC).

(a) *Scope.* This section prescribes procedures for contracting within the U.S. for research on a cost-reimbursement basis with educational institutions or nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) *Definitions.* As used in this section—

(1) *Educational institution* means an institution of higher learning which—

(i) Provides facilities for teaching and research; and

(ii) Is authorized to grant academic degrees.

(2) *Nonprofit organization* means—

(i) Organizations of the type—

(A) Described in section 501(c)(3) and (d) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)); and

(B) Exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)); or

(ii) Any nonprofit scientific organization qualified under a state nonprofit organization statute.

(3) *Research* includes all effort described as research in 235.001, including that part of exploratory development applicable to applied research.

(c) *Applicability.* (1) Do not use the SFRC for any purpose other than as described in this section.

(2) The procedures in this section may be used if—

(i) The principle purpose of the acquisition is research from an educational institution or a nonprofit organization;

(ii) The effort will be on a cost-reimbursement basis;

(iii) The basis for award is—

(A) A basic research proposal responding to a broad agency announcement (FAR 6.102(d)(2)); or

(B) An unsolicited research proposal (FAR 6.302–1); or

(C) A proposal establishing or maintaining an essential engineering, research, or development capability (FAR 6.302–3); and

(iv) The contract requires the delivery of designs, drawings, or reports as end items.

(d) *Content of research proposal.* Research proposals submitted under this section must contain—

(1) All the information in FAR 15.505;

(2) A statement of work complying with FAR 35.005, and a breakdown of the time the principle investigator and any associates will devote to the contract (see FAR 35.015(a)). The breakdown will be by man-days, man-months, or man-years;

(3) The executed representations on DD Form 2222–1, Representations and Certifications from Offerors Submitting Proposals Under DFARS 235.70. (Representations and certifications submitted on a one-time basis to each contracting office are valid for all SFRC contract awards made by that office only if the offeror in each proposal references the one-time submission and confirms its validity.);

(4) A statement that the Government may award a contract under the procedures of this section;

(5)(i) Identification of property in the Contractor-Acquired Property clause by showing for each item, when possible—

(A) The description of the property; and

(B) The estimated or known cost;

(ii) The description of the property should be detailed enough to enable the contracting officer—

(A) To determine whether the Government will furnish such property under FAR 35.014 and FAR 45–302–1; and

(B) For property which may be contractor-acquired (versus Government-furnished)—

(*1*) To accept it as advance notification required by FAR 52.244–2; and

(*2*) To authorize acquisition at time of award;

(iii) If the offeror proposes to acquire facilities (FAR 45.301), the offeror shall include a written statement which—

(A) Explains why acquiring these items with contract funds is necessary; and

(B) Expresses the offeror's unwillingness or financial inability to acquire the items with the offeror's own resources;

(iv) Special test equipment or components proposed. Individual items of less than $1,000 may be grouped by category (FAR 45.307–2);

(6) A SF 1411, Contract Pricing Proposal Cover Sheet, or acceptable substitute. FAR 52.244–2(b) prescribes information required for subcontracts;

(7) Markings complying with FAR 15.509 of the title page and each restricted sheet if the proposal includes data that the offeror does not want disclosed for any purpose other than evaluation. In addition, the offeror should state in the offer or check Block A on page 2 of the DD Form 2222–2 if the offeror grants the Government permission to have nongovernment evaluators review the proposal;

(8) The following statement:

> This proposal incorporates by reference, and makes a part thereof, all applicable clauses in DFARS 235.015–71(i) in effect on the effective date of the contract or such other dates as may be mutually agreed upon.

(9) Any other applicable FAR or DFARS clauses agreed to by the parties;

(10) Monthly expenditure estimates by which incremental funding periods may be calculated; and

(11) An executed DD Form 2222–2, Short Form Research Contract Research Proposal Cover Page.

(e) *Contracting procedures.* (1) Contracting officer may award a SFRC under full and open competition (FAR subpart 6.1) when the proposal—

(i) Is in response to a broad agency announcement under FAR 6.102(d)(2);

(ii) Contains the information required by 235.015–71(c); and

(iii) Has been recommended for award under the peer or scientific review procedures of FAR 6.102(d)(2).

(2) The contracting officer may award an SFRC under other than full and open competition (FAR subpart 6.3) when—

(i) The proposal is an unsolicited research proposal submitted, evaluated, and accepted under FAR subpart 15.5, which meets the criteria of FAR 6.302–1; or

(ii) Award is necessary to establish or maintain an essential engineering research or development capability under FAR 6.302–1.

(3) When a research proposal (solicited or unsolicited) is satisfactory to the Government, the contracting officer should accept the proposal by executing a SFRC incorporating—

(i) The proposal by reference, or

(ii) The statement of work by reference.

(4) When acceptance of the entire research proposal is not advantageous to the Government, the contracting officer should use the acceptable parts of the research proposal. These parts may be either attached or incorporated by reference to develop a contract for execution by both parties.

(5) The contractor must sign the SFRC before the Government signs.

(6) Use the DD Form 2222, Short Form Research Center (SFRC) Modification, to effect modifications.

(7) The initial dollar amount and period of performance specified in the award document shall include the initial research program only. The SFRC shall identify separately the options, periods, and costs, if appropriate.

(8) FAR 35.014 applies to vesting of title in property to organizations, defined in 235.015–71(b). DD Form 2222 shall identify property, title to which is not vested in the contractor, or for which a determination of title is deferred.

(9) The offeror's submission of its proposal under this section 235.015–71 constitutes the offeror's agreement to be bound by all terms and conditions of the resulting contract.

(f) *Advance payments.* The contracting officer shall ensure that SFRCs awarded to institutions and organizations authorized to receive advance payments under FAR subpart 32.4 are clearly marked to read "Advance Payment Pool Contract."

(g) *Method of funding.* If incrementally funded, the SFRC shall specify—

(1) The total estimated cost for the full period of the research program, both funded and unfunded; and

(2) The amount of funds currently obligated.

(h) *Uniform contract format.* The SFRC is exempt from uniform contract format requirements (FAR 15.406).

(i) *SFRC clauses.* (1) The following clauses should be incorporated by reference in all SFRC awards of $25,000 or more. Clauses with a single asterisk (*) apply to educational institutions only. Clauses with a double asterisk (**) apply to nonprofit organizations only.

FAR 52.202–1	Definitions.
FAR 52.203–1	Officials not to benefit.
FAR 52.203–3	Gratuities.
FAR 52.203–5	Covenant against contingent fees.
FAR 52.203–7	Anti-kickback procedures.
DFARS 252.203–7000	Statutory prohibition on compensation to former Department of Defense employees (applies to all contracts of $100,000 or more awarded to major defense contractors aggregating $10 million or more during the previous Government fiscal year. Does not apply to state and local governments.)
DFARS 252.204–7005	Overseas distribution of defense subcontracts (applies only when contract action exceeds $500,000, or when any modification increases contract amount to more than $500,000.)
FAR 52.215–1	Examination of records by Comptroller General.
FAR 52.215–2	Audit—Negotiation.
FAR 52.215–22	Price reduction for defective cost or pricing data (applies to cost-plus-fixed fee contracts exceeding $100,000; applies to subcontracts under cost-no-fee prime contracts if contract exceeds $100,000.)
FAR 52.215–24	Subcontractor cost or pricing data (applies only if FAR 52.215–22 applies.)
FAR 52.215–26	Integrity of unit price (applies when contract exceeds $25,000.)
**FAR 52.215–30	Facilities capital cost of money (applies as set forth in the clause.)
**FAR 52.215–31	Waiver of facilities capital cost of money (applies as set forth in the clause.)
FAR 52.215–33	Order of precedence.
DFARS 252.215–7000	Aggregate pricing adjustment (applies only if contract exceeds $10,000 and FAR 52.215–22 applies.)
FAR 52.216–7	Allowable cost and payment.
**FAR 52.216–8	Fixed fee (applies only in cost-plus-fixed-fee contracts.)
FAR 52.216–11 and Alternate I	Cost contract—no fee (Alternate I deletes paragraph (b) of the basic clause.)
FAR 52.216–12 and Alternate I	Cost-sharing contract—no fee (Alternate I deletes paragraph (b) of the basic clause.)
*FAR 52.216–15	Predetermined indirect cost rates (applies only when the contractor has an executed negotiation agreement with the cognizant contract administration office.)
FAR 52.219–8	Utilization of small business and small disadvantaged business concerns.
FAR 52.219–13	Utilization of women-owned small businesses.
FAR 52.222–2	Payment for overtime premiums (note: the word "zero" is inserted in the blank space indicated by an asterisk.)
FAR 52.222–3	Convict labor.
FAR 52.222–26	Equal opportunity (add Alternate I as a special provision when Alternate I applies.)
FAR 52.222–35	Affirmative action for special disabled and Vietnam era veterans.
FAR 52.222–36	Affirmative action for handicapped workers.
FAR 52.223–2	Clean air and water (applies only if contract action exceeds the dollar amount set forth in the preamble to the clause.)
FAR 52.227–1 and Alternate I	Authorization and consent.
FAR 52.227–2	Notice and assistance regarding patent and copyright infringement.
FAR 52.227–11	Patent rights—retention by the contractor (short form)
DFARS 252.227–7013 and Alternate I	Rights in technical data and computer software.

DFARS 252.227–7014	Contract items requiring experimental, developmental or research work.
DFARS 252.227–7018	Restrictive markings on technical data.
DFARS 252.227–7029	Identification of technical data.
**DFARS 252.227–7030	Technical data—withholding of payment.
DFARS 252.227–7034	Patents—subcontracts.
FAR 52.228–7	Insurance—liability to third persons (Alternates I and II apply under the circumstances set forth.)
**FAR 52.230–3	Cost accounting standards.
**FAR 52.230–4	Administration of cost accounting standards (applies only if contract action exceeds $100,000 and the contract is not exempt under FAR 30.301.)
**FAR 52.230–5	Disclosure and consistency of cost accounting practices (applies only if contract action exceeds $100,000 and the contract is not exempt under FAR 30.301.)
DFARS 252.231–7000	Supplemental cost principles (applies to nonprofit institutions only when allowability of costs is determined under FAR subpart 31.2.)
DFARS 252.231–7001	Penalties for unallowable costs (applies when contract action exceeds $100,000.)
**FAR 52.232–9	Limitation on withholding of payments.
FAR 52.232–20	Limitation of cost (applies only when contract action is fully funded.)
FAR 52.232–22	Limitation of funds (applies only when contract action is incrementally funded.)
FAR 52.232–23	Assignment of claims.
FAR 52.233–1	Disputes.
FAR 52.233–3 and Alternate I	Protest after award.
DFARS 252.235–7000	Progress reports.
DFARS 252.235–7001	Final scientific or technical report requirements.
DFARS 252.235–7002	Acknowledgement of support and disclaimer.
DFARS 252.235–7003	Publication of project results.
DFARS 252.235–7004	Absence or change in principal investigator or project director.
DFARS 252.235–7007	Animal welfare.
FAR 52.242–1	Notice of intent to disallow costs.
DFARS 252.242–7003	Certification of indirect cost.
**FAR 52.243–2 and Alternate V	Changes—cost-reimbursement.
FAR 52.244–2	Subcontracts under cost-reimbursement and letter contracts.
FAR 52.244–5	Competition in subcontracting.
FAR 52.245–5 and Alternate I	Government property (cost-reimbursement, time-and-material, or labor-hour contracts.)
FAR 52.247–63	Preference for U.S.-flag air carriers.
FAR 52.249–5	Termination for Government convenience of the Government (educational and other nonprofit institutions) (applies as set forth in the clause preamble.)
**FAR 52.249–6	Termination (cost-reimbursement) (applies only to cost-plus-fixed-fee contracts.)
**FAR 52.249–14	Excusable delays (applies only to contracts to which FAR clause 52.249–6 applies.)
FAR 52.251–1	Government supply sources.
DFARS 252.251–7000	Ordering from Government supply sources.

(2) Use the following clauses in all SFRC contracts over $25,000—

(i) The Clause at 252.235–7005, Option to Extend the Term of the Contract;

(ii) The Clause at 252.235–7006, Contractor-Acquired Property;

(iii) The Clause at 252.235–7007, Title to Contractor-Acquired Property;

(iv) The Clause at 252.235–7008, Advance Payments;

(v) The Clause at 252.235–7009, Inspection and Acceptance; and

(vi) The Clause at 252.235–7010, Restriction on Printing.

235.016 Broad agency announcement.

To help achieve the goals of section 1207 of Public Law 99–661 (see part 226), contracting officers shall—

(1) Whenever practicable, reserve discrete or severable areas of research interest contained in broad agency announcements for exclusive competition among historically black colleges and universities and minority institutions;

(2) Indicate such reservation—

(i) In the broad agency announcement; and

(ii) In the announcement synopsis (see 205.207(d)(v)).

235.070 Indemnification against unusually hazardous risks.

235.070–1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354 and if authorized by the Secretary concerned, or designee under 10 U.S.C. 2356, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as "unusually hazardous;"

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to grant indemnification. Include the approved definition in the contract.

235.070–2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Pub. L. 85–804. Pub. L. 85–804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Pub. L. 85–804 must also comply with FAR subpart 50.4.

235.070–3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070–1, use either—

(a) The clause at 252.235–7001, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235–7002, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

235.071 Contract clauses.

(a) Use the clause at 252.235–7003, Animal Welfare, in solicitations and contracts awarded in the U.S., its possessions, and Puerto Rico involving research on live vertebrate animals.

(b) Use the clause at 252.235–7004, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

6. Part 236 is revised to read as follows:

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

Subpart 236.1—General

236.102 Definitions.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.
236.203 Government estimate of construction costs.
236.206 Liquidated damages.
236.270 Expediting construction contracts.
236.271 Cost-plus-fixed fee contracts.
236.272 Prequalification of sources.
236.273 Network analysis systems.
236.274 Construction in foreign countries.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitations for bids.
236.303–70 Additive or deductive items.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.403 Cost-reimbursement contracts.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.

Subpart 236.6—Architect-Engineer Services

236.601 Policy.
236.602 Selection of firms for architect-engineer contracts.
236.602–1 Selection criteria.
236.602–2 Evaluation boards.
236.602–4 Selection authority.
236.604 Performance evaluation.
236.606 Negotiations.
236.606–70 Statutory fee limitation.
236.609 Contract clauses.
236.609–70 Option for supervision and inspection services.

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition or removal of improvements.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 236.1—General

236.102 Definitions.

A–E means architect-engineer.

Construction activity means an activity—

(1) At any organizational level of the DoD;

(2) That is responsible for the architectural, engineering, and other related technical aspects of the—

(i) Planning;

(ii) Design; and

(iii) Construction of facilities; and

(3) Which receives its technical guidance from the—

(i) Army Office of the Chief of Engineers;

(ii) Naval Facilities Engineering Command; or

(iii) Air Force Directorate of Civil Engineering.

Subpart 236.2—Special Aspects of Contracting for Construction

236.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* (i) In Block 2 of the SF 1420, Performance Evaluation—Construction Contracts, enter the contractor establishment code from Item B5A of the DD 350, Contracting Action Report, Individual.

(ii) In Block 5 of the SF 1420, enter the telephone number of the Government office that will retain the official record copy of the report.

(b) *Distribution and use of performance reports.* (1) Send each contractor performance evaluation report to the central data base immediately upon its completion.

(A) The central data base is operated by—

U.S. Army Engineer Division, North Pacific, ATTN: CENPD–CT, P.O. Box 2870, Portland, OR 97208–2870, Telephone: (503) 326–3459/4910

(B) For computer access to the files, contact the North Pacific Division for user log-on and procedures.

(2) Use performance records when making responsibility determinations under FAR subpart 9.1.

(A) For each contract expected to exceed $1,000,000, retrieve all performance records on file in the central data base for all prospective contractors that have a reasonable chance of being selected for award. The central data base will provide—

(*1*) Overall current performance ratings;

(*2*) Descriptions of contracts on which ratings are based (e.g., type of facility, contract value, applicable performance elements); and

(*3*) A telephone number to obtain transcripts and documentation of pertinent evaluation details.

(B) Consider using the performance records in the data base—

(*1*) For lower value contracts; and

(*2*) To assess a contractor's performance record for reasons other than an award decision.

236.203 Government estimate of construction costs.

(c)(i) Designate the Government estimate as "For Official Use Only," unless the information is classified. If it is, handle the estimate in accordance with security regulations.

(ii) For sealed bid acquisitions—

(A) File a sealed copy of the Government estimate with the bids. (In the case of two-step acquisitions, this is done in the second step.)

(B) After the bids are read and recorded, remove the "For Official Use Only" designation and read and record the estimate as if it were a bid, in the same detail as the bids.

236.206 Liquidated damages.

See 212.104 for instructions on use of liquidated damages.

236.270 Expediting construction contracts.

(a) 10 U.S.C. 2858 requires agency head approval to expedite the completion date of a contract funded by a Military Construction Appropriations Act, if additional costs are involved. This approval authority may not be redelegated. The approval authority must—

(1) Certify that the additional expenditures are necessary to protect the National interest; and

(2) Establish a reasonable completion date for the project.

(b) The contracting officer may approve an expedited completion date if no additional costs are involved.

236.271 Cost-plus-fixed fee contracts.

Annual military construction appropriations acts restrict the use of cost-plus-fixed fee contracts for construction and A–E services. The Assistant Secretary of Defense (Production and Logistics) must specifically approve such contracts in writing when—

(a) They are estimated to exceed $25,000;

(b) They will be performed within the U.S., except Alaska; and

(c) They are funded by a military construction appropriation act.

236.272 Prequalification of sources.

(a) Prequalification procedures may be used when necessary to ensure timely and efficient performance of critical construcition projects. Prequalification—

(1) Results in a list of sources determined to be qualified to perform a specific construction contract; and

(2) Limits offerors to those with proven competence to perform in the required manner.

(b) The head of the contracting activity must—

(1) Authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification; and

(2) Approve the prequalification procedures.

(c) For small businesses, the prequalification procedures must require the qualifying authority to—

(1) Request a preliminary recommendation from the appropriate Small Business Administration regional office, if the qualifying authority believes a small business is not responsible;

(2) Permit the small business to submit a bid or proposal if the preliminary recommendation is that the small business is responsible; and

(3) Follow the procedures in FAR subpart 19.6, if the small business is in line for award and is found nonresponsible.

236.273 Network analysis systems.

Use head of the contracting activity approved procedures for preparing and using network analysis systems, whether contractor prepared, or Government prepared.

236.274 Construction in foreign countries.

When a technical working agreement with a foreign government is required for a construction contract—

(a) Consider inviting the Army Office of the Chief of Engineers, or the Naval Engineering Facilities Command to participate in the negotiations.

(b) The agreement should, as feasible and where not otherwise provided for in other agreements, cover all elements necessary for the construction that are required by laws, regulations, and customs of the U.S. and the foreign government—

(1) Acquisition of all necessary rights;

(2) Expeditious, duty-free importation of labor, material, and equipment;

(3) Payment of taxes applicable to contractors, personnel, materials, and equipment;

(4) Applicability of workers' compensation and other labor laws to citizens of the U.S., the host country, and other countries;

(5) Provision of utility services;

(6) Disposition of surplus materials and equipment;

(7) Handling of claims and litigation; and

(8) Resolution of any other foreseeable problems which can appropriately be included in the agreement.

Subpart 236.3—Special Aspects of Sealed Bidding in Construction Contracting

236.303 Invitations for bids.

236.303-70 Additive or deductive items.

(a) If it appears that sufficient funds may not be available for all the desired construction features, consider using a bid schedule with—

(1) A first or base bid item covering the work generally as specified; and

(2) A list of priorities that contains one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order or priority.

(b) Prior to opening the bids, record in the contract file the amount of funds available for the project.

(c) Determine the low bidder and the bid items to be awarded as follows—

(1) Use the recorded amount of available funds to determine the low bidder, which will be the bidder that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in order of listed priority), those additive or deductive bid items that provide the most features within the funds available.

(2) Evaluate all bids on the basis of the same additive or deductive bid items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds, skip that item and go to the next item from the list of priorities.

(ii) Add the next item if an award can be made that includes the item and is still within the available funds.

(3) Use the list of priorities only to determine the low bidder. After determining the low bidder, an award may be made on any combination if—

(i) It is in the best interests of the Government;

(ii) Funds are available at time of award; and

(iii) The low bidder's price for the combination is less than the price offered by any other responsive, responsible bidder.

Subpart 236.4—Special Procedures for Negotiation of Construction Contracts

236.403 Cost-reimbursement contracts.

(1) For cost-plus-fixed fee contracts, negotiate the fee for a prime contractor using departmental procedures approved by the Assistant Secretary of Defense (Production and Logistics).

(2) For cost-plus-incentive fee contracts, negotiate the target fee for a prime contractor using the criteria and fee schedule in departmental procedures to determine—

(i) The reasonableness of the target cost;

(ii) The maximum and minimum fees to be established; and

(iii) The fee adjustment formula.

Subpart 236.5—Contract Clauses

236.570 Additional provisions and clauses.

(a) Use the following clauses in all fixed-price construction solicitations and contracts—

(1) 252.236-7000, Modification Proposals-Price Breakdown; and

(2) 252.236-7001, Contract Drawings, Maps, and Specifications.

(b) Use the following provisions and clauses in fixed-price construction contracts and solicitations as applicable—

(1) 252.236-7002, Obstruction of Navigable Waterways, when the contract will involve work near or on navigable waterways.

(2) When the head of the contracting activity has approved use of a separate bid item for mobilization and preparatory work, use either—

(i) 252.236-7003, Payment for Mobilization and Preparatory Work. Use this clause for major construction contracts that require—

(A) Major or special items of plant and equipment; or

(B) Large stockpiles of material which are in excess of the type, kind, and quantity which would be normal for a contractor qualified to undertake the work; or

(ii) 252.236-7004, Payment for Mobilization and Demobilization. Use this clause for contracts involving major mobilization expense, or plant equipment and material (other than the situations covered in paragraph (b)(2)(i) of this section) made necessary by the location or nature of the work.

(A) Generally, allocate 60 percent of the lump sum price in paragraph (a) of the clause to the cost of mobilization.

(B) Vary this percentage to reflect the circumstances of the particular contract,

but in no event should mobilization exceed 80 percent of the payment item.

(3) 252.236–7005, Airfield Safety Precautions, when construction will be performed on or near airfields.

(4) 252.236–7006, Cost Limitations, if the solicitation's bid schedule contains one or more items subject to statutory cost limitations, and if a waiver has not been granted (FAR 36.205).

(5) 252.236–7007, Additive or Deductive Items, if the procedures in 236.303–70 are being used.

Subpart 236.6—Architect-Engineer Services

236.601 Policy.

(1) 10 U.S.C. 2807(b) requires notice to Congress 21 days before the initial obligation of funds if a contract is for—

(i) A–E services or construction design for military construction, military family housing, or restoration or replacement of damaged or destroyed facilities; and

(ii) An estimated total fee of $300,000 or more.

(2) During the 21 day period, synopsis of the proposed contract action and administrative actions leading to the award may be started.

236.602 Selection of firms for architect-engineer contracts.

236.602–1 Selection criteria.

(a)(i) Establish the evaluation criteria before making the public announcement required by FAR 5.205(c) and include the criteria in the announcement.

(ii) Use the information in the DD Form 1391, FY 19____ Military Construction Project Data, for the construction project, if applicable. In addition to the general considerations in FAR 36.602, the criteria should be specific regarding—

(A) Desired qualifications;

(B) Size and expertise of staff;

(C) Required past experience;

(D) Any esthetic considerations;

(E) Any special conceptual or design elements; and

(F) Related factors.

(6) Consider the volume of work previously awarded to the firm by the DoD, with the object of making an equitable distribution of DoD A–E contracts among qualified A–E firms, including small and small disadvantaged businesses, and those that have not had prior DoD contracts. In considering the volume of DoD work previously awarded an A–E firm—

(A) Use data from the Washington Headquarters Services/Defense Information Operations and Reports, which is compiled from DD Form 350, Contracting Action Report, data and indicates award volume during the previous 12 months. Do not use any other data.

(B) Do not consider awards to overseas offices of A–E firms covering projects outside the U.S., its territories and possessions.

(C) Treat an A–E subsidiary as an individual firm if it is not normally subject to the management decisions, bookkeeping, and policies of a holding or parent company. Assume that an incorporated subsidiary is in this category when it is operating under a firm name different from the parent company.

(D) Do not reject the overall most highly qualified firm solely in the interest of equitable distribution of awards.

236.602–2 Evaluation boards.

(a) Preselection boards are authorized, if the lists they develop are approved by the head of the construction activity. If used, preselection boards will—

(i) Be formally constituted;

(ii) Consist of at least three members; and

(iii) Prepare a preselection list of the maximum practicable number of qualified firms using data described in FAR 36.603, and any other pertinent information.

236.602–4 Selection authority.

(a)(i) The following selections require special approval—

(A) The estimated cost exceeds $500,000;

(B) The firm to be selected has already been awarded contracts totaling over $500,000 during the current calendar year by the construction activity; or

(C) Supplemental work added to an existing contract causes the total contract cost to exceed $500,000. Special approval is not, however, required for supplemental work added to a contract under the Changes clause at FAR 52.247–1.

(ii) Special approval means approval by the next higher organizational level above the construction activity and must be obtained prior to negotiation with the A–E firm.

(A) Selection by the Army Corps of Engineers requires approval by the Chief of Engineers.

(B) Selection by the Naval Facilities Engineering Command requires approval by the Commander, NAVFAC.

(C) Selection by the Air Force Directorate of Civil Engineering requires approval by the Director of Civil Engineering.

(c) A finding that some of the firms on the selection report are unqualified does not preclude approval of the report, provided that a minimum of three firms remains. The reasons for finding a firm or firms unqualified must be recorded.

236.604 Performance evaluation.

(c) *Distribution and use of performance reports.* (i) Forward each performance report to the central data base identified in 236.201(c) after completing the review. The procedures in 236.201 also apply to A–E contracts.

(ii) File and use the SF 1421, Performance Evaluation (Architect-Engineer), in a manner similar to the SF 254, Architect-Engineer and Related Services Questionnaire.

236.606 Negotiations.

236.606–70 Statutory fee limitation.

(a) 10 U.S.C. 2306(d) limits the contract price (or estimated cost and fee) for A–E contracts for the preparation of designs, plans, drawings, and specifications to 6 percent of the project's estimated construction cost. This fee limit also applies—

(1) To modifications involving work not initially included in the contract.

Apply the 6 percent limit to the revised total estimated construction cost; and

(2) If redesign is required and the contract is modified. Use the following method to ensure that the statutory limitation is not exceeded—

(i) Add the estimated cost of the redesign features to the original estimated construction cost;

(ii) Add the contract cost for the original design to the contract cost for redesign; and

(iii) Divide the total contract design cost by the total estimated construction cost. The resulting percentage may not exceed the 6 percent statutory limitation.

(b) If an A–E contract also covers services other than those listed in paragraph (a) of this subsection, that part of the contract price for the other services is not subject to the 6 percent limit.

236.609 Contract clauses.

236.609–70 Option for supervision and inspection services.

(a) Use the clause at 252.236–7008, Option for Supervision and Inspection Services, in solicitations and contracts for A–E services when—

(1) The contract will be fixed price; and

(2) Supervision and inspection services by the A–E may be required during construction.

(b) Include the scope of such services in Appendix A of the contract.

Subpart 236.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(c) Do not use Optional Form 347, Order for Supplies and Services, (see 213.505–2).

7. Part 247 is revised to read as follows:

PART 247—TRANSPORTATION

Sec.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).
247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.
247.104–3 Cost-reimbursement contracts.
247.104–5 Citations of Government rate tenders.
247.105 Transportation assistance.

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.
247.270–1 Scope of section.
247.270–2 Definitions.
247.270–3 Type of contract.
247.270–4 Technical provisions.
247.270–5 Evaluation of bids and proposals.
247.270–6 Award of contract.
247.270–7 Contract clauses.
247.271 Contracts for the preparation of personal property for shipment or storage.
247.271–1 Scope of section.
247.271–2 Policy.
247.271–3 Procedures.
247.271–4 Solicitation provisions, schedule formats, and contract clauses.

Subpart 247.3—Transportation in Supply Contracts

247.305 Solicitation provisions, contract clauses, and transportation factors.
247.305–10 Packing, marking, and consignment.
247.305–70 Returnable cylinders and other containers.
247.370 Use of Standard Form 30 for consignment instructions.
247.371 DD Form 1653, Transportation Data for Solicitations.
247.372 DD Form 1654, Evaluation of Transportation Cost Factors.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.
247.571 Policy.
247.572 Procedures.
247.572–1 Ocean transportation incidental to a contract for supplies, services, or construction.
247.572–2 Direct purchase of ocean transportation services.
247.573 Contract clause.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 247.1—General

247.103 Transportation Documentation and Audit Regulation (TDA).

(b)(2) Appendix J of the Defense Transportation Management Regulation lists the carriers and carrier associations that have agreed to provide transportation under commercial forms and procedures within CONUS.

247.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

247.104–3 Cost-reimbursement contracts.

(a) Section 10721 rates do not apply to foreign military sale (FMS) shipments.

(i) On shipments of stock fund items from a contractor to a depot, when some of the items in a specific transportation unit are clearly for FMS—

(A) Section 10721 rates do not apply to FMS items shipped on a separate bill of lading; and

(B) Section 10721 rates do apply to the non-FMS items.

247.104–5 Citations of government rate tenders.

(a) See Section XI, chapter 32 of the Defense Transportation Management Regulation for instructions on converting commercial bills of lading to Government bills of lading within CONUS.

247.105 Transportation assistance.

(a)(1) Transportation assistance includes all transportation factors, such as—

(A) Freight rates (for evaluation of bids or routing purposes);

(B) Other transportation costs;

(C) Transit agreements;

(D) Time in transit;

(E) Port handling charges; and

(F) Port capabilities.

(ii) Within CONUS, the Military Traffic Management Command (MTMC), through its eastern and western area commands, is responsible for the performance of traffic management functions. These functions include the direction, control, and supervision of all functions incident to the acquisition and use of commercial freight and passenger transportation services. See Chapters 1 and 2 of the Defense Transportation Management Regulation for the locations and geographical areas of jurisdiction of each area headquarters.

(iii) For assistance with international shipments—

(A) Originating on CONUS, request assistance from the appropriate military activity; i.e., the Military Airlift Command (MAC), Military Sealift Command (MSC), or the military service sponsoring the cargo;

(B) For all modes of transportation originating overseas, request assistance from the overseas Theater Commander assigned responsibility for common-user, military-operated land transportation;

(C) Of bulk petroleum via ocean tanker, request assistance, rates, or other costs from the MSC;

(D) Of supplies between points outside the CONUS, including Alaska and Hawaii, request assistance, rates, or other costs from the military service sponsoring the cargo. Direct the requests to:

Army—Deputy Chief of Staff for Logistics, Department of the Army, ATTN: DALO–TSP, Washington, DC 20310–0570.
Navy—Naval Supply Systems Command, Code 051, Washington, DC 20376–5000.
Air Force—Applicable overseas Air Force Command, Pacific Air Forces/LGT, Hickam AFB, HI 96853, Space Command/LKT, Peterson AFB, CO 80914, U.S. Air Forces in Europe/LGT, APO NY 09012.
Marine Corps—Director, Transportation Division HQ, U.S. Marine Corps, COS Washington, DC 20380.

(E) When requesting rates and related costs for the evaluation of bids or proposals, include the bid opening or proposal due date and the expected date of initial shipment, if established.

Subpart 247.2—Contracts for Transportation or for Transportation-Related Services

247.270 Stevedoring contracts.

247.270–1 Scope of section.

This section contains procedures peculiar to stevedoring. Other portions of the FAR and DFARS dealing with service contracting also apply to stevedoring contracts.

247.270–2 Definitions.

Commodity rate is—

(a) The price quoted for handling a ton (weight or measurement) of a specified commodity.

(b) Computed by dividing the hourly stevedoring gang cost by the estimated number of tons of the specified commodity which can be handled in 1 hour.

Gang cost is—

(a) The total hourly wages paid to the workers in the gang, in accordance with the collective bargaining agreement between the maritime industry and the unions at a specific port; and

(b) Payments for workmen's compensation, social security taxes, unemployment insurance, taxes, liability and property damage insurance, general and administrative expenses, and profit.

Stevedoring is the—

(a) Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or

(b) Breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.

247.270–3 Type of contract.

Normally, use an indefinite-quantity type contract.

247.270–4 Technical provisions.

(a) Because conditions vary at different ports, and sometimes within the same port, it is not practical to develop standard technical provisions covering all phases of stevedoring operations.

(b) When including car loading and unloading or other dock and terminal work under a stevedoring contract, include these requirements as separate items of work.

247.270–5 Evaluation of bids and proposals.

Require that offers include and evaluate on the basis of—

(a) Tonnage or commodity rates which apply to the bulk of the cargo worked under normal conditions;

(b) Labor-hour rates which apply to services not covered by commodity rates, or to work performed under hardship conditions; and

(c) Rates for equipment rental.

247.270–6 Award of contract.

Make the award to the contractor that is otherwise eligible for award and offers the lowest overall acceptable bid or proposal after evaluating the—

(a) Total estimated cost of tonnage to be moved at commodity rates;

(b) Estimated cost at labor-hour rates; and

(c) Cost of equipment rental.

247.270–7 Contract clauses.

Use the following clauses in solicitations and contracts for stevedoring services as indicated—

(a) 252.247–7000, Hardship Conditions, as appropriate;

(b) 252.247–7001, Price Adjustment, when using sealed bidding;

(c) 252.247–7002, Revision of Prices, when using negotiation;

(d) 252.247–7003, Changes, in lieu of the clause at FAR 52.243–1, Changes—Fixed-Price;

(e) 252.247–7004, Termination, when it is desirable to permit either party to terminate the contract;

(f) 252.247–7005, Indefinite Quantities-Fixed Charges, when the contract will provide for the payment of fixed charges;

(g) 252.247–7006, Indefinite Quantities-No Fixed Charges, when the contract will not provide for the payment of fixed charges;

(h) 252.247–7007, Removal of Contractor's Employees; and

(i) 252.247–7008, Liability and Insurance.

247.271 Contracts for the preparation of personal property for shipment or storage.

247.271–1 Scope of section.

This section contains procedures peculiar to the preparation of personal property for shipment or storage, and for the performance of intra-area or intra-city movement. Other portions of the FAR and DFARS dealing with service contracting also apply to these services.

247.271–2 Policy.

(a) *Annual contracts.* Normally—

(1) Use requirements contracts awarded through sealed bidding to acquire services for the—

(i) Preparation of personal property for shipment or storage; and

(ii) Performance on intra-area movement.

(2) Award contracts on a calendar year basis.

(3) Include provisions for option years.

(4) Award contracts, or exercise option years, before November 1 of each year, if possible.

(b) *Areas of performance.* Define clearly in the solicitation each area of performance.

(1) Establish one or more areas; however, hold the number to a minimum consistent with local conditions.

(2) Each schedule may provide for the same or different areas of performance. Determine the areas as follows—

(i) Use political boundaries, streets, or any other features as lines of demarcation. Consider such matters as—

(A) Total volume;

(B) Size of overall area; and

(C) The need to service isolated areas of high population density.

(ii) Specifically identify frequently used terminals, and consider them as being included in each area of performance described in the solicitation.

(c) *Maximum requirements-minimum capability.* The contracting officer shall—

(1) Establish realistic quantities on the Estimated Quantities Report in DoD 4500.34R, Personal Property Traffic Management Regulation;

(2) Ensure that the Government's minimum acceptable daily capability—

(i) Will at least equal the maximum authorized individual weight allowance as prescribed by the Joint Federal Travel Regulations; and

(ii) Will not preclude bidding by small business firms.

247.271–3 Procedures.

(a) *CONUS military activities assigned multi-service personal property areas of responsibility.* (1) When two or more military installations or activities have personal property responsibilities in a given area, one activity shall contract for the estimated requirements of all activities in the area. The installation commanders concerned shall designate the activity by mutual agreement.

(2) The Commander, MTMC, shall designate the contracting activity when local commanders are unable to reach agreement.

(b) *Additional services and excess requirements.* (1) Excess requirements are those services which exceed contractor capabilities available under contracts. Use small purchase procedures to satisfy excess requirements.

(2) Additional services are those not specified in the bid items.

(i) Additional services may include—

(A) Hoisting or lowering of articles;

(B) Waiting time;

(C) Special packaging; and

(D) Stuffing or unstuffing of sea van containers.

(ii) Consider contracting for local moves that do not require drayage by using hourly rate or constructive weight methods. The rate will include those services necessary for completion of the movement, including—

(A) Packing and unpacking;

(B) Movement;

(C) Inventorying; and

(D) Removal of debris.

(iii) Each personal property shipping activity shall determine if local requirements exist for any additional services.

(iv) The contracting officer may obtain additional services by—

(A) Including them as items within the contract; provided, they are not used in the evaluation of bids (see 252.247–7009, Evaluation of Bids); or

(B) Using small purchase procedures.

(v) Either predetermine prices for additional services with the contractor, or negotiate them on a case-by-case basis.

(vi) The contracting officer must authorize the contractor to perform any additional services, other than attempted pick up or delivery, regardless of the contracting method.

(vii) To the maximum extent possible, identify additional services required that are incidental to an order before placing the order; or, when applicable, during the premove survey.

(c) *Contract distribution.* In addition to the distribution requirements of FAR subpart 4.2, furnish one copy of each contract as follows—

(1) CONUS personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, ATTN: MTPP-CI, room 408 5611 Columbia Pike, Falls Church, VA 22041–5050.

(2) In the European and Pacific areas, personal property shipping activities shall send the copy to either the Property Directorate, MTMC Europe, or the MTMC Field Office-Pacific.

(3) Other overseas personal property shipping activities shall send the copy to the Commander, Military Traffic Management Command, ATTN: MT-PPQ, 5611 Columbia Pike, Falls Church, VA 22041–5050.

247.271–4 Solicitation provisions, schedule formats, and contract clauses.

When acquiring services for the preparation of personal property for movement or storage, and for performance of intra-city or intra-area movement, use the following provisions, clauses, and schedules. Revise solicitation provisions and schedules, as appropriate, if using negotiation rather than sealed bidding. Overseas commands, except those in Alaska and Hawaii, may modify these clauses to conform to local practices, laws, and regulations.

(a) The provision at 252.247–7009, Evaluation of Bids. When adding "additional services" items to any schedule, use the basic clause with Alternate I.

(b) The provision at 252.247–7010, Award.

(c) In solicitations and resulting contracts, the schedules contained in DoD 4500.34–R, Personal Property Traffic Management Regulation, as provided by the installation personal property shipping office.

(1) When there is no requirement for an item or subitem in a schedule, indicate that item or subitem number, in its proper numerical sequence, and add the statement "No Requirement."

(2) With Schedules I (Outbound) and II (Inbound), item numbers are reserved to permit inclusion of additional items as required by local conditions.

(3) Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices, laws, and regulations.

(4) All generic terminology, schedule, and item numbers in proper sequence shall follow those contained in the basic format.

(5) When it is in the Government's best interest to have both outbound and inbound services within a given area of performance furnished by the same contractor, modify the schedule format to combine both services in a single schedule. However, items shall follow the same sequential order as in the basic format.

(6) Process any modification of schedule format, other than those authorized in paragraphs (c)(1) through (5) of this subsection, as a request for deviation through MTMC area commands/field offices to HQ MTMC.

(d) The clause at 252.247–7011, Scope of Contract.

(e) The clause at 252.247–7012, Period of Contract. When the period of performance is less than a calendar year, modify the clause to indicate the beginning and ending dates. However, the contract period shall not end later than December 31 of the year in which the contract is awarded.

(f) In addition to designating each ordering activity, as required by the clause at FAR 52.216–18, Ordering, identify by name or position title the individuals authorized to place orders for each activity. When provisions are made for placing oral orders in accordance with FAR 16.506(b), document the oral orders in accordance with departmental/agency instructions.

(g) The clause at 252.247–7013, Ordering Limitation.

(h) The clause at 252.247–7014, Contract Areas of Performance.

(i) When using the clause at FAR 52.216–21, Requirements, delete paragraph (f) of the clause and insert in its place paragraph (f) at 252.247–7015.

(j) The clause at 252.247–7016, Demurrage.

(k) The clause at 252.247–7017, Contractor Liability for Loss and Damage.

(l) The clause at 252.247–7018, Erroneous Shipments.

(m) The clause at 252.247–7019, Subcontracting.

(n) The clause at 252.247–7020, Drayage.

(o) The clause at 252.247–7021, Additional Services.

(p) The clauses at FAR 52.247–2, Permits, Authorities, or Franchises; FAR 52.247–8, Estimated Weight or Quantities Not Guaranteed; FAR 52.247–13, Accessorial Services-Moving Contracts; and FAR 52.247–17, Charges.

Subpart 247.3—Transportation in Supply Contracts

247.305 Solicitation provisions, contract clauses, and transportation factors.

247.305–10 Packing, marking, and consignment.

(b) Consignment instructions shall include, as a minimum—

(i) The clear text and coded MILSTRIP data as follows—

(A) Consignee code and clear text identification of consignee and destination as published in—

(*1*) DoD 4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(*2*) DoD 4000.25–8–M, Military Assistance Program Address Directory (MAPAD);

(*3*) Commercial and Government Entity (CAGE) Handbook H4/H8; or

(*4*) Transportation Control and Movement Document. Reporting procedures and instructions shall comply with DoD Regulation 4500.32–R, MILSTAMP.

(B) Project code, when applicable;

(C) Transportation priority;

(D) Required delivery date; and

(E) Coded MILSTRIP document number, demand/suffix code, a supplementary address and signal code.

(ii) Non-MILSTRIP shipments shall include data similar to paragraphs (b)(i)(A) through (D) of this subsection and the applicable portion of paragraph (b)(i)(E) with the notation "Non-MILSTRIP."

(iii) In amended shipping instructions include, in addition to the data requirements of paragraphs (b)(i)(A) through (E) of this subsection, the following, when appropriate—

(A) Name of the activity originally designated, from which the stated quantities are to be deducted; and

(B) Any other features of the amended instructions not contained in the basic contract.

(iv) If a contract is assigned for any contract administration function listed in FAR subpart 42.3, to any office listed in DoD 4105.59–H, DoD Directory of Contract Administration Services Components, then include in instructions the—

(A) Modification serial number; and, if a new line item is created by the issuance of shipping instructions;

(B) New line item number; and

(C) Existing line item number, if affected.

(v) For petroleum, oil and lubricant products, instructions for diversions need not include the modification serial number and new line item number, when the instructions are—

(A) For diversions overseas to new destinations;

(B) Issued by an office other than that issuing the contract or delivery order; and

(C) Issued by telephone, teletype, or telegram.

247.305–70 Returnable cylinders and other containers.

(a) Use the clause at 252.247–7022, Returnable Cylinders and Other Containers, if the contract will involve the purchase of any item in contractor-furnished returnable cylinders, and the contractor retains title to the cylinders.

(b) The contracting officer may modify the 30 day time period specified in the clause to comply with customary commercial practice.

247.370 Use of Standard Form 30 for consignment instructions.

When complete consignment instructions are not known initially, use the Standard Form 30, Amendment of Solicitation/Modification of Contract, to issue or amend consignment instructions, and when necessary, to confirm consignment instructions issued by telephone, teletype, or telegram.

(a) When using the SF 30 to confirm delivery instructions—

(1) Stamp or mark "CONFIRMATION" in block letters on the form, and specify in detail those instructions being confirmed.

(2) Do not change the instructions being confirmed.

(b) Process the confirming SF 30 as follows—

(1) For contracts assigned for any contract administration function listed in subpart 247.3 to any office listed in DoD 4105.59–H, DoD Directory of Contract Administration Services Components, within 5 working days;

(2) For diversions of petroleum, oil, and lubricant products overseas to new destinations, within 30 days of instruction being confirmed; and

(3) Other contracts—

(i) Telephone—within 5 working days; and

(ii) Teletype or telegraph—consolidated on a monthly basis.

247.371 DD Form 1653, transportation data for solicitations.

(a) The transportation specialist prepares the DD Form 1653 at the request of the contracting officer. The completed form will contain recommendations concerning f.o.b. terms best suited for a particular acquisition, and other suggested transportation provisions for inclusion in the solicitation.

(b) When appropriate, the DD Form 1653 will also include information on combined port handling and transportation charges for inclusion in the solicitation in connection with export shipments.

247.372 DD Form 1654, evaluation of transportation cost factors.

Contracting personnel may use the DD Form 1654 to furnish information to the transportation office for development of cost factors for use by the contracting officer in the evaluation of f.o.b. origin offers.

Subpart 247.5—Ocean Transportation by U.S.-Flag Vessels

247.570 Scope.

This subpart—

(a) Implements the Cargo Preference Act of 1904, 10 U.S.C. 2631, which applies to the ocean transportation of cargo owned by, or destined for use by, the DoD.

(b) Does not specifically implement the Cargo Preference Act of 1954, 46 U.S.C. 1241(b). The 1954 Act is applicable to the DoD, but DFARS coverage is not required because compliance with the 1904 Act historically has resulted in the DoD exceeding the 1954 Act's requirements.

(c) Is an approved class deviation from FAR subpart 47.5 in its entirety (but see 247.571(c)).

247.571 Policy.

(a) DoD contractors shall transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

(1) Those vessels are not available, and notices are given and approvals received in accordance with this subpart;

(2) The Secretary of the Navy determines that the freight charged is excessive or unreasonable; or

(3) The contracting officer finds that the charges to the Government are higher than charges to private persons for the transportation of like goods.

(b) Contracts shall provide for the use of Government-owned vessels when security classifications prohibit the use of other than Government-owned vessels.

(c) The Cargo Preference Act of 1904 does not apply to ocean transportation of—

(1) Products obtained for contributions to foreign assistance programs; or

(2) Products owned by agencies other than the DoD. In these cases, FAR subpart 47.5 applies.

247.572 Procedures.

247.572-1 Ocean transportation incidental to a contract for supplies, services, or construction.

(a) This subsection applies when ocean transportation is not the purpose of the contract.

(b) The contracting officer shall obtain assistance from the cognizant transportation activity (see 247.105), in developing—

(1) The Government estimate for transportation costs, irrespective of whether freight will be paid directly by the Government;

(2) Shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve transportation of supplies by sea.

(c) The contracting officer shall ask each offeror whether it will transport supplies by sea if awarded the contract (see 247.573(a)). Even if the successful offeror responds that it does not anticipate sea transport of supplies, it may discover during contract performance that ocean transportation is required. In that event, the Act will apply to the contract, and it must—

(1) Notify the Government that it now intends to use ocean transportation;

(2) Use U.S.-flag vessels unless certain conditions exist (see 247.571(a)); and

(3) Comply with the other requirements of the clause at 252.247–7023, Transportation of Supplies by Sea.

(d) When the contracting officer is notified that the contractor or subcontractor considers that—

(1) No U.S.-flag vessels are available, the contracting officer shall request confirmation of the nonavailability from the Director, Office of Contracts and Business Management, Military Sealift Command (MSC).

(2) The freight charges to the Government, the contractor or any subcontractor, are higher than charges for transportation of like goods to private persons, the contracting officer may approve any request for a waiver of the requirement to ship on U.S.-flag vessels for a particular shipment.

(i) Prior to granting a waiver, the contracting officer shall request advice, oral or written, from the Commander, MSC.

(ii) In advising the contracting officer whether to grant the waiver, the Commander, MSC, shall consider, as appropriate, evidence from—

(A) Published tariffs;

(B) Industry publications;

(C) The Maritime Administration; and

(D) Any other available sources.

(3) The freight charged by U.S.-flag carriers is considered excessive or otherwise unreasonable, the contracting officer shall forward a report to the Commander, MSC, through the head of the contracting activity, and the Director, Office of Contracts and Business Management, MSC.

(i) The report shall be in determination and finding format, and—

(A) Take into consideration that the 1904 Act is, in part, a subsidy of the U.S.-flag commercial shipping industry that recognizes that lower prices may be available from foreign shippers;

(B) Consider, accordingly, not only excessive profits to the vessel owner, if ascertainable but also excessive costs (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition) resulting from the use of U.S.-flag vessels in extraordinarily inefficient circumstances;

(C) Include, as appropriate—

(*1*) An analysis of whether the cost is excessive, taking into account factors such as the differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(*2*) A comparison of U.S.-flag rates charged on comparable routes;

(*3*) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel for the required transportation in terms of cargo requirements/vessel capacity; the commercial reasonableness of vessel positioning required, etc.); and

(*4*) Any other relevant economic and financial considerations.

(D) Consider that the fact that it would be less expensive to use a foreign-flag vessel is not a sufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(ii) If the Commander, MSC, concurs with the contracting officer, the Commander will forward the report to the Secretary of the Navy, via ASN(RDA)(PP), for a determination as to whether the freight charges are excessive or otherwise unreasonable.

247.572-2 Direct purchase of ocean transportation services.

(a) This subsection applies when ocean transportation is the principal of the contract, including—

(1) Time charters;

(2) Voyage charters;

(3) Contracts of affreightment;

(4) Dedicated contractor contracts of affreightment; and

(5) Ocean bills of lading.

(b) Coordinate these acquisitions, as appropriate, with the MSC in accordance with DoDD 5160.10, Single Manager Assignment for Ocean Transportation.

(c) The Commander, MSC, is authorized to make any determination as to the availability of U.S.-flag vessels, in order to ensure the proper utilization of Government and private U.S. vessels.

(d) All solicitations for ocean transportation services for supplies owned by the military departments shall provide a preference for U.S.-flag vessels as an evaluation factor.

(e) The contracting officer shall not award a contract of the type described in paragraph (a) of this subsection for a foreign-flag vessel unless—

(1) The contracting officer determines that no U.S.-flag vessels are available, and obtains approval of the Commander, MSC; or

(2) The contracting officer determines that the freight charges proposed by U.S.-flag vessels to the Government are higher than charges to private persons for transportation of like goods, and obtains the approval of the Commander; MSC; or

(3) The Secretary of the Navy determines (see paragraph (f) of this subsection) that the freight charges for U.S.-flag vessels are excessive or otherwise unreasonable.

(f) When the contracting officer concludes, based solely on economic considerations, that the charge offered for a U.S.-flag vessel is excessive or otherwise unreasonable, the contracting officer will send a report through the head of the contracting activity to the commander, MSC.

(1) The fact that it would be less expensive to use a foreign-flag vessel is an insufficient basis, on its own, to determine that the freight rate proposed by the U.S.-flag carrier is excessive or otherwise unreasonable. However, such a differential may indicate a need for further review.

(2) The Commander, MSC, will forward the report, if in agreement with the contracting officer, to the Secretary of the Navy for a determination.

(3) The report shall be in determination and finding format; take into consideration the factors in 247.572-1(d)(3); and include, as appropriate—

(i) An analysis of the carrier's cost in accordance with FAR subpart 15.8, or profit in accordance with DFARS subpart 215.9. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(ii) A description of efforts taken pursuant to FAR 15.803(d), to negotiate a reasonable price. For the purpose of FAR 15.803(d), this report is the referral to higher authority; and

(iii) An analysis of whether the cost is excessive (i.e., cost beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration such factors as—

(A) The differential between freight charges by the U.S.-flag carrier and an estimate of what foreign-flag carriers would charge based upon a price analysis;

(B) A comparison of rates charged by other U.S.-flag carriers on comparable routes;

(C) Efficiency of operation regardless of rate differential (i.e., suitability of the vessel capacity/cargo requirements; the commercial reasonableness of the vessel positioning required, etc.); and

(D) Any other relevant economic and financial considerations affecting the Government.

247.573 Contract clause.

Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts except those for direct purchase of ocean transportation services, or those with an anticipated value below the small purchase limitation in FAR 13.000.

8. Part 249 is revised to read as follows:

PART 249—TERMINATION OF CONTRACTS

Sec.

Subpart 249.1—General Principles

249.102 Notice of termination.
249.105 Duties of termination contracting officer after issuance of notice of termination.
249.105-1 Termination status report.
249.108 Settlement of subcontract settlement proposals.
249.108-4 Authorization for subcontract settlements without approval or ratification.
249.109 Settlement agreements.
249.109-7 Settlement by determination.
249.110 Negotiated memorandum.

Subpart 249.5—Contract Termination Clauses

249.501 General.
249.501-70 Special termination costs.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.
249.7001 Congressional notification on significant contract terminations.

Authority: 5 U.S.C. 301. 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 249.1—General Principles

249.102 Notice of termination.

Use Standard Form 30, Amendment of Solicitation/Modification of Contract, to confirm all notices and amendments of notices of termination.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status report.

When the contract administration office receives a termination notice, it will under RCS:DD(I&L)(Q&AR)1411—

(i) Prepare a DD Form 1598, Contract Termination Status Report;

(ii) Send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;

(iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and

(iv) Submit a final report within 30 days after closing the termination case.

249.108 Settlement of subcontract settlement proposals.

249.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) Industrial plant equipment included in the inventory—

(*1*) Is subject to the screening requirements in FAR 45.608.

(*2*) Shall not be disposed of until screening is complete when the cost of that equipment is used in determining the amount of the claim.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

(a)(i) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination—

(A) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(B) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(ii) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not sign a supplementary procurement instrument number to the letter of determination. Send three copies of the SF 30 to the contractor. Request the contractor sign and return the original and one copy.

249.110 Negotiated memorandum.

(a)(1) *Fixed price contracts.* Use of the following format for the termination contracting officer's settlement memorandum for fixed price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to use this format, appropriately modified, for subcontract settlements submitted for review and approval.

Part I—General Information

1. Identification. (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and title of both contractor and Government personnel who participated in the negotiation.

Description of terminated contract.

a. Date of contract and contract number.

b. Type of contract (e.g., fixed price, fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clause (cite FAR/DFARS designation or other special provisions).

3. Termination notice.

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.

c. State whether termination notice was amended, and explain any amendment.

d. State whether contractor stopped work on effective termination date, if not, furnish details.

e. State whether the contractor promptly terminated subcontracts.

f. Statement as to the diversion of common items and return of goods to suppliers, if any.

g. Furnish information as to contract performance and timely deliveries by the contractor.

4. Contractor's settlement proposal.

a. Date and amount. Indicate date and location claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

b. basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain approval in connection with submission on other than inventory basis.

c. Examination of proposal. State type or reviews made and by whom (audit, engineering, legal, or other).

Part II—Summary of Contractor's Claim and Negotiated Settlement

Prepare a summary substantially as follows:

Item claimed	Contractor's proposal	Dollars accepted	Costs questioned	Unresolved items	TCO Negotiated amount
1. Contractors costs as set forth on settlement proposal. Metals, raw material, etc. Total					
2. Profit					
3. Settlement expenses					
4. Total					
5. Settlement with subs					
6. Acceptable furnished product					
7. Gross Total					
8. Disposal and other credits					
9. Net settlement					
10. Partial, progress and advanced payments					
11. Net payments requested					

Part III—Discussion of Settlement

1. Contractor's cost.

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.

c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. Profit. Explain the basis and factors considered in arriving at a fair profit.

3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.

4. Subcontractor's settlements. Include the number of settlements and the net amount of each.

5. Partial payments. Furnish the total amount of partial payments, if any.

6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.

7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.

8. Assignments. List any assignments, giving name and address of assignee.

9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.

11. Government property. State whether all Government property has been accounted for.

12. Special tooling. If involved, furnish comment on disposition.

13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

TABULAR SUMMARY FOR COMPLETE OR PARTIAL TERMINATION

	Amount claimed	Amount allowed
Prime contractors charges (before disposal credits):		
Plus:		
Subcontractor charges (after disposal credits)		
Gross settlement:		
Less:		
Disposal credits—Prime		
Net settlement:		
Less:		
Prior payments credits (this settlement)		
Previous partial settlements		
Other credits or deductions		
Total		
Net payment:		
Total contract price (complete termination):		
CPIT (for partial termination)		
Less:		
Total payments to date		
Net payment from this settlement		
Fund reserved for reservations		
Final contract price (terminated portion for partial termination)		
Reduction in contract price		

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.

15. Include statement that the gross settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

(ii) *Cost-reimbursement contracts.* Use Part I of the format in paragraph (a)(i) of this section and the following Part II for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

Part II—Summary of Settlement

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables I and II. Partial settlements may be summarized on Table II.

2. Comments. Explain tabular summaries.

a. Summary of final settlement (see Table I).

(1) Explain why the auditor's final report was not available for consideration, if applicable.

(2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show number and amounts of settlements with subcontractors.

(12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

Gross settlement		$
Less:		
Disposal credits		$
Net settlement		$
Less:		
Prior payments	$	
Other credits or deductions	$	

Total	$____
Net payment	$____
Total contract estimated cost plus fixed fee	$____
Less:	
Net settlement	$____
Estimated reserve for exclusions	$____
Final contract price (Consisting of $____ for reimbursement of costs and $____ for adjusted fixed fee)	$____
Reduction in contract price (credit)	$____

(13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).

(14) Government property. State whether all Government property has been accounted for.

(15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. Sign and date the memorandum.

(End of memorandum)

TABLE I.—SUMMARY OF SETTLEMENT

Allowed	Amount claimed	Amount
1. Previous reimbursed costs—prime and subs	$____	$____
2. Previous unreimbursed costs	$____	$____
3. Total cost settlement	$____	$____
4. Previous fees paid—prime	$____	$____
5. Previous fees unpaid—prime	$____	$____
6. Total fee settlement	$____	$____
7. Gross settlement	$____	$____
Less: Deductions not reflected in items 1–7		
a. Disposal credits	$____	$____
b. Other charges against contractor arising from contract	$____	$____
8. Net settlement		$____
Less: prior payment credits		$____
9. Net payment		
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):		
Aggregate gross amount of previous settlements		$____
Aggregate net amount of previous partial settlements		$____
Aggregate net payment provided in previous partial settlements		$____
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements		$____

TABLE II.—UNREIMBURSED COSTS SUBMITTED ON SF 1437 *

Costs	Amounts claimed by contractor's proposal	Auditor's Recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools				
5. Other costs				
6. General and administrative expenses				
7. Fee				
8. Settlement expense				
9. Settlement with subs				
10. Total costs (items 1–9)				

*Expand the format to include recommendations of technical personnel as required.

Subpart 249.5—Contract Termination Clauses

249.501 General.

249.501–70 Special termination costs.

(a) The clause at 252.249–7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) Normally, use the clause when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(3) Adequate funds are available to cover the contingent reserved liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; and

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs based on—

(i) The Government's incremental assignment of funds to the contract; or

(ii) The time when certain performance milestones are accomplished by the contractor.

Subpart 249.70—Special Termination Requirements

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement between the Department of Defense Production (Canada) and the U.S. DoD, "Canadian Agreement";

(2) Policies in the Canadian Agreement and part 249; and

(3) The Manual of Procedure on Termination of Contracts, Department of Supply and Services (Canada).

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contracts Settlement Committee of the Department of Supply and Services (Canada) has approved settlements with Canadian subcontractors when the Manual of Procedure on Termination of Contracts, Department of Supply and Services (Canada), requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR subpart 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d)(i) The Canadian Commercial Corporation should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO (usually the DCMAO, Cleveland) for settlement. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

(ii) The TCO shall inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the termination proposal.

249.7001 Congressional notification on significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor.

(b) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are—

(1) Army—OSA, OCLL (SACLL), ASA (I&L)
(2) Navy—Chief of Legislative Affairs (OLA-N)
(3) Air Force—SAF/AQC
(4) Defense Logistics Agency—DLA-PP
(5) Defense Communications Agency—Contract Management Division (Code 260)
(6) Defense Nuclear Agency—Chief, Office of Procurement, OATR
(7) Defense Mapping Agency—DMA/LO
(8) National Security Agency/Central Security Service—Chief, Office of Contracting
(9) Defense Advanced Research Projects Agency—CMO
(10) Defense Intelligence Agency—RSQ
(11) On-Site Inspection Agency—Acquisition Management (ACQ)
(12) Strategic Defense Initiative Organization—Director of Contracts (Code CT)

(c) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has been obtained, treat this information as "For Official Use Only" unless the information is classified.

(d) Include the following in the request for clearance—

(1) Contract number, date, and type of contract;
(2) Name of the company;
(3) Nature of contract or end item;
(4) The reason for the termination;
(5) Contract price of the items terminated;
(6) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;
(7) Statement of anticipated impact on the company and the community;
(8) The area labor category, whether the contractor is a large or small business and any known impact on hard core disadvantaged employment programs;
(9) Total number of subcontractors involved and the impact in this area; and
(10) An unclassified draft of a suggested press release.

(e) To minimize termination costs, liaison offices will act promptly on all requests for clearances and provide a response not later than 2 working days after receipt of the request.

(f) This reporting requirement is assigned RCS:DD(I&L)(AR) 1412.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. The authority for 48 CFR part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

252.208-7000 through 252.208-7003 [Removed]

10. Sections 252.208-7000 through 252.208-7003 are removed.

11. Section 252.208-7004 is redesignated as 252.208-7000 and revised to read as follows:

252.208-7000 Intent to Furnish Precious Metals as Government-Furnished Material

As prescribed in 208.7305(a), use the following clause:

Intent to Furnish Precious Metals as Government-Furnished Material (Feb 1991)

(a) The Government intends to furnish precious metals required in the manufacture

of items to be delivered under the contract if the Contracting Officer determines it to be in the Government's best interest. The use of Government-furnished silver is mandatory when the quantity required is one hundred troy ounces or more. The precious metal(s) will be furnished pursuant to the Government Furnished Property clause of the contract.

(b) The Offeror shall cite the type (silver, gold, platinum, palladium, iridium, rhodium, and ruthenium) and quantity of precious metals required in the performance of this contract (including precious metals required for any first article or production sample), and shall specify the national stock number (NSN) and nomenclature, if known, of the deliverable item requiring precious metals.

Precious Metal *	Quantity	Deliverable item (NSN and nomenclature)
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

* If platinum or palladium, specify whether sponge or granules are required.

(c) Offerors shall submit two prices for each deliverable item which contains precious metals—one based on the Government furnishing precious metals, and one based on the Contractor furnishing precious metals. Award will be made on the basis which is in the best interest of the Government.

(d) The Contractor agrees to insert this clause, including this paragraph (d), in solicitations for subcontracts and purchase orders issued in performance of this contract, unless the Contractor knows that the item being purchased contains no precious metals.

(End of clause)

§ 252.208-7005 and 252.208-7006 [Removed]

12. Sections 252.208-7005 and 252.208-7006 are removed.

13. Section 252.216-7000 is revised to read as follows:

252.216-7000 Economic price adjustment—basic steel, aluminum, brass, bronze, or copper mill products.

As prescribed in 216.203-4-70(a), use the following clause:

Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products (Feb 1991)

(a) Definitions.

As used in this clause, "Established price" means a price which—

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Meets the criteria of FAR 15.804-3.

"Unit price" excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor warrants that the unit price stated for (*Identify the item*) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(4) The Contractor shall certify on each invoice that each unit price stated reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied as required.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancer, without liability to either party, any portion of the contract affectd by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may after that time deliver any items which the Contractor certifies, by notice received by the Contracting Officer within 10 days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

14. Section 252.216-7001 is revised to read as follows:

252.216-7001 Economic price adjustment—nonstandard steel items.

As prescribed in 216.203-4-70(b), use the following clause:

Economic Price Adjustment—Nonstandard Steel Items (FEB 1991)

(a) *Definitions.*

As used in this clause—

"Base labor index" means the average of the labor indices for the 3 months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

"Base steel index" means the Contractor's established price (see Note 6) including all applicable extras of $_____ per _____ (see Note 1) for _____ (see Note 2) on the date set for bid opening (or the date of submission of the offer).

"Current labor index" means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

"Current steel index" means the Contractor's established price (see Note 6) for that item, including all applicable extras in effect _____ days (see Note 3) prior to the first day of the month in which delivery is required.

"Established price" is—

(1) A price which—

(i) Is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(ii) Meets the criteria of FAR 15.804-3; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

"Labor index" means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see Note 4) for any particular month.

"Month" means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that

accounting period shall be used in lieu of "month."

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the "base steel index" definition in paragraph (a) of this clause shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See Note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) of this clause for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index" and the "current labor index."

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index" and the "current steel index."

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

(ii) The adjusted cost of steel (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to _____ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see Note 5)).

(4) The revised contract unit price shall not exceed 10 percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying and certifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) of this clause that are relevant to the computations of the "base labor index" and the "current labor index;" and

(ii) The Contractor's established prices (see Note 6), including all applicable extras for like quantities of the item that are relevant to the computation of "base steel index" and the "current steel index."

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the certified statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see Note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d) of this clause.

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

Notes

1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.

2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.

3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the "labor index" definition.

4 Offeror identify the shop and plant in which the standard steel mill item identified under the "base steel index" definition will be finally fabricated or processed into the contract item.

5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(1), and (e)(2). In paragraph (e)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

6 In negotiated acquisitions of nonstandard steel items, when there is no "established price" or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

15. Section 252.222–7000 is added to read as follows:

252.222–7000 Wage Determination Information.

As prescribed in 222.1006, use the following clause:

Wage Determination Information (FEB 1991)

Less than 60 days (30 days if this work is an unknown, nonrecurring requirement) before issuance of the solicitation, the Contracting Officer requested from the Department of Labor a Service Contract Act wage determination. Upon receipt, the Contracting Officer shall incorporate the wage determination by amendment to this solicitation or by a bilateral modification of the resulting contract.

(End of clause)

Alternate I (Feb 1991)

As prescribed in 222.1006, substitute the following language for the language of the basic clause.

Less than 120 days but more than 60 days (30 days if this work is an unknown, nonrecurring requirement) before the issuance of the solicitation, the Contracting Officer requested from the Department of Labor a Service Contract Act wage determination. Upon receipt, the Contracting Officer shall incorporate the wage determination by amendment of this solicitation subject to the limitations of subsection 22.1012–2 of the Federal Acquisition Regulation.

16. Section 252.222–7002 is redesignated as section 252.222–7001 and revised to read as follows:

252.222–7001 Restrictions on employment of personnel.

As prescribed in 222.7003, use the following clause;

Restrictions on Employment of Personnel (Feb 1991)

(a) The Contractor shall employ, for the purposes of performing that portion of the contract work in the State of (insert appropriate State), individuals who are residents of the State, and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform the contract.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in each subcontract.

(End of clause)

17. Section 252.232–7001 is redesignated as section 252.232–7000 and revised to read as follows:

252.232–7000 Advance payment pool.

As prescribed in 232.412–70(a), use the following clause:

Advance Payment Pool (Feb 1991)

(a) Notwithstanding any other provision of this contract, advance payments will be made for contract performance in accordance with the Determinations, Findings, and Authorization for Advance payment dated _____.

(b) Payments made in accordance with this clause shall be governed by the terms and conditions of the Advance Payment Pool Agreement between the United States of America and (*insert the name of the contractor*). The Agreement is incorporated in the contract by reference.

(End of clause)

18. Section 252.232–7002 is redesignated as section 252.232–7001 and revised to read as follows:

252.232–7001 Disposition of payments.

As prescribed in 232.412–70(b), use the following clause:

Disposition of Payment (Feb 1991)

Payment will be by a dual payee Treasury check made payable to the contractor or the (*insert the name of the disbursing office in the advance payment pool agreement*), and will be forwarded to that disbursing office for appropriate disposition.

(End of clause)

19. Section 252.232–7003 is redesignated as 252.232–7002 and revised to read as follows:

252.232–7002 Progress payments for foreign military sales acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

Progress Payments for Foreign Military Sales Acquisitions (Feb 1991)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for each progress payment rate; and

(b) Submit a supporting schedule showing—

(1) The amount of each request distributed to each country's requirements; and

(2) Total price per contract line item applicable to each separate progress payment rate.

(c) Identify in each progress payment request the contract requirements to which it applies (i.e., FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among contract line items and countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

20. Section 252.232–7004 is redesignated as section 252.232–7003 and revised to read as follows:

252.232–7003 Flexible progress payments.

As prescribed in 232.502–4–70(b), use the following clause:

Flexible Progress Payments (Feb 1991)

(a) This contract is subject to flexible progress payment procedures as set forth in this clause and Defense Federal Acquisition Regulation Supplement (DFARS) 232.502–1–71.

(1) The progress payment rate of this contract is _____ percent. This percentage applies instead of the customary uniform progress payment rate and liquidation rate of the Progress Payments clause.

(2) The progress payment rate of this contract was determined by the DoD Cash Flow Computer Model (*name*) dated _____, using _____ percent as the minimum rate for the Contractor's investment (as a weighted average of costs) in its work in process inventory over the life of the contract.

(b) If actual and projected cash flow data generated during contract performance reveal that the customary flexible progress payment rate will result in a Contractor investment in work in process inventory more than 2 percentage points higher or lower than the minimum rate of Contractor investment specified in paragraph (a)(2) of this clause, the progress payment rate shall be redetermined by using the DoD Cash Flow Computer Model. Unless it contained an error, the version of the DoD Cash Flow Computer Model identified in paragraph (a)(2) of this clause shall be used for any redetermination. The customary flexible progress payment rate shall not be less than the customary uniform progress payment rate that would have applied to this contract absent flexible progress payment procedures, and the progress payment rate shall not be greater than 100 percent.

(c) Notwithstanding paragraph (b) of this clause, if at any time the flexible progress payment rate is determined to be overstated because any factual data submitted by the Contractor in support of the rate computation was not current, accurate, and complete at the time the flexible progress payment rate was established, the progress payment rate shall be reduced to the rate that should have been calculated using the model specified in paragraph (a)(2) of this clause. The Contractor shall pay interest in accordance with paragraph (d) of this clause on all resulting overpayments, computed from the date of the Government's overpayment, to the date of liquidation of the overpayment. Payment of any unliquidated overpayment and interest shall be due 30 days after the date of the first written demand for payment.

(d) Interest shall be simple interest at the rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), which is applicable at the time the Government made the overpayment, and then at the rate applicable for each 6 month period as fixed by the Secretary, until the overpayment is liquidated.

(e) Flexible progress payment terms will be made available to subcontractors in accordance with paragraph (j) of the Progress Payments clause and DFARS 232.502–1–71(b)(4).

(End of clause)

252.232–7005 through 252.232–7007 [Removed]

21. Sections 252.232–7005 through 252.232–7007 are removed.

22–23. Sections 252.235–7000 and 252.235–7001 are redesignated as 252.235–7001 and 252.235–7002 respectively and revised and a new section 252.235–7000 is added to part 252 to read as follows:

252.235–7000 Distribution of final scientific or technical report.

As prescribed in 235.010–70, use the following clause:

Distribution of Final Scientific or Technical Report (Feb 1991)

(a) The Contractor shall submit two copies of the approved final scientific or technical report to: Defense Technical Information Center (DTIC), ATTN: DTIC–FDAC, Cameron Station, Alexandria, VA 22304–6145.

(b) If a SF 298, Report Documentation Page, is required to be submitted with the final scientific or technical report, the Contractor shall provide a copy of the SF 298 with each copy of the report provided to DTIC.

(End of clause)

252.235–7001 Indemnification under 10 U.S.C. 2354—fixed price.

As prescribed in 235.070–3, use the following clause:

Indemnification Under 10 U.S.C. 2354—Fixed Price (Feb 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term "third persons" includes employess of the contractor;

(2) The loss, damage, and lost use of the Contractor's property, but exclusing lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragaph (h) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) The Secretary of the department or designated representative certifies before payment that the amount of the payment is just and reasonable.

(d) The Contractor shall buy and maintain, to the extent available, insurance against unusually hazardous risks in the form, amount, period(s) of time, at the rate(s), and with such insurers, as the Contracting Officer (or, for Navy contacts, the Department) may from time to time require and approve. If the cost of this insurance is higher than the cost of the insurance the Contractor had as of the date of the contract, the Government shall reimburse the Contractor for the difference in cost, as long as it is properly allocable to this contract and is not included in the contract price. The Government shall not be liable for claims, loss, or damage if insurance was available and is either required or approved under this paragraph.

(e) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(f) *Notice.*

The Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the Contractor receives or has received.

(g) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions and execute any authorizations required.

(h) *Flowdown.*

The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(i) The Government may discharge its obligations under paragraph (h) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(j) The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(End of clause)

252.235-7002 Indemnification under 10 U.S.C. 2354—cost reimbursement.

As prescribed in 235.070-3, use the following clause:

Indemnification Under 10 U.S.C. 2354—Cost Reimbursement (Feb 1991)

(a) This clause provides for indemnification under 10 U.S.C. 2354 if the Contractor meets all the terms and conditions of this clause.

(b) Claims, losses, and damages covered—

(1) Claims by third persons for death, bodily injury, sickness, or disease, or the loss, damage, or lost use of property. Claims include those for reasonable expenses of litigation or settlement. The term "third persons" includes employees of the Contractor;

(2) The loss, damage, and lost use of the Contractor's property, but excluding lost profit; and

(3) Loss, damage, or lost use of the Government's property.

(c) The claim, loss, or damage—

(1) Must arise from the direct performance of this contract;

(2) Must not be compensated by insurance or other means, or be within deductible amounts of the Contractor's insurance;

(3) Must result from an unusually hazardous risk as specifically defined in the contract;

(4) Must not result from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, managers, superintendents, or other equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location where this contract is being performed; or

(iii) A separate and complete major industrial operation connected with the performance of this contract;

(5) Must not be a liability assumed under any contract or agreement (except for subcontracts covered by paragraph (i) of this clause), unless the Contracting Officer (or in contracts with the Department of the Navy, the Department) specifically approved the assumption of liability; and

(6) The Secretary of the department or designated representative certifies before payment that the amount of the payment is just and reasonable.

(d) A reduction of the insurance coverage maintained by the Contractor on the date of the execution of this contract shall not increase the Government's liability under this clause unless the Contracting Officer consents, and the contract price is equitably adjusted, if appropriate, to reflect the Contractor's consideration for the Government's assumption of increased liability.

(e) *Notice.*

The "Insurance—Liability to Third Persons" clause of this contract applies also to claims under this clause. In addition, the Contractor shall—

(1) Promptly notify the Contracting Officer of any occurrence, action, or claim that might trigger the Government's liability under this clause;

(2) Furnish the proof or evidence of any claim, loss, or damage in the form and manner that the Government requires; and

(3) Immediately provide copies of all pertinent papers that the contractor receives or has received.

(f) The Government may direct, participate in, and supervise the settlement or defense of the claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required.

(g) The "Limitation of Cost" clause of this contract does not apply to the Government's obligations under this clause. The obligations under this clause are excepted from the release required by the "Allowable Cost, Fee, and Payment" clause of this contract.

(h) Under this clause, a claim, loss, or damage arises from the direct performance of this contract if the cause of the claim, loss, or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(i) *Flowdown.*

The Government shall indemnify the Contractor if the Contractor has an obligation to indemnify a subcontractor under any subcontract at any tier under this contract for the unusually hazardous risk identified in this contract only if—

(1) The Contracting Officer gave prior written approval for the Contractor to provide in a subcontract for the Contractor to indemnify the subcontractor for unusually hazardous risks defined in this contract;

(2) The Contracting Officer approved those indemnification provisions;

(3) The subcontract indemnification provisions entitle the Contractor, or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims; and

(4) The subcontract provides the same rights and duties, the same provisions for notice, furnishing of paper and the like, between the Contractor and the subcontractor, as exist between the Government and the Contractor under this clause.

(j) The Government may discharge its obligations under paragraph (i) of this clause by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(k) The rights and obligations of the parties under this clause shall survive the

termination, expiration, or completion of this contract.

(End of clause)

24. Section 252.235–7003 is revised to read as follows:

252.235–7003 Animal welfare.

As prescribed in 235.071(a), use the following clause:

Animal Welfare (FEB 1991)

(a) The Contractor shall give the Contracting Officer evidence that the Contractor registered with the Secretary of Agriculture of the United States in accordance with 7 U.S.C. 2316 and 9 CFR 2.25–2.28 before undertaking performance of any contract involving research on live vertebrate animals.

(b) The Contractor shall acquire vertebrate animals used in research from a dealer licensed by the Secretary of Agriculture under 7 U.S.C. 2316 and 9 CFR 2.1–2.11, or from a source that is exempt from licensing under those sections.

(c) The Contractor use and care of any live animals used or intended for use in the performance of this contract shall comply with—

(1) The "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions";

(2) The "Guide for the Care and Use of Laboratory Animals," prepared by the Institute of Laboratory Animal Resources; and

(3) The pertinent laws and regulations of the United States Department of Agriculture (see 7 U.S.C. 2131 *et seq.* and 9 CFR chapter A, parts 1–4). In case of conflict among the standards, the most stringent standard shall be used.

(d) *Sanctions.*

(1) The Contracting Officer may immediately suspend, in whole or in part, work and further payments under this contract if the Contracting Officer, in consultation with the Office for Protection from Research Risks (OPRR), National Institutes of Health (NIH), determines that the Contractor is not in compliance with the requirements and/or standards stated in paragraphs (a) through (c) of this clause.

(i) Notice may be by telephone and confirmed in writing.

(ii) The Contracting Officer may in its written notice of suspension designate a period of time for the Contractor to correct its noncompliance.

(iii) The suspension will stay in effect until the Contractor complies with the requirements.

(2) The Contracting Officer, in consultation with the OPRR/NIH may terminate the contract, in whole or in part, if the Contractor fails to complete the corrective action within the time specified in the Contracting Officer's written notice.

(3) The Contractor's failure to comply within the designated time frame may also cause the removal of its name from the list of those contractors with approved Public Health Service Welfare Assurances.

(e) The Contractor may request registration of its facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, for the region where its research facility is located. Contact the Senior Staff Officer, Animal Care Staff, USDA/PHIS, Federal Center Building, Hyattsville, MD 20782, for the location of the appropriate APHIS regional office, as well as information concerning this program.

(End of clause)

25. Section 252.235–7004 is revised to read as follows:

252.235–7004 Frequency authorization.

As prescribed in 235.071(b), use the following clause:

Frequency Authorization (Feb 1991)

(a) The Contractor or subcontractor shall obtain authorization of radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contracting Officer shall furnish procedures to follow in getting radio frequency authorization.

(d) The Contractor or subcontractor shall use DD Form 1494, Application for Frequency Allocation, when seeking a frequency authorization.

(End of clause)

26. Section 252.235–7005 is revised to read as follows:

252.235–7005 Option to Extend the Term of the Contract.

As prescribed in 235.015–71(i)(2), use the following clause:

Option To Extend the Term of the Contract (FEB 1991)

If the Contractor's proposal covers an additional period(s) which could be treated as an optional period(s), the Contracting Officer may—

(a) Add the additional period(s) to the contract as an option(s); and

(b) Exercise such option(s) by written notice of exercise at any time during the performance period or any extensions thereof.

(End of clause)

27. Sections 252.235–7006 through 252.235–7010 are added to part 252 to read as follows:

252.235–7006 Contractor-Acquired Property.

As prescribed in 235.015–71(i)(2), use the following clause:

Contractor-Acquired Property (FEB 1991)

(a) Definition.

"Property," as used in this clause, means all nonexpendable tangible personal property (except material)—

(1) Described in FAR 45.101, including automatic data processing equipment as defined in FAR 31.001, and facilities as defined in FAR 45.301;

(2) Which is acquired with funds provided under this contract for the conduct of research;

(3) Which the Contractor has specifically identified in its proposal; and

(4) Which the Contracting Officer has authorized the Contractor to acquire.

(b) The Contracting Officer may accept the identification and description in the Contractor's proposal of property to be Contractor-acquired property as advance notification required by subparagraphs (a) and (b) of the clause of this contract entitled "Subcontracts Under Cost-Reimbursement and Letter contracts."

(c) Except for those items specifically identified in the contract as required by Block 27a of the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form), award of this contract constitutes the Contracting Officer's written consent to acquire property in the Contractor's proposal.

(d) The Contracting Officer will approve or disapprove subcontracts to acquire the items listed in Block 27a of the DD Form 2222 after the award of any contract resulting from this solicitation.

(End of clause)

252.235–7007 Title to Contractor-Acquired Property.

As prescribed in 235.015–71(i)(2), use the following clause:

Title to Contractor-Acquired Property (FEB 1991)

(a) Definition.

"Property," as used in this clause, has the meaning given in the "Contractor-Acquired Property" clause of this contract.

(b) Title shall vest in the Contractor without further obligation when the property—

(1) Has an acquisition cost of $1,000 or more;

(2) Was specfically identified in the Contractor's proposal; and

(3) Is property other than that property for which a determination of title is deferred. Property for which the determination of title is deferred shall be identified in Block 27b of the DD Form 2222, Research Contract (SFRC)/Modification, Short Form.

(c) Title in all property which—

(1) Has an acquisition cost of $1,000 or more; and

(2) Was not specifically identified in the Contractor's proposal; or

(3) Is property for which a determination of title is deferred, vests—

(i) In the Government under FAR 35.014;

(ii) In the Contractor, or

(iii) In the Contractor, subject to the right of the Government to direct transfer of the title back to the Government or third parties. The Government may exercise this right at any time up to and including the twelfth month after completion or termination of the contract. The Government at any time may remove an item of property from this category, give up the right to direct transfer of

the title back to the Government or third parties, and transfer title to the Contractor.

(d) Transfer of title back to the Government or third parties shall not be the basis for any claim by the Contractor. The Government Property (Cost-Reimbursement, Time and Material, or Labor Hour Contracts) clause and its Alternate I of this contract apply to any changes in property.

(e) Property acquired with funds made available under this contract shall be considered Government property subject to the Government Property clause until title to such property vests in the Contractor without right of the Government to direct transfer of the title back to the Government or third parties.

(f) Within 45 days following the end of the calendar year or the Contractor's fiscal year, the Contractor shall furnish the Contracting Officer a list of all property with an acquisition cost of $1,000 or more which the Contractor acquired under this contract during that year and to which title has not vested in the Contractor.

(End of clause)

252.235-7008 Advance Payments.

As prescribed in 235.015-71(i)(2), use the following clause:

Advance Payments (FEB 1991)

The advance payment pool agreement between the Contractor and one or more military departments which is in effect as of the date of, and applies to, this contract shall govern advance payments made under this contract. If such an agreement is not in effect as of the date of this contract, the "Allowable Cost and Payment" clause of this contract shall govern payments to the Contractor.

(End of clause)

252.235-7009 Inspection and Acceptance.

As prescribed in 235.015-71(i)(2), use the following clause:

Inspection and Acceptance (FEB 1991)

The Scientific Program Officer designated in Block 11 on the DD Form 2222 (Research Contract (SFRC)/Modification, Short Form) of this contract shall conduct inspection and acceptance of the final delivery. The Scientific Program Officer shall have at least 30 days after contractual delivery for acceptance.

(End of clause)

252.235-7010 Restriction on Printing.

As prescribed in 235.015-71(i)(2), use the following clause:

Restriction on Printing (FEB 1991)

The Contractor is authorized to reproduce reports, data, or other written materials, if required, provided the material produced does not exceed 5,000 production units of any page, and items consisting of multiple pages do not exceed 25,000 production units in the aggregate. The Contractor shall obtain the express prior written authorization of the Contracting Officer to reproduce material in excess of these quantities.

(End of clause)

252.236-7000 [Removed]

28. Section 252.236-7000 is removed.

29. Section 252.236-7001 is redesignated as 252.236-7000 and revised to read as follows:

252.236-7000 Modification Proposals—Price Breakdown.

As prescribed in 236.570(a), use the following clause:

Modification Proposals—Price Breakdown (Feb 1991)

(a) The Contractor shall furnish a price breakdown, itemized as required by the Contracting Officer, with any proposal for a contract modification.

(b) The price breakdown—

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for—

(i) Material;

(ii) Labor;

(iii) Equipment;

(iv) Subcontracts; and

(v) Overhead; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

(c) The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

(d) The Contractor's proposal shall include a justification for any time extension proposed.

(End of clause)

30. Section 252.236-7002 is redesignated as 252.236-7001 and revised to read as follows:

252.236-7001 Contract Drawings, Maps, and Specifications.

As prescribed in 236.570(a), use the following clause:

Contract Drawings, Maps, and Specifications (Feb 1991)

(a) The Government—

(1) Will provide the Contractor, without charge,_____sets (five unless otherwise specified) or large-scale contract drawings and specifications except publications incorporated into the technical provisions by reference;

(2) Will furnish additional sets on request, for the cost of reproduction; and

(3) May, at its option, furnish the Contractor one set of reproducibles, or half-size drawings, in lieu of the drawings in paragraph (a)(1) of this clause.

(b) The Contractor shall—

(1) Check all drawings furnished immediately upon receipt;

(2) Compare all drawings and verify the figures before laying out the work;

(3) Promptly notify the Contracting Officer of any discrepancies; and

(4) Be responsible for any errors which might have been avoided by complying with this paragraph (b).

(c) Large scale drawings shall, in general, govern small scale drawings. Figures marked on drawings shall, in general, be followed in preference to scale measurements.

(d) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or misdescribed details of the work, but shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(e) The work shall conform to the specifications and the contract drawings identified on the following index of drawings:

Title File and Drawing No.

(End of clause)

31. Section 252.236-7006 is redesignated as 252.236-7002 and revised to read as follows:

252.236-7002 Obstruction of Navigable Waterways.

As prescribed in 236.570(b)(1), use the following clause:

Obstruction of Navigable Waterways (Feb 1991)

(a) The Contractor shall—

(1) Promptly recover and remove any material, plant, machinery, or appliance which the contractor loses, dumps, throws overboard, sinks or misplaces, and which, in the opinion of the Contracting Officer, may be dangerous to or obstruct navigation;

(2) Give immediate notice, with description and locations of any such obstructions, to the Contracting Officer; and

(3) When required by the Contracting Officer, mark or buoy such obstructions until the same are removed.

(b) The Contracting Officer may—

(1) Remove the obstructions should the Contractor refuse, neglect, or delay compliance with paragraph (a) of this clause; and

(2) Deduct the cost of removal from any monies due or to become due to the Contractor; or

(3) Recover the cost of removal under the Contractor's bond.

(c) The Contractor's liability for the removal of a vessel wrecked or sunk without fault or negligence is limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 410 *et.seq.*).

(End of clause)

252.236-7004 and 252.236-7005 [Removed]

32. Sections 252.236-7004 and 252.236-7005 are removed.

252.236-7008 [Removed]

33. Section 252.236-7008 is removed.

34. Section 252.236-7009(a) is redesignated as 252.236-7003 and revised to read as follows:

252.236-7003 Payment for Mobilization and Preparatory Work.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Preparatory Work (Feb 1991)

(a) The Government will make payment to the Contractor under the procedures in this clause for mobilization and preparatory work under item no._____.

(b) Payments will be made for actual payments by the Contractor on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of this contract, as follows—

(1) For construction plant and equipment exceeding $25,000 in value per unit (as appraised by the Contracting Officer at the work site) acquired for the execution of the work;

(2) Transportation of all plant and equipment to the site;

(3) Material purchased for the prosecution of the contract, but not to be incorporated in the work;

(4) Construction of access roads or railroads, camps, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities, and construction yards;

(5) Personal services; and

(6) Hire of plant.

(c) Requests for payment must include—

(1) A certified account of the Contractor's actual expenditures;

(2) Supporting documentation, including receipted bills or certified copies of payrolls and freight bills; and

(3) A Contractor's certificate—

(i) Showing that it has acquired the construction plant, equipment, and material free from all encumbrances;

(ii) Agreeing that the construction plant, equipment, and material will not be removed from the site; and

(iii) Agreeing that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work, without the written permission of the Contracting Officer.

(d) Upon receiving a request for payment, the Government will make payment, less any prescribed retained percentage, if—

(1) The Contracting Officer finds the—

(i) Construction plant, material, equipment, and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract; and

(ii) Preparatory work has been done with proper economy and efficiency.

(2) Payments for construction plant, equipment, material, and structures and facilities prepared or erected for prosecution of the contract work do not exceed—

(i) The Contractor's cost for the work performed less the estimated value upon completion of the contract; and

(ii) 100 percent of the cost to the contractor of any items having no appreciable salvage value; and

(iii) 75 percent of the cost to the contractor of items which do have an appreciable salvage value.

(e)(1) Payments will continue to be made for item no. _____, and all payments will be deducted from the contract price for this item, until the total deductions reduce this item to zero, after which no further payments will be made under this item.

(2) If the total of payments so made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract.

(3) The retained percentage will be paid in accordance with the Payments to Contractor clause of this contract.

(f) The Contracting Officer shall determine the value and suitability of the construction plant, equipment, materials, structures and facilities. The Contracting Officer's determinations are not subject to appeal.

(End of clause)

35. Section 252.236–7009(b) is redesignated as 252.236–7004 and revised to read as follows:

252.236-7004 Payment for mobilization and demobilization.

As prescribed in 236.570(b)(2), use the following clause:

Payment for Mobilization and Demobilization (Feb 1991)

(a) The Government will pay all costs for the mobilization and demobilization of all of the Contractor's plant and equipment at the contract lump sum price for this item.

(1) _____ percent of the lump sum price upon completion of the contractor's mobilization at the work site.

(2) The remaining _____ percent upon completion of demobilization.

(b) The Contracting Officer may require the Contractor to furnish cost data to justify this portion of the bid if the Contracting Officer believes that the percentages in paragraphs (a) (1) and (2) of this clause do not bear a reasonable relation to the cost of the work in this contract.

(1) Failure to justify such price to the satisfaction of the Contracting Officer will result in payment, as determined by the Contracting Officer, of—

(i) Actual mobilization costs at completion mobilization;

(ii) Actual demobilization costs at completion of demobilization; and

(iii) The remainder of this item in the final payment under this contract.

(2) The Contracting Officer's determination of the actual costs in paragraph (b)(1) is not subject to appeal.

(End of clause)

252.236-7009 [Removed]

35a. The section heading of 252.236–7009 is removed.

36. Section 252.236–7011 is redesignated as 252.236–7005 and revised to read as follows:

252.236-7009 Airfield safety precautions.

As prescribed in 236.570(b)(3), use the following clause. At some airfields, the width of the primary surface is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

Airfield Safety Precautions (Feb 1991)

(a) *Definitions.*

As used in this clause—

(1) "Landing areas" means—

(i) The primary surfaces, comprising the surface of the runway, runway shoulders, and lateral safety zones. The length of each primary surface is the same as the runway length. The width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline);

(ii) The "clear zone" beyond the ends of each runway, i.e., the extension of the primary surface for a distance of 1,000 feet beyond each end of each runway;

(iii) All taxiways, plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, e.g., a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(IV) All aircraft parking aprons, plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) "Safety precaution areas" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance, or the transitional surface.

(i) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plan, both flaring symmetrically about the runway centerline exended.

(A) The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway. It continues upward at a slope of 50:1 (1 foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation. At that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plan (glide angle) and ending there.

(B) The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone. It then flares uniformly, reaching the maximum width of 16,000 feet at the end.

(ii) The "approach-department clearance zone" is the ground area under the approach-departure clearance surface.

(iii) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes.

(A) The inclined plan in each case begins at the edge of the surface.

(B) The slope of the incline plane is 7:1 (1 foot vertically for each 7 feet horizontally). It continues to the point of intersection with the—

(*1*) Inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation); or

(*2*) Outer horizontal surface (which is the horizontal plan 500 feet above the established airfield elevation), whichever is applicable.

(iv) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone, and approach-departure clearance zone.)

(b) *General.*

(1) The Contractor shall comply with the requirements of this clause while—

(i) Operating all ground equipment (mobile or stationary);

(ii) placing all materials; and

(iii) Performing all work, upon and around all airfields.

(2) The requirements of this clause are in addition to any other safety requirements of this contract.

(c) The Contractor shall—

(1) Report to the Contracting Officer before initiating any work;

(2) Notify the Contracting Officer of proposed changes to locations and operations;

(3) Not permit either its equipment or personnel to use any runway for purposes other than aircraft operation without permission of the Contracting Officer, unless the runway is—

(i) Closed by order of the Contracting Officer, and

(ii) Marked as provided in paragraph (d)(2) of this clause;

(4) Keep all paved surfaces, such as runway, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft;

(5) Operate mobile equipment according to the safety provisions of this clause, while actually performing work on the airfield. At all other time, the Contractor shall remove all mobile equipment to locations—

(i) Approved by the Contracting Officer.

(ii) At a distance of at least 750 feet from the runway centerline, plus any additional distance; and

(iii) Necessary to ensure compliance with the other provisions of this clause; and

(6) Not open a trench unless materials is on hand and ready for placing in the trench. As soon as practicable after material has been placed and work approved, the Contractor shall backfill and compact trenches as required by the contract. Meanwhile, all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(d) *Landing areas.*

The Contractor shall—

(1) Place nothing upon the landing areas without the authorization of the Contracting Officer,

(2) Outline those landing areas hazardous to aircraft, using (unless otherwise authorized by the Contracting Officer) red flags, by day, and electric, battery-operated low-intensity red flasher lights by night;

(3) Obtain, at an airfield where flying is controlled, additional permission from the control tower operator every time before entering any landing area, unless the landing area is marked as hazardous in accordance with paragraph (d)(2) of this clause;

(4) Identify all vehicles it operates in landing areas by means of a flag on a staff attached to, and flying above, the vehicle. The flag shall be 3 of feet square, and consist of a checkered pattern of international orange and white squares of 1 foot on each side (except that the flag may vary up to 10 percent from each of these dimensions);

(5) Mark all other equipment and materials in the landing areas, using the same marking devices as in paragraph (d)(2) of this clause; and

(6) Perform work so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projection shoulders that might damage and airplane tire.

(e) *Safety percaution areas.*

The Contractor shall—

(1) Place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Mark all equipment and materials in safety precaution, areas, using (unless otherwise authorized by the Contracting Officer) red flag by day, and electric, battery-operated, low-intensity red flasher lights by night; and

(3) Provide all objects placed in safety precaution areas with a red light or red lantern at night, if the objects project above the approach-departure clearance surface or above the transitional surface.

(End of clause)

252.236-7010 [Removed]

37. Section 252.236-7010 is removed.

252.236-7012 through 252.236-7017 [Removed]

38. Sections 252.236-7012 through 252.236.7017 are removed.

39. Section 252.236-7081 is redesignated as 252.236-7006 and revised to read as follows:

252.236-7006 Cost Limitation.

As prescribed in 236.570(b)(4), use the following provision:

Cost Limitation (Feb 1991)

(a) Certain items in this solicitation are subject to statutory cost limitations. The limitations are stated in the Schedule.

(b) An offer which does not contain separate bid prices for the items identified in the Schedule are subject to a cost limitation may be considered nonresponsive.

(c) By signing its offer, the Offeror certifies that each price bid on items identified as subject to a cost limitation includes an appropriate apportionment of all costs, direct and indirect, overhead, and profit.

(d) Offers may be rejected which—

(1) Have been materially unbalanced for the purpose of bringing items within cost limitations; or

(2) Exceed the cost limitations, unless the limitations have been waived by the Government prior to award.

(End of provision)

40. Section 252.236-7082 is redesignated as 252.236-7007 and revised to read as follows:

252.236-7007 Additive or Deductive Items.

As prescribed in 236.570(b)(5), use the following provision:

Additive or Deductive Items (Feb 1991)

(a) The low offeror and the items to be awarded shall be determined as follows—

(1) Prior to the opening of bids, the Government will determine the amount of funds available for the project.

(2) The low offeror shall be the Offeror that—

(i) Is otherwise eligible for award; and

(ii) Offers the lowest aggregate amount for the first or base bid item, plus or minus (in the order stated in the list of priorities in the bid schedule) those additive or deductive items that provide the most features within the funds determined available.

(3) The Contracting Officer shall evaluate all bids on the basis of the same additive or deductive items.

(i) If adding another item from the bid schedule list of priorities would make the award exceed the available funds for all offerors, the Contracting Officer will skip that item and go to the next item from the bid schedule of priorities; and

(ii) Add that next item if an award may be made that includes that item and is within the available funds.

(b) The Contracting Officer will use the list of priorities in the bid schedule only to determine the low offeror. After determining the low offeror, an award may be made on any combination of items if—

(1) It is in the best interest of the Government;

(2) Funds are available at the time of award; and

(3) The low offeror's price for the combination is less than the price offered by any other responsive, responsible offeror.

(c) *Example.*

The amount available is $100,000. Offeror A's base bid and four additives (in the order stated in the list of priorities in the bid Schedule) are $85,000, $10,000, $8,000, $6,000, and $4,000. Offeror B's base bid and four additives are $80,000, $16,000 $9,000, $7,000, and $4,000. Offeror A is the low offeror. The aggregate amount of offeror A's bid for purposes of award would be $99,000, which includes a base bid plus the first and fourth additives. The second and third additive were skipped because each of them would cause the aggregate bid to exceed $100,000.

(End of provision)

41. Section 252.236-7018 is redesignated as 252.236-7008 and revised to read as follows:

252.236-7008 Option for Supervision and Inspection Services.

As prescribed in 236.609-70, use the following clause:

Option for Supervision and Inspection Services (Feb 1991)

(a) The Government may—

(1) At its option, direct the Contractor to perform any part or all of the supervision and inspection services for the construction contract as provided under Appendix A of this contract; and

(2) Exercise its option, by written order, at any time prior to 6 months after satisfactory

completion and acceptance of the work under this contract.

(b) Upon receipt of the Contracting Officer's written order, the Contractor shall proceed with the supervision and inspection services.

(End of clause)

252.236-7019 [Removed]

42. Section 252.236-7019 is removed.

43. Section 252.247-7000 is revised to read as follows:

252.247-7000 Hardship Conditions.

As prescribed in 247-270-7(a), use the following clause:

Hardship Conditions (Feb 1991)

(a) The Contractor shall promptly notify the Contracting Officer of unusual conditions associated with loading or unloading a particular cargo, which will work a hardship on the Contractor if loaded or unloaded at the basic commodity rates.

(b) Unusual conditions include, but are not limited to, inaccessibility of place of stowage to the ship's cargo gear, side port operations, and small quantities of cargo in any one hatch.

(c) The Contracting Officer shall investigate the conditions promptly after receiving the notice. If the Contracting Officer finds that the conditions are unusual and do materially affect the cost of loading or unloading, the Contracting Officer will authorize payment at the extra-labor rates set forth in the schedule of rates of this contract.

(End of clause)

252.247-7001 [Removal]

44. Section 252.247-7001 is removed.

45. Section 252.247-7002 is redesignated as 252.247-7001 and revised to read as follows:

252.247-7001 Price Adjustment.

As prescribed in 274.270-7(b), use the following clause:

Price Adjustment (Feb 1991)

(a) The Contractor warrants that the prices set forth in this contract—

(1) Are based upon the wage rates, allowances, and conditions set forth in the collective bargaining agreements between the Contractor and its employees, in effect as of (*insert date*), and which are generally applicable to the ports where work under this contract is performed;

(2) Apply to operations by the Contractor on non-Government work as well as under this contract; and

(3) Do not include any allowance for cost increases that may—

(i) Become effective under the terms of the collective bargaining agreements after the date in paragraph (a)(1) of this clause; or

(ii) Result from modification of the collective bargaining agreements after the date in paragraph (a)(1) of this clause.

(b) The Contractor shall notify the Contracting Officer within 60 days of receipt of notice of any changes (increase or decrease) in the wage rates, allowances, fringe benefits, and conditions that apply to its direct labor employees, if the changes—

(1) Are pursuant to the provisions of the collective bargaining agreements, or

(2) Are a result of effective modifications to the agreements; and

(3) Would change the Contractor's costs to perform this contract.

(c) The Contractor shall include in its notification—

(1) A proposal for an adjustment in the contract commodity, activity, or man-hour prices; and

(2) Data, in such form as the Contracting Officer may require, explaining the—

(i) Causes;

(ii) Effective date; and

(iii) Amount of the increase or decrease in the Contractor's proposal for the adjustment.

(d) Promptly upon receipt of any notice and data described in paragraph (c), the Contractor and the Contracting Officer shall negotiate an adjustment in the existing contract commodity, activity, or man-hour prices. However, no upward adjustment of the existing commodity, activity, or man-hour prices will be allowed in excess of _____ percent per year, except as provided in the Changes clause of this contract.

(1) Changes in the contract prices shall reflect, in addition to the direct and variable indirect labor costs, the associated changes in the costs for social security, unemployment compensation, taxes, and workman's compensation insurance.

(2) There will be no adjustment to increase the dollar amount allowances of the Contractor's profit.

(3) The agreed upon adjustment, its effective date, and the revised commodity, activity, or man-hour prices for services set forth in the schedule of rates, shall be incorporated in the contract by supplemental agreement.

(e) There will be no adjustment for any changes in the quantities of labor that the Contractor contemplated for each specific commodity, except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within 5 days after award, the accounting data and computations the Contractor used to determine its estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(f) Failure of the parties to agree to an adjustment under this clause will be deemed to be a dispute concerning a question of fact within the meaning of the Disputes clause of this contract. The Contractor shall continue performance pending agreement on, or determination of, any such adjustment and its effective date.

(g) The Contractor shall include with the final invoice submitted under this contract a certification that the Contractor has not experienced a decrease in rates of pay for labor, or that the Contractor has given notice of all such decreases in compliance with paragraph (b) of this clause.

(End of clause)

46. Section 252.247-7003 is redesignated as 252.247-7002 and revised to read as follows:

252.247-7002 Revision of Prices.

As prescribed in 247.270-7(c), use the following clause:

Revision of Prices (FEB 1991)

(a) *Definition.*

"Wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which—

(i) Substantially affects the cost of performing this contract;

(ii) Is generally applicable to the port where work under this contract is performed; and

(iii) Applies to operations by the Contractor on non-Government work as well as to work under this contract.

(b) *General.*

The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements, and on other conditions in effect on the date of this contract. The Contracting Officer and the Contractor may agree to increase or decrease such prices in accordance with this clause.

(c) *Demand for negotiation.*

(1) At any time, subject to the limitations specified in this clause, either the Contracting Officer or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract.

(2) No such demand shall be made before 90 days after the date of this contract, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. However, this limitation does not apply to a wage adjustment during the 90 day period.

(3) Each demand shall specify a date (the same as or subsequent to the date of the delivery of the demand) as to when the revised prices shall be effective. The date is the effective date of the price revision.

(i) If the Contractor makes a demand under this clause, the demand shall briefly state the basis of the demand and include the statements and data referred to in paragraph (d) of this clause.

(ii) If the demand is made by the Contracting Officer, the Contractor shall furnish the statements and data within 30 days of the delivery of the demand.

(d) *Submission of data.*

At the times specified in paragraph (c)(3) (i) and (ii) of this clause, the Contractor shall submit—

(1) A new estimate and breakdown of the unit cost and the proposed prices for the services the Contractor will perform under this contract after the effective date of the price revision, itemized to be consistent with the original negotiations of the contract;

(2) An explanation of the difference between the original (or last proceding) estimate and the new estimate;

(3) Such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of

assistance in determining the accuracy and reliability of the new estimate;

(4) A statment of the actual costs of performance under this contract to the extent that they are available at the time of the negotiation of the revision of prices under this clause; and

(5) Any other relevant data usually furnished in the case of negotiations of prices under a new contract. The Government may examine and audit the Contractor's accounts, records, and books as the Contracting Officer considers necessary.

(e) *Negotiations.*

(1) Upon the filing of the statements and data required by paragraph (d) of this clause, the Contractor and the Contracting Officer shall negotiate promptly in good faith to agree upon prices for services the Contractor will perform on and after the effective date of the price revision.

(2) If the prices in this contract were established by competitive negotiation, they shall not be revised upward unless justified by changes in conditions occurring after the contract was awarded.

(3) The agreement reached after each negotiation will be incorporated into the contract by supplemental agreement.

(f) *Disagreements.*

If, within 30 days after the date on which statements and data are required pursuant to paragraph (c) of this clause, the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be resolved in accordance with the Disputes clause of this contract. The prices fixed by the Contracting Officer will remain in effect for the balance of the contract, and the Contractor shall continue performance.

(g) *Retroactive changes in wages or working conditions.*

(1) In the event of a retroactive wage adjustment, the Contractor or the Contracting Officer may request an equitable adjustment in the prices in this contract.

(2) The Contractor shall request a price adjustment within 30 days of any retroactive wage adjustment. The Contractor shall support its request with—

(i) An estimate of the changes in cost resulting from the retroactive wage adjustment;

(ii) Complete information upon which the estimate is based; and

(iii) A certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

(3) Subject to the limitation in paragraph (g)(2) as to the time of making a request, completion or termination of this contract shall not affect the Contractor's right under paragraph (g).

(4) In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, the disagreement will be resolved in accordance with the Disputes clause of this contract.

(5) The Contractor shall notify the Contracting Officer in writing of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. The notice shall be given within 20 days after the request, or if the request occurs before contract execution, at the time of execution.

(End of clause)

47. Section 252.247–7004 is redesignated as 252.247–7003 and revised to read as follows:

252.247–7003 Changes.

As prescribed in 247.270–7(d), use the following clause:

Changes (Feb 1991)

(a) The Contracting Officer may, at any time by written order, and without notice to the sureties, make changes within the general scope of this contract.

(b) If any such change causes an increase or decrease in the cost of the performance of any part of the work under this contract, the Contracting Officer and the Contractor shall negotiate an equitable adjustment in the contract price or the schedule of rates.

(c) The Contractor must claim any adjustment under this clause within 30 days of receipt of the notification of change. The Contracting Officer may decide to receive and act on any such claim at any time before final payment under this contract.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

48. Section 252.247–7005 is redesignated as 252.247–7004 and revised to read as follows:

252.247–7004 Termination.

As prescribed in 247.270–7(e), use the following clause:

Termination (Feb 1991)

(a) Either the Contracting Officer or the Contractor may terminate this contract at any time upon 60 days (or such other number of days provided in the Schedule) written notice to the other. Termination under this clause does not affect any obligation or liability that may have accrued before the termination.

(b) Upon termination of this contract under either paragraph (a) or the Default clause of this contract, the Government shall pay the Contractor any amount due for services performed under this contract to the date of termination.

(c) In the event of partial termination, payment for services furnished under the portion of the contract not terminated shall be in accordance with the terms of this contract.

(d) Any payment under this clause shall be without prejudice to any Government claim against the Contractor. The Government has the right to offset any such claims against any such payment.

(End of clause)

49. Section 252.247–7006 is redesignated as 252.247–7005 and revised to read as follows:

252.247–7005 Indefinite Quantities—Fixed Charges.

As prescribed in 247.270–7(f), use the following clause:

Indefinite Quantities—Fixed Charges (Feb 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government is obligated to compensate the Contractor the monthly lump sum specified in the Schedule entitled Fixed Charges, for each month or portion of a month the contract remains in effect.

(End of clause)

50. Section 252.247–7007 is redesignated as 252.247–7006 and revised to read as follows:

252.247–7006 Indefinite Quantities—No Fixed Charges.

As prescribed in 247.270–7(g), use the following clause:

Indefinite Quantities—No Fixed Charges (Feb 1991)

The amount of work and services the Contractor may be ordered to furnish shall be the amount the Contracting Officer may order from time to time. In any event, the Government shall order, during the term of this contract, work or services having an aggregate value of not less than $100.

(End of clause)

252.247–7008 [Removed]

51. Section 252.247–7008 is removed.

52. Section 252.247–7009 is redesignated as 252.247–7007 and revised to read as follows:

252.247–7007 Removal of Contractor's Employees.

As prescribed in 247.270–7(h), use the following clause:

Removal of Contractor's Employees (Feb 1991)

The Contractor agrees to use only experienced, responsible, and capable people to perform the work. The Contracting Officer may require that the Contractor remove from the job, employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interest of military security.

(End of clause)

53. Section 252.247–7010 is redesignated as 252.247–7008 and revised to read as follows:

252.247–7008 Liability and Insurance.

As prescribed in 247.270–7(i), use the following clause:

Liability and Insurance (Feb 1991)

(a) The Contractor shall be—

(1) Liable to the Government for loss or damage to property, real and personal,

owned by the Government or for which the Government is liable;

(2) Responsible for, and hold the Government harmless from, loss of or damage to property not included in paragraph (a)(1) of this clause; and

(3) Responsible for, and hold the Government harmless from, bodily injury and death of persons, resulting either in whole or in part from the negligence or fault of the Contractor, its officers, agents, or employees in the performance of work under this contract.

(b) For the purpose of this clause, all cargo or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable.

(1) The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor.

(2) Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the Disputes clause of this contract.

(c) The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations. The Contractor is not responsible to the Government for, and does not agree to hold the Government harmless from, loss or damage to property or bodily injury to or death of persons if—

(1) The unseaworthiness of the vessel, or failure or defect of the gear or equipment furnished by the Government, contributed jointly with the fault or negligence of the Contractor in causing such damage, injury, or death; and

(i) The Contractor, his officers, agents, and employees, by the exercise of due diligence, could not have discovered such unseaworthiness or defect of gear or equipment; or

(ii) Through the exercise of due diligence could not otherwise have avoided such damage, injury, or death.

(2) The damage, injury, or death resulted solely from an act or omission of the Government or its employees, or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(d) The Contractor shall at its own expense acquire and maintain insurance during the term of this contract, as follows—

(1) Standard workmen's compensation and employer's liability insurance and longshoremen's and harbor worker's compensation insurance, or such of these as may be proper under applicable state or Federal statutes.

(i) The Contractor may, with the prior approval of the Contracting Officer, be a self-insurer against the risk of this paragraph (d)(1).

(ii) This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as a self-insurer under applicable provision of law.

(2) Bodily injury liability insurance in an amount of not less than $300,000 on account of any one occurrance.

(3) Property damage liability insurance (which shall include any and all property, whether or not in the case, custody, or control of the Contractor) in an amount of not less than $300,000 for any one occurrence.

(e) Each policy shall provide, by appropriate endorsement or otherwise, that cancellation or material change in the policy shall not be effective until after a 30 day written notice is furnished the Contracting Officer.

(f) The Contractor shall furnish the Contracting Officer with satisfactory evidence of the insurance required in paragraph (d) of this clause before performance of any work under this contract.

(g) The Contractor shall, at its own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a co-defendant of the Contractor, resulting from the Contractor's performance of work under this contract. This requirement is without regard to whether such suit, demand, claim, or action was the result of the Contractor's negligence. The Government shall have the right to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interest of the United States.

(h) It is expressly agreed that the provisions in paragraph (d) through (g) of this clause shall not in any manner limit the liabilty or extend the liability of the Contractor as provided in paragraph (a) through (c) of this clause.

(i) The Contractor shall—

(1) Equitably reimburse the Government if the Contractor is indemnified, reimbursed, or relieved of any loss or damage to Government property;

(2) Do nothing to prevent the Government's right to recover against third parties for any such loss or damage; and

(3) Upon the request of the Contracting Officer, shall at the Government's expense, furnish the Government all reasonable assistance and cooperation in obtaining recovery, including the prosecution of suit and the execution of instruments of assignment in favor of the Government.

(End of clause)

54. Section 252.247–7100 is redesignated as 252.247–7009 and revised to read as follows:

252.247–7009 Evaluation of Bids.

As prescribed in 247.271–4(a), use the following provision:

Evaluation of bids (Feb 1991)

(a) The Government will, evaluate bids on the basis of total aggregate price of all items within an area of performance under a given schedule.

(1) An offeror must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that Schedule. If there is to be no charge for an item, an entry such as "No Charge," or the letters "N/C" or "O," must be made in the unit price column of the Schedule.

(2) Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the Schedule.

(b) In addition to other factors, the Contracting Officer will evaluate bids on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards).

(1) In making this evaluation, the Contracting Officer will assume that the administrative cost to the Government for issuing and administering each contract awarded under this solicitation would be $500.

(2) Individual awards will be for the items and combinations of items which result in the lowest aggregate cost to the Government, including the administrative costs in paragraph (b)(1).

(c) When drayage is necessary for the accomplishment of any item in the bid schedule, the Offeror shall include in the unit price any costs for bridge or ferry tolls, road use charges or similar expenses.

(d) Unless otherwise provided in this solicitation, the Offeror shall state prices in amounts per hundred pounds on gross or net weights, whichever is applicable. All charges shall be subject to, and payable on, the basis of 100 pounds minimum weight for unaccompanied baggage and a 500 pound minimum weight for household goods, net or gross weight, whichever is applicable.

(End of provision)

Alternate I (Feb 1991)

As prescribed in 247.271–4(a), add the following paragraph (e) to the basic clause:

(e) Notwithstanding paragraph (a), when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

55. Section 252.247–7101 is redesignated as 252.247–7010 and revised to read as follows:

§ 252.247–7010 Award.

As prescribed in 247.271–4(b), use the following provision:

Award (Feb 1991)

(a) The Government shall make award by area to the qualified low bidder under each of the specified schedules to the extent of the bidder's stated guaranteed daily capability as provided in this solicitation and the Estimated Quantities Schedule.

(b) The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government.

(c) The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

252.247–7102 [Removed]

56. Section 252.247–7102 is removed.

57. Section 252.247–7103 is redesignated as 252.247–7011 and revised to read as follows:

252.247-7011 Scope of Contract.

As prescribed in 247.271-4(d), use the following clause:

Scope of Contract (Feb 1991)

(a) The Contractor shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall—

(1) Furnish all materials except Government-owned containers (Federal Specification PPP-B-580), all equipment, plant and labor; and

(2) Perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage, including—

(i) Stenciling;

(ii) Cooperage;

(iii) Drayage of personal property in connection with other services;

(iv) Decontainerization of inbound shipments of personal property; and

(v) The handling of shipments into and out of the Contractor's facility.

(b) Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the Through Government Bill of Lading or other method/mode of shipment or property to be moved under the Do-It-Yourself moving program or otherwise moved by the owner.

(End of clause)

58. Section 252.247-7104 is redesignated as 252.247-7012 and revised to read as follows:

252.247-7012 Period of Contract.

As prescribed in 247.271-4(e), use the following clause:

Period of Contract (Feb 1991)

(a) This contract begins January 1, 19____, and ends December 31, 19____, **BOTH DATES INCLUSIVE. ANY WORK ORDERED BEFORE, AND NOT COMPLETED BY THE EXPIRATION DATE SHALL BE GOVERNED BY THE TERMS OF THIS CONTRACT.**

(b) The Government will not place new orders under this contract that require that performance commence more than 15 days after the expiration date.

(c) The Government may place orders required for the completion of services (for shipments in the Contractor's possession) for 180 days past the expiration date.

(End of clause)

59. Section 252.247-7105 is redesignated as 252.247-7013 and revised to read as follows:

252.247-7013 Ordering Limitation.

As prescribed in 247.271-4(g), use the following clause:

Ordering Limitations (Feb 1991)

(a) The Government will place orders for items of supplies or services with the contractor awarded the initial contract to the extent of the contractor's guaranteed maximum daily capability. However, the contractor may accept an additional quantity in excess of its capability to accommodate a single order.

(b) Orders for additional requirements will be placed in a like manner with the next higher contractor to the extent of its guaranteed maximum daily capability. The Government will repeat this procedure until its total daily requirement is fulfilled.

(c) In the event the procedure in paragraphs (a) and (b) of this clause does not fulfill the Government's total daily requirement, the Government may offer additional orders under the contract to contractors without regard to their guaranteed maximum daily capability.

(End of clause)

60. Section 252.247-7106 is redesignated as 252.247-7014 and revised to read as follows:

252.247-7014 Contract Areas of Performance.

As prescribed in 247.271-4(h), use the following clause and complete paragraph (b) by defining each area of performance as required (see 247.271-2(b)):

Contract Areas of Performance (Feb 1991)

(a) The Government will consider all areas of performance described in paragraph (b) as including the Contractor's facility, regardless of geographical location.

(b) The Contractor shall perform services within the following defined areas of performance, which include terminals identified therein.

(End of clause)

61. Section 252.247-7107 is redesignated as 252.247-7015 and revised to read as follows:

252.247-7015 Requirements.

As prescribed in 247.271-4(i), substitute the following paragraph (f) for paragraph (f) of the basic clause at FAR 52.216-21.

Alternate (Feb 1991)

(f) Orders issued during the effective period of this contract and not completed within the time shall be completed by the Contractor within the time specified in the order. The rights and obligations of the Contractors and the Government for those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period.

252.247-7108 [Removed]

62. Section 252.247-7108 is removed.

63. Section 252.247-7109 is redesignated as 252.247-7016 and revised to read as follows:

252.247-7016 Demurrage.

As prescribed in 247.271-4(j), use the following clause:

Demurrage (Feb 1991)

The Contractor shall be liable for all demurrage, detention, or other charges as a result of its failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

64. Sections 252.247-7110 through 252.247-7114 are redesignated as 252.247-7017 through 252.247-7021 and revised to read as follows:

252.247-7017 Contractor liability for loss or damage.

As prescribed in 247.271-4(k), use the following clause:

Contractor Liability for Loss or Damage (Feb 1991)

(a) *Definitions.*

As used in this clause—

"Article" means any shipping piece or package and its contents.

"Schedule" means the level of service for which specific types of traffic apply as described in DoD 4500.34R, Personal Property Traffic Management Regulation.

(b) For shipments picked up under Schedule I, Outbound Services, or delivered under Schedule II, Inbound Services—

(1) If notified within 1 year after delivery that the owner has discovered loss or damage to the owner's property, the Contractor agrees to indemnify the Government for loss or damage to the property which arises from any cause while it is in the Contractor's possession. The Contractor's liability is—

(i) *Non-negligent damage.*

For any cause, other than the Contractor's negligence, indemnification shall be at a rate not to exceed sixty cents per pound per article.

(ii) *Negligent damage.*

When loss or damage is caused by the negligence of the Contractor, the liability is for the full cost of satisfactory repair or for the current replacement value of the article.

(2) The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(3) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor shall be presumed to be liable for the loss or damage, if timely notified.

(c) For shipments picked up or delivered under Schedule III, Intra-City and Intra-Area—

(1) If notified of loss or damage within 75 days following delivery, the Contractor agrees to indemnify the Government for loss or damage to the owner's property.

(2) The Contractor's liability shall be for the full cost of satisfactory repair, or for the current replacement value of the article less depreciation, up to a maximum liability of $1.25 per pound times the net weight of the shipment.

(3) The Contractor has full salvage rights to damaged items which are not repairable and for which the Government has received compensation at replacement value.

(End of clause)

252.247-7018 Erroneous shipments.

As prescribed in 247.271-4(i), use the following clause:

Erroneous Shipments (Feb 1991)

(a) The Contractor shall—

(1) Forward to the rightful owner, articles of personal property inadvertently packed with goods of other than the rightful owner.

(2) Ensure that all shipments are stenciled correctly. When a shipment is sent to an incorrect address due to incorrect stenciling by the Contractor, the Contractor shall forward it to its rightful owner.

(3) Deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. The Contractor shall forward to the owner any pieces of one lot not included in delivery, and remaining at its facility after departure of the original shipment.

(b) Forwarding under paragraph (a) of this clause shall be—

(1) With the least possible delay;

(2) By a mode of transportation selected by the Contracting Officer; and

(3) At the Contractor's expense.

(End of clause)

252.247-7019 Subcontracting.

As prescribed in 247.271-4(m), use the following clause:

Subcontracting (Feb 1991)

The Contractor shall not subcontract without the prior written approval of the Contracting officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

252.247-7020 Drayage.

As prescribed in 247.271-4(n), use the following clause:

Drayage (Feb 1991)

(a) Drayage included for Schedule I, Outbound, applies in those instances when a shipment requires drayage to an air, water, or other terminal for onward movement after completion of shipment preparation by the Contractor. Drayage not included is when it is being moved from a residence or other pickup point to the Contractor's warehouse for onward movement by another freight company, carrier, etc.

(b) Drayage included for Schedule II, Inbound, applies in those instances when shipment is delivered, as ordered, from a destination Contractor's facility or other destination point to the final delivery point. Drayage not included is when shipment or partial removal of items from shipment is performed and prepared for a member's pickup at destination delivery point.

(c) The Contractor will reposition empty government containers—

(1) Within the area of performance;

(2) As directed by the Contracting Officer; and

(3) At no additional cost to the Government

(End of clause)

252.247-7021 Additional Services.

As prescribed in 247.271-4(o), use the following clause:

Additional Services (Feb 1991)

The Contractor shall provide additional services not included in the schedule, but required for satisfactory completion of the services ordered under this contract, at a rate comparable to the rate for like services as contained in tenders on file with the Interstate Commerce Commission, state regulatory bodies, or the Military Traffic Management Command. in effect at a time of order.

(End of clause)

252.247-7200 [Removed]

65. Section 252.247-7200 is removed.

66. Section 252.247-7201 is redesignated as 252.247-7022 and revised to read as follows:

252.247-7022 Returnable Cylinders and Other Containers.

As prescribed in 247.305-70, use the following clause:

Returnable Cylinders and Other Containers (Feb 1991)

(a) Cylinders/containers shall remain the Contractor's property but shall be loaned without charge to the Government for a period of 30 days after delivery to the f.o.b. point specified in the contract. Beginning with the first day after the loan period expires, to and including the day the cylinders/containers are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or are made available for delivery to the Contractor's designated carrrier (if the original delivery was f.o.b. destination), the Government shall pay the Contractor a rental of $_____ (Insert dollar amount for rental) per cylinder/container per day, regardless of type or capacity.

(b) This rental charge will be computed separately for cylinders/containers for each type, size, and capacity, and for each point of delivery named in the contract. A credit of 30 cylinder/container days will accrue to the Government for each cylinder/container, regardless of type or capacity, delivered by the Contractor. A debit of one cylinder/container day will accrue to the Government for each cylinder/container for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the debit total exceeds the credit total, rental shall be charged for the difference. If the credit total equals or exceeds the debit total, no rental shall be charged. No rental shall accrue to the Contractor in excess of replacement value per cylinder/container specified in pargraph (c) of this clause.

(c) For each cylinder/container lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid for that cylinder/container.

(Insert the cylinder/container types, sizes, capacities, and associated replacement values.)

(d) Cylinders/containers lost or damaged beyond repair and paid for by the Government shall become Government property, subject to the following:

If any lost cylinder/container is located within _____ (insert number of days) calendar days after payment of the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government the replacement value, less rental computed in accordance with paragraph (a) of this clause, beginning at the expiration of the 30 day loan period specified in paragraph (a) of this clause, and continuing to the date on which the cylinder/container was delivered to the Contractor.

(End of clause)

252.247-7202 through 252.247-7004 [Removed]

67. Sections 252.247-7202 through 252.247-7204 are removed and section 252.247-7023 is added to read as follows:

252.247-7023 Extend of Transportation of Supplies by Sea.

As prescribed in 247.573, use the following clause:

Extent of Transportation of Supplies by Sea (FEB 1991)

(a) *Definitions.*

As used in this clause—

(1) "Components" means articles, materials, and supplies incorporated directly into end products at any level of manufacture, fabrication, or assembly by the contractor or any subcontractor.

(2) "Department of Defense" (DoD) means the Army, Navy, Air Force, Marine Corps, and Defense Agencies.

(3) "Foreign flag vessel" means any vessel that is not a U.S.-flag vessel.

(4) "Ocean transportation" means any transportation aboard a ship, vessel, boat, barge, or ferry through international waters.

(5) "Subcontractor" means a supplier, materialman, distributor, or vendor at any level below the prime contractor whose contractual obligation to perform results from, or is conditioned upon, award of the prime contract and who is performing any part of the work or other requirement of the prime contract.

(6) "Supplies" means all property, except land and interests in land, that is clearly identifiable for eventual use by or owned by the DoD at the time of transportation by sea.

(i) An item is clearly identifiable for eventual use by the DoD if, for example, the contract documentation contains a reference to a DoD contract number or a military destination.

(ii) "Supplies" includes (but is not limited to) public works; buildings and facilities; ships; floating equipment and vessels of every character, type, and description, with parts, subassemblies, accessories, and equipment; machine tools; material; equipment; stores of all kinds, end items; construction materials; and components of the foregoing.

(7) "U.S.-flag vessel" means a vessel of the United States or belonging to the United

States, including any vessel registered or having national status under the laws of the United States.

(b) *Representation.* The Offeror represents that it does (does not) anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(c) The Contractor shall employ U.S.-flag vessels, and no others, in the transportation by sea of any supplies to be furnished in the performance of this contract. The Contractor and its subcontractors may request that the Contracting Officer authorize shipment in foreign-flag vessels, or designate available U.S.-flag vessels, if the Contractor or a subcontractor believes that—

(1) U.S.-flag vessels are not available for timely shipment;

(2) The freight charges are excessive or unreasonable; or

(3) Freight charges are higher than charges to private persons for transportation of like goods.

(d) The Contractor must submit any request for use of other than U.S.-flag vessels in writing to the Contracting Officer at least 45 days prior to the sailing date necessary to meet its delivery schedules. The Contracting Officer will process requests submitted after such date(s) as expeditiously as possible, but the Contracting Officer's failure to grant approvals to meet the shipper's sailing date will not of itself constitute a compensable delay under this or any other clause of this contract. Requests shall contain at a minimum—

(1) Type, weight, and cube of cargo;

(2) Required shipping date;

(3) Special handling and discharge requirements;

(4) Loading and discharge points;

(5) Name of shipper and consignee;

(6) Prime contract number; and

(7) A documented description of efforts made to secure U.S.-flag vessels, including points of contact (with names and telephone numbers) with at least two U.S.-flag carriers contacted. Copies of telephone notes, telegraphic and facsimile message or letters will be sufficient for this purpose.

(e) The Contractor shall, within 30 days after each shipment covered by this clause, provide the Contracting Officer and the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, one copy of the rated on board vessel operating carrier's ocean bill of lading, which shall contain the following information—

(1) Prime contract number;

(2) Name of vessel;

(3) Vessel flag of registry;

(4) Date of loading;

(5) Port of loading;

(6) Port of final discharge;

(7) Description of commodity;

(8) Gross weight in pounds and cubic feet if available;

(9) Total ocean freight in U.S. dollars; and

(10) Name of the steamship company.

(f) The Contractor agrees to provide with its final invoice under this contract a representation that to the best of its knowledge and belief—

(1) No ocean transportation was used in the performance of this contract;

(2) Ocean transportation was used and only U.S.-flag vessels were used for all ocean shipments under the contract. Legible copies of shipping documents were submitted with the applicable invoices to the payment office, to the Contracting Officer, and to the Maritime Administration in accordance with paragraph (e) of this clause;

(3) Ocean transportation was used, and the Contractor had the written consent of the Contracting Officer for all non-U.S.-flag ocean transportation; or

(4) Ocean transportation was used and some or all of the shipments were made on non-U.S.-flag vessels without the written consent of the Contracting Officer. Described these shipments in the following format:

ITEM DESCRIPTION	CONTRACT LINE ITEM	QUANTITY
TOTAL		

(g) If the final invoice does not include the required representation, the Government will reject and return it to the Contractor as an improper invoice for the purposes of the Prompt Payment clause of this contract. In the event there has been unauthorized use of non-U.S.-flag vessels in the performance of this contract, the Contracting Officer is entitled to equitably adjust the contract, based on the unauthorized use.

(h) The Contractor shall include this clause, including this paragraph (h) in all subcontracts under this contract.

(End of clause)

68. Section 252.249–7000 is revised to read as follows:

252.249–7000 Special Termination Costs.

As prescribed in 249.501–70, use the following clause:

Special Termination Costs (Feb 1991)

(a) Definition.

"Special termination costs," as used in this clause means only costs in the following categories as defined in part 31 of the Federal Acquisition Regulation (FAR)—

(1) Severance pay, as provided in FAR 31.205–6(g);

(2) Reasonable costs continuing after termination, as provided in FAR 31.205–42(b);

(3) Settlement of expenses, as provided in FAR 31.205–42(g);

(4) Costs of return of field service personnel from sites, as provided in FAR 31.205–35 and FAR 31.205–46(c); and

(5) Costs in paragraphs (a) (1), (2), (3), and (4) of this clause to which subcontractors may be entitled in the event of termination.

(b) Notwithstanding the Limitation of Cost/Limitation of Funds clause of this contract, the Contractor shall not include in its estimate of costs incurred or to be incurred, any amount for special termination costs to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government.

(c) The Contractor agrees to perform this contract in such a manner that the Contractor's claim for special termination costs will not exceed $_____. The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount.

(d) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount of the costs payable by the Government.

(e) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

PART 253—FORMS

69. The authority for 48 CFR part 253 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR subpart 1.3.

Subpart 253.2—Prescription of Forms

70. Sections 253.208, 253.208–1 and 253.208–2 are added to read as follows:

253.208 Required sources of supplies and services.

253.208–1 DD Form 448, Military Interdepartmental Purchase Request.

(a) Use the DD Form 448 as prescribed in subpart 208.70.

(b) Prepare MIPR information in uniform contract format when possible. Overprint of fixed repetitive information is authorized.

(c) Instructions for completion of DD Form 448.

(1) BLOCK 5—MIPR NUMBER. Number the MIPR by using—

(i) The requiring department identification code as prescribed in DoD 4000.25–6–M, Department of Defense Activity Address Directory (DoDAAD);

(ii) The last digit of the fiscal year; and

(iii) The number of the particular MIPR (numbered consecutively by the requiring activity).

(2) BLOCK 6—AMEND NO. Assign a suffix number. Assign amendments of the same MIPR consecutive suffix numbers.

(3) BLOCK 9.

(i) Conduct interdepartmental screening of items in accordance with FAR 8.001. Requisition items which are available from stocks of other departments as follows:

(A) Obtain items within the scope of MILSTRIP (see DoD 4000.25–1–M, Military Standard Requisitioning and Issue Procedures (MILSTRIP)) by use of DD Form 1348 (Single Line Item Requisition System Document (Manual), DoD))/1348M (Single Line Item

Requisition System Document, DoD (Mechanical)).

(B) Obtain items not covered by MILSTRIP using DD Form 1149, Requisition and Invoice/Shipping Document.

(C) If, after receipt of a MIPR, it is determined the requested items are available from stock, the acquiring department shall use the MIPR to obtain the item.

(ii) Normally restrict a MIPR to one major end item, including its required spare parts, ground support equipment, and similar related items. For other than major end items, limit MIPRs to items within a single Federal supply class when possible.

(4) BLOCK 10.

(i) *Delivery Schedules.* (A) The requiring department must clearly state the required time of delivery or performance in each MIPR, taking into consideration the normal administrative lead time of the particular commodity. Delivery and performance schedules on MIPRs must be realistic (see FAR subpart 12.1). If the acquiring department cannot accept the delivery schedule in the MIPR, the acquiring department will note that on DD Form 448–2, Acceptance of MIPR. Changes in the requested delivery schedule must be made by MIPR amendment.

(B) When a short delivery schedule is mandatory, the requiring department shall mark the MIPR "URGENT" in bold letters and provide justification for the marking.

(ii) Requring activities must provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(iii) The requiring activity will furnish estimated weight, cube, and dimensions for each line item or a statement explaining why these data are not available.

(iv) The requiring activity shall include the name and telephone number of an individual who is thoroughly familiar with the MIPR, its attachments, and technical requirements.

(v) Prepare attachments to MIPRs in sufficient numbers so that each copy of a MIPR submitted to the acquiring department is complete with a copy of all attachments. "Ship To and Mark For" addresses in shipping instructions must include the clear text identification and DoDAAD code if assigned.

(5) BLOCK 12—TRANSPORTATION ALLOTMENT. Enter allotment data for transportation of supplies at Goverment expense if appropriate.

(6) BLOCK 13—MAIL INVOICES TO. Use this block to identify the name and address of the office to receive invoices and make payment.

(i) Complete the block only if—

(A) The resulting contract is not to be paid by the Defense Contract Management Command or the Defense Finance Center; and

(B) The office to receive invoices and make payment is known at the time of preparation of the MIPR.

(ii) If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office.

(iii) If payment is to be made by an office other than the office to which the invoice is to be mailed, include the name, address, and DoDAAD code of the payment office as an attachment to the MIPR.

(iv) If multiple offices are to receive invoices and make payment, include the names and addresses of those offices as an attachment to the MIPR. Also incude the DoDAAD code of each payment office.

(v) Whenever the payment office is included in an attachment, include a reference to the attachment in this block.

(vi) If the names and addresses of invoicing and payment offices are provided the acquiring department after submission of the MIPR, the requiring department also must provide the DoDAAD code for each payment office.

(7) BLOCK 14. Enter allotment data for the acquisition of supplies. Enter each citation in Item 14 in the appropriate space as follows—

(i) *Accounting Classification Reference Number (ACRN).* If the ACRN procedures of 204.7108 are used in the MIPR to relate allotment data to the MIPR item or delivery, enter the ACRN for each fund citation. (The acquiring department, when preparing the contract, is not required to use the ACRN assigned to a fund citation in the MIPR.)

(ii) *Appropriation.* Enter the ten positions as follows:

(A) First and second—Treasury Department number identifying the department or agency to which the appropriation applies or has been transferred.

(B) Third and fourth—Treasury Department number identifying the department or agency from which an appropriation has been transferred; leave blank if no transfer is involved.

(C) Fifth and sixth—Identify the appropriation fiscal year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability, and the sixth position shall be the last digit of the final year of availability. For annual appropriations, the fifth position shall be blank, and the sixth position shall be the last digit of the fiscal year. For no-year (continuing) appropriations, the fifth position shall be blank, and the sixth position shall be "X."

(D) Seventh through tenth—Treasury Department appropriation serial number.

(iii) *Limit/Subhead.* Up to four characters; if less than four characters, leave empty spaces blank.

(iv) *Supplemental Accounting Classification Data.* Not to exceed 36 characters. Enter in accordance with departmental or agency regulations.

(v) *Accounting Station.* Enter the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(vi) *Amount.* Enter the amount for each fund citation if more than one allotment is cited.

(vii) *Additional Citations.* If space is required for additional fund citations, include as an attachment and reference the attachment on the form.

(d) When preparing a MIPR amendment, always fill out the basic information in Blocks 1 though 8. Fill out only those other blocks which vary from the data shown on the basic MIPR or a prior amendment. Insert "n/c" in items where there is no change.

(e) Change of a disbursing office cited on a DoD funded MIPR does not require a MIPR amendment when the resultant contract is assigned for administration to the Defense Contract Management Command. The administrative contracting office may issue an administrative change order, copies of which will be provided to the contracting officer for transmittal to the requiring activity.

253.208–2 DD Form 448–2, Acceptance of MIPR.

(a) Use the DD Form 448–2 as prescribed in subpart 208.70.

(b) Instructions for completion of DD Form 448–2. (Complete only the applicable blocks.)

(1) BLOCK 6. Check the specific terms under which the MIPR is being accepted.

(2) BLOCK 7. If any one of the MIPR line items is not accepted, check Block 7 and record the affected MIPR line item number and reason in Block 13.

(3) BLOCKS 8 AND 9. Use Blocks 8 and 9 only—

(i) When Block 6c acceptance is indicated (indicate the MIPR line item numbers that will be provided under each method of financing in Blocks 8a and 9a, respectively); or

(ii) If quantities or estimated costs cited in a MIPR require adjustment (list the affected MIPR line item numbers together with the adjusted quantities or estimated costs in the columns provided under Blocks 8 and 9, as appropriate).

(4) BLOCK 10. Whenever a MIPR is accepted in part or in total under Category II funding, forecast the estimated date of contract award.

(5) BLOCK 11. Enter the total amount of funds required to fund the MIPR items, as accepted.

(6) BLOCK 12.

(i) Complete this block only in those cases where the amount recorded in Block 11 is not in agreement with the amount recorded in Block 5. This will serve either—

(A) As a request to the requiring department to issue a MIPR amendment to provide the additional funds; or

(B) Authority for the requiring department to withdraw the available excess funds.

(ii) When funds of two or more appropriations are involved, provide proper breakdown information in Block 13.

(7) BLOCK 13. Use this block to record—

(i) Justification, by MIPR line item, for any additional funds required;

(ii) Explanation for rejection of MIPR whether in part or in total;

(iii) Appropriation and subhead data cited on the MIPR; and

(iv) Other pertinent data.

(c) Complete a DD Form 448–2 for all MIPR amendments involving an adjustment of funds or delivery schedule, or if requested by the requiring department.

(d) Unless otherwise agreed, provide the requiring department an original and three copies of each DD Form 448–2.

71. Appendix B to Chapter 2 is added to read as follows:

Appendix B to Chapter 2—Coordinated Acquisition Assignments

Part 1—Army Assignments
Part 2—Navy Assignments
Part 3—Air Force Assignments
Part 4—Defense Logistics Agency Assignments
Part 5—Defense Nuclear Agency Assignments
Part 6—General Services Administration Assignments

Part 1—Army Assignments

("P" after the FSC number indicates a partial FSC assignment)

Federal supply class code	Commodity
	Electronic Equipment.
	Each department is assigned acquisition responsibility for those items which the department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1005 P*	Guns, through 30mm
	This partial assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.
1010P*	Guns, over 30mm up to 75mm.
	This partial assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type guns and aircraft gun mounts.
1015P*	Guns, 75mm through 125mm.
	This partial assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordance type guns.
1020 P*	Guns over 125mm through 150mm
1025 P*	Guns over 150mm through 200mm
1030 P*	Guns over 200mm through 300mm
1035 P*	Guns over 300mm
	These partial assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. They do not apply to Navy ordnance type guns.
1040	Chemical Weapons and Equipment
1055 P*	Launchers, Rocket and Pyrotechnic
	This partial assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and airborne type, with the exception of 2.75 inch rocket launchers which are included in this partial FSC assignment to the Department of the Army.
1090 P	Assemblies Interchangeable Between Weapons in Two or More Classes
	This partial assignment applies to the following items:
	National stock number nomenclature
	1090–563–7232 Staff Section Class
	1090–699–0633 Staff Section
	1090–796–8760 Power Supply
	1090–885–8451 Wrench Corrector
	1090–986–9707 Reticle Assembly
1095 P*	Miscellaneous Weapons
	This partial assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type; line throwing guns (which are under DoD Coordinated Acquisition assignment to the Department of the Navy); and aircraft type miscellaneous weapons.
1210 P*	Fire Control Directors
1220 P*	Fire Control Computing Sights and Devices
1230 P*	Fire Control Systems, Complete
1240 P*	Optical Sighting and Ranging Equipment
1250 P*	Fire Control Stabilizing Mechanisms
1260 P*	Fire Control Designating and Indicating Equipment
1265 P*	Fire Control Transmitting and Receiving Equipment, Except Airborne
1285 P*	Fire Control Radar Equipment, Except Airborne
1290 P*	Miscellaneous Fire Control Equipment
	The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals/Catalogs. They do not apply to Naval ordnance type and aircraft type.
1305 P*	Ammunition, through 30mm
	This partial assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.
1310 P*	Ammunition, over 30mm up to 75mm
	This partial assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type and to 40mm ammunition (which is under DoD Coordinated Acquisition assignment to the Navy). The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1315 P*	Ammunition, 75mm through 125mm
	This partial assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1320 P*	Ammunition, over 125mm
	This partial assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Naval ordnance type. The Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1325 P	Bombs

Federal supply class code	Commodity
	This partial assignment applies to bombs as listed in Department of Army Supply Manuals/Catalogs. It does not apply to Navy assigned bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy owned capacity.
1330	Grenades
1340 P	Rockets and Rocket Ammunition
	This partial assignment applies to:
	66mm Rocket, HEAT, M72
	2.75" Rocket FFAR, Service and Practice
	Heads MK5 and Mods (HEAT)
	HE, M151
	HE, XM229 (17 lb Warhead)
	HE, XM157 (Spotting Red)
	HE, XM158 (Spotting Yellow)
	MK61 Practice (5 lb Slug)
	XM230 Practice (10 lb)
	Motors MK4 and Mods (High Performance Aircraft)
	MK40 and Mods (Low Performance Aircraft)
	3.5 inch Rocket Heat, M35
	Practice, M36
	Smoke, WP, M30
	4.5 inch Motor, Drill, M24
	HE, M32
	Practice, M33
	Incendiary and toxicological rockets, as listed in Army Supply Bulletins
	It does not apply to Navy assigned rockets as shown in the list of assignments to the Navy. However, the Department of the Army is responsible for acquisition of filler and for filing of all smoke and toxicological rockets.
1345	Land Mines
1365	Military Chemical Agents
1370 P	Pyrotechnics
	This partial assignment does not apply to shipboard and aircraft pyrotechnics.
1375 P	Demolition Materials
	This partial assignment applies to Blasting Agents and supplies such as:
	Bangalore torpedo
	Blocks, demolition
	Caps, blasting, electronic and nonelectric
	Charge, cratering
	Charge, shaped and demolition
	Chests, demolition platoon and squad
	Cord detonating
	Demolition equipment sets, with ancillary items
	Detonators, all types
	Dynamite
	Firing devices
	Fuze, safety
	Kit, demolition
	Lighter, fuse
	Machine, blasting
	Primer, percussion cap
	It does not apply to Navy underwater demolition requirements.
1367 P	Bulk Explosives
	This partial assignment applies to solid propellants and explosives such as:
	Ammonium Picrate (Explosive D) JAN-A-166A
	Trinitrotoluene (TNT) MIL-T-248A
	Tetryl JAN-T-339
	Pantaerythrite Tetranitrate (PETN) JAN-P-387
	RDX
	Composition B
	Composition B-3
	Pentolite, 50
	Composition C-3
	Composition A-3
	Composition A-4
	Nitroguanidine (Picrate)
	It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.
1377 P	Cartridge and Propellant Actuated Devices and Components.
	This partial assignment is reserved pending Services agreement as to items to be included in the assignment.
1380	Military Biological Agents
1390 P*	Fuzes and Primers
	This partial assignment applies to Fuzes and Primers for Army assigned ammunition. It does not apply to Naval ordnance type, which is under DoD Coordinated Acquisition assignment to the Department of the Navy; and guided missile fuzes.
2210	Locomotives
2220	Rail Cars
2240	Locomotive and Rail Car Accessories and Components
2250	Track Materials, Railroad
2310 P	Passenger Motor Vehicles
2320 P	Trucks and Truck Tractors
	These two partial assignments apply to tactical vehicles; trucks over 10,000 pounds gross vehicle weight (GVW); and the following types of vehicles:
	Bus, convertible to ambulance
	Truck, 4 x 4, convertible to ambulance
	Truck 4 x 4 dump, 9,000 GVW, with cut-down cab
	These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Acquisition assignment, and airport crash rescue vehicles, which are under DoD Coordinated Acquisition assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Acquisition to the General Services Administration.
2330 P	Trailers
	This partial assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Acquisition assignment, and airport crash rescue trailer units which are under DoD Coordinated Acquisition assignment to the Department of the Air Force.
2340 P	Motorcycles, Motor Scooters, and Bicycles
	This partial assignment does not apply to bicycles and tricycles.
2350	Tanks and Self-propelled Weapons
2340	Tractors, Track Laying, High-Speed
2510 P**	Vehicular Cab, Body, and Frame Structural Components
2520 P**	Vehicular Power Transmission Components
2530 P**	Vehicular Brake, Steering, Axle, Wheel, and Track Components
2540 P**	Vehicular Furniture and Accessories
2590 P**	Miscellaneous Vehicular Components
2610	Tires and Tubes, Pneumatic, except Aircraft
2630	Tires, solid and cushion
2640	Tire Rebuilding and Tire and Tube Repair Materials
2805 P**	Gasoline Reciprocating Engines, except Aircraft and Components
2910 P**	Engine Fuel System Components, Nonaircraft
2920 P**	Engine Electrical System Components, Nonaircraft
2930 P**	Engine Cooling System Components, Nonaircraft
2940 P**	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft
2990 P**	Miscellaneous Engine Accessories, Nonaircraft
4210 P	Fire Fighting Equipment
	This partial assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.
4230 P	Decontaminating and Impregnating Equipment
	This partial assignment applies only to items peculiar to chemical warfare.
4240 P	Safety and Rescue Equipment
	This partial assignment applies only to military respiratory protective equipment for chemical warfare.
5805 P	Telephone and Telegraph Equipment
	This partial assignment applies only to military (wire) equipment, field type.
5815 P	Teletype and Facsimile Equipment
	This partial assignment applies only to military (wire) equipment, field type.
5820 P	Radio and Television Communication Equipment, except Airborne
	This partial assignment applies to nontactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.
5830 P	Intercommunication and Public Address Systems; except Airborne
	This partial assignment applies only to military (wire) equipment, field type.
6135 P	Batteries, Primary
	This partial assignment applies to MIL type, dry cell batteries, only.
6625 P	Electrical and Electronic Properties Measuring and Testing Instruments
	This partial assignment applies only to instruments for testing military (wire) equipment, field type.
6645 P	Time Measuring Instruments
	This partial assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor:

Federal supply class code	Commodity
	Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.
6660 P	Meteorological Instruments and Apparatus Each department is assigned acquisition responsibility for those systems, instruments and end items in FSC 6660 which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus This partial assignment applies only to items peculiar to chemical warfare.
6695 P	Combination and Miscellaneous Instruments This partial assignment applies to jewel bearings only.
6920 P	Dyes This partial assignment applies only to items peculiar to chemical warfare.
6910 P	Training Aids This partial assignment applies only to items peculiar to Amry assignments under weapons, fire control equipment, ammunition and explosives, and chemical and biological warfare.
6920 P	Armament Training Devices This partial assignment applies to armament training devices as listed in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons in Department of Army Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.
6940 P	Communication Training Devices This partial assignment applies only to code training sets, code practice equipment, and other telephone and telegraph training devices.
8130 P	Reels and Spools This partial assignment applies only to reels and spools for military (wire) equipment, field type.
8140 P	Ammunication Boxes, Packages, and Special Containers This partial assignment applies only to boxes, packages, and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in Department of Army Catalog SC 8140 IL and SC 8140 ML.

*For contracting purposes, Naval ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunitions used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance acquired from the Army).

**These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC 2805 applies to military standards engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these FSCs are assigned to the Defense Logistics Agency (Defense Construction Supply Center).

Part 2—Navy Assignments

("P" after the FSC number indicates a partial FSC assignment).

Federal supply class code	Commodity
	Electronic Equipment Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of Government funds).
1095P	Miscellaneous Weapons This partial assignment applies to line throwing guns only.
1310P	Ammunition, over 30mm up to 75mm This partial assignment applies only to reels and spools for military
1325P	Bombs This partial assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. The Department of the Army is responsible for the acquisition of fillers and the loading, assembling, and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling, and packing in excess of Navy-owned capacity.
340P	Rockets and Rocket Ammunition This partial assignment applies to: Fuze, Rocket, V.T., MK93-0 2.25 inch Rocket SCAR, Practice Heads MK3 and Mods Motors MK15 and Mods MK16 and Mods 5 inch Rocket HVAR, service and practice Heads MK2 and Mods (common) MK6 and Mods (GP) MK4 and Mods (smoke) MK25 and Mods (ATAR) Motors MK10 and Mods 5 inch Rocket FFAR service and practice Heads MK24 and Mods (General Purposes) MK32 and Mods (Shaped Charged) MK26 and Mods (Ilum) Motor MK16 and Mods The Department of the Army is responsible for acquisition of filler and for filling of all smoke and toxicological rockets.
1390P	Fuzes and Primers This partial assignment applies to fuzes and primers for Navy assigned ammunition.
1550P	Drones This partial assignment applies only to Drone, Model BQM34E.
1905P	Combat Ships and Landing Vessels This partial assignment applies to landing vessels only.
1910P	Transport Vessels, Passenger and Troop This partial assignment applies to ferryboats only.
1920	Fishing Vessels
1925	Special Service Vessels
1930	Barges and Lighters, Cargo
1935P	Barges and Lighters, Special Purpose This partial assignment does not apply to derricks, pile drivers, rock cutters, concrete mixing plants, mechanical bank grader barges, other bank revetment barges, and barge power plants.
1940	Small Craft
1945P	Pontoons and Floating Docks This partial assignment applies only to Naval Facilities Engineering Command type pontoons.
1950	Floating Drydocks
1990P	Miscellaneous Vessels This partial assignment applies to commercial sailing vessels only.
2010	Ship and Boat Propulsion Components
2020	Rigging and Rigging Gear
2030	Deck Machinery
2040	Marine Hardware and Hull Items
2060	Commercial Fishing Equipment
2090	Miscellaneous Ship and Marine Equipment
2820P	Steam Engines, Reciprocating and Components This partial assignment applies to marine main propulsion steam engines only.
2825P	Steam Turbines and Components This partial assignment applies to marine steam turbines only.
4210P	Fire Fighting Equipment This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.
4410P	Industrial Boilers This partial assignment applies only to boilers for use aboard those ships assigned to the Navy for coordinated acquisition.
4420 P	Heat Exchangers and Steam Condensers This partial assignment applies only to heat exchangers for use aboard those ships assigned to the Navy for coordinated acquisition.
4925P	Ammunition Maintenance and Repair Shop Specialized Equipment This partial assignment applies to sets, kits, and outfits of tools and equipment for explosive ordnance as defined in military service regulations and documents.
5821P	Radio and Television Communication Equipment, Airborne This partial assignment applies only to the following commercially developed radio sets. (The term "commercially developed" means that no Government funds were provided for development purposes.) HF-101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113, ARC-94, 102, 105, 110, 112, 119, 120; MRC-95, 108; VC-102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.
6125P	Converters, Electrical, Rotating This partial assignment applies only to motor-generated sets for use aboard ships assigned to the Navy for coordinated acquisition.
6320P	Shipboard Alarm and Signal System

Federal supply class code	Commodity
	This partial assignment applies only to alarm systems, fire alarm systems, indicating systems, telegraph systems (signal and signaling) (less electronic type) for use aboard ships assigned to the Navy for coordinated acquisition.
6605P	Navigational Instruments This partial assignment applies only to lifeboat and raft compasses, aircraft sextants, hand leads (soundings), lead reels, sounding machines and pelorus stands for use aboard ships assigned to the Navy for coordinated acquisition.
6645P	Time Measuring Instruments This partial assignment applies only to the following instruments, cases, and spare parts therefor: Chronometers including gimbal, padded and make break circuit Clocks, alarm, boat, deck, direct reading, electrical, floor, interval timer, marine, mechanical, master control, master program, master regulating, mechanical message center, nurses, program, shelf, stop, wall, watchman's Counters, time period Meters, engine running time, hour recording, and electrical time totalizing Timers; bombing, engine hours, sequential, stop, and program Program control instrument Cases; chronometer, including gimbal and padded, chronometer carrying; makebreak circuit chronometer Cans, chronometer shipping and storage Clock keys; clock movements, clock motors
6650P	Optical Instruments This partial assignment applies only to stands, telescope, for use aboard ships assigned to the Navy for coordinated acquisition.
6660P	Meteorological Instruments and Apparatus Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. For purposes of this assignment, the developing department is the department which awarded the developmental contract, notwithstanding that other departments may have provided funds for the development.
6665P	Hazard-Detecting Instruments and Apparatus This partial assignment applies only to hazard determining safety devices, for use aboard ships assigned to the Navy for coordinated acquisition.
8140P	Ammunition Boxes, Packages, and Special Containers This partial assignment applies only to boxes, packages, and containers for 40mm ammunition.

Part 3—Air Force Assignments

("P" after the FSC number indicates a partial FSC assignment).

Federal supply class code	Commodity
	Electronic Equipment Each department is assigned acquisition responsibility for those items which the department either designed or sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (i.e., developed without the use of Government funds).
1550 P	Drones This partial assignment applies only to the following model drones: Model 147 Model 154 BQM 34A MQM 34D
2320 P	Trucks and Truck Tractors This partial assignment applies only to airport crash rescue vehicles.
2330 P	Trailers This partial assignment applies only to airport crash rescue trailer units.
4210 P	Fire Fighting Equipment This partial assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.
6660 P	Meteorological Instruments and Apparatus Each department is assigned acquisition responsibility for those systems, instruments, and end items in FSC 6660 for which the department either designed or sponsored development. The developing department is the department which awarded the development contract, notwithstanding that other departments may have provided funds for the development.
6710P *	Cameras, Motion Picture This partial assignment does not apply to submarine periscope and underwater cameras.
6720 P*	Cameras, Still Picture This partial assignment does not apply to submarine periscope and underwater cameras.
6730 P*	Photographic Projection Equipment This partial assignment does not apply to 35mm theater projectors.
6740*	Photographic Development and Finishing Equipment
6760*	Photographic Equipment and Accessories
6780*	Photographic Sets, Kits, and Outfits
8820 P	Live Animals Not Raised for Food This partial assignment applies only to the following types of working dogs: Scout Sentry Patrol Mine/tunnel Tracker Detector-narcotic/contraband Slede Bloodhound Water dog Patrol/detector

*This partial FSC assignment does not apply to photograhic equipment controlled by the Congressional Joint Committee on Printing and Micro-Film Equipment and Supplies.

Part 4—Defense Logistics Agency Assignments

("P" after the FSC number indicates a partial FSC assignment)

Federal supply class code	Commodity	DLA center [6]
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low-Speed.	DCSC
2420	Tractor, Wheeled	DCSC
2510 P [2]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [2]	Vehicular Power Transmission Components.	DCSC
2530 P [2]	Vehicular Brake, Steering, Axle, Wheel. and Track Components.	DCSC
2540 P [2]	Vehicular Furniture and Accessories.	DCSC
2590 P [2]	Miscellaneous Vehicular Components.	DCSC
2805 P [2]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [2]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [2]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [2]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P [2]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [2]	Misscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction, Unmounted.	DISC
3120	Bearings, Plane Unmounted	DISC
3130	Bearings, Mounted	DISC
3210	Sawmill and Planning Mill Machinery.	DGSC
3220	Woodworking Machines	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405 P [5]	Saws and Filing Machines	DGSC
3408 P [5]	Machining Centers and Way-Type Machines.	DGSC
3410 P [5]	Electrical and Ultrasonic Erosion Machines.	DGSC
3411 P [5]	Boring Machines	DGSC
3412 P [5]	Broaching Machines	DGSC
3413 P [5]	Drilling and Tapping Machines.	DGSC
3414 P [5]	Gear Cutting and Finishing Machines.	DGSC
3415 P [5]	Grinding Machines	DGSC
3416 P [5]	Lathes	DGSC
3417 P [5]	Milling Machines	DGSC
3418 P [5]	Planers and Shapers	DGSC
3419 P [5]	Miscellaneous Machine Tools.	DGSC
3422 P [5]	Rolling Mills and Drawing Machines.	DGSC
3424 P [5]	Metal Heat Treating Equipment.	DGSC
3426 P [5]	Metal Finishing Equipment	DGSC

Federal supply class code	Commodity	DLA center [6]
3431	Electric Arc Welding Equipment.	DGSC
3432 P [5]	Electric Resistance Welding Equipment.	DGSC
3433 P [5]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P [5]	Welding Positioners and Manipulators.	DGSC
3438 P [5]	Miscellaneous Welding Equipment.	DGSC
3439 P [5]	Miscellanous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P [5]	Bending and Forming Machines.	DGSC
3442 P [5]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P [5]	Mechanical Presses, Power Driven.	DGSC
3444 P [5]	Manual Presses	DGSC
3445 P [5]	Punching and Shearing Machines.	DGSC
3446 P [5]	Forging Machinery and Hammers.	DGSC
3447 P [5]	Wire and Metal Ribbon Forming Machinery.	DGSC
3448 P [5]	Riveting Machines	DGSC
3449 P [5]	Misc. Scondary Metal Forming and Cutting Machines.	DGSC
3450 P [5]	Machine Tool, Portable	DGSC
3455 P [5]	Cutting Tools for Machine Tools.	DGSC
3456 P [5]	Cutting Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P [5]	Machine Tool Accessories	DGSC
3461 P [5]	Accessories for Secondary Metal Working Machinery.	DGSC
3465 P [5]	Production Jigs, Fixtures and Templates.	DGSC
3470 P [5]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Repairing Equipment	DGSC
3530	Industrial Sewing Machine & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P [5]	Industrial Marking Machines	DGSC
3620 P [5]	Rubber and Plastics Working Machinery.	DGSC
3635 P [5]	Crystal and Glass Industries Machinery.	DGSC
3650 P [5]	Chemical & Parmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing System, Fixed or Mobile.	DGSC
3660 P [5]	Industrial Size Reduction Machinery.	DGSC
3680 P [5]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P [5]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P [5]	Industrial Assembly Machines.	DGSC
3694 P [5]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment	DCSC
3720	Harvesting Equipment	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Sholves	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Minning, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable, and Chain.	DISC
4110	Refrigeration Equipment	DGSC
4120	Air Conditioning Equipment	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [3]	Fire Fighting Equipment	DCSC
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units.	DCSC
4540	Miscellaneous Plumbing, Heating, and Sanitation Equipment.	DCSC
4610	Water Purification Equipment	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment.	DCSC
4710	Pipe and Tube	DCSC
4720	Hose and Turbing, Flexible	DCSC
4730	Fittings and Specialities; Hose, Pipe, and Tube.	DCSC
4810	Valves, Powered	DCSC
4820	Valves, Nonpowered	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Oufits of Measuring Tools.	DGSC
5305	Screws	DISC
5306	Bolts	DISC
5307	Studs	DISC
5310	Nuts and Washers	DISC
5315	Nails, Keys, and Pins	DISC
5320	Rivets	DISC
5325	Fastening Devices	DISC
5330	Packing and Gasket Materials.	DISC
5335	Metal Screening	DISC
5340	Miscellaneous Hardware	DISC
5355	Knobs and Pointers	DISC
5360	Coil, Flat and Wire Springs	DISC
5365	Rings, Shims, and Spacers	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating	DCSC
5430	Storage Tanks	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricatd Tower Structures.	DCSC
5450	Miscellaneous Prefbricated structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork	DCSC
5530	Plywood and Veneer	DCSC
5660	Fencing, Fences and Gagtes	DCSC
5680 P	Miscellaneous Construction Materials. This partial assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DLA managed items in GSA assigned classes.).	DCSC
5905	Resistors	DESC
5910	Capacitors	DESC
5915	Filters and Networks	DESC
5920	Fuses and Lightning Arrestors.	DESC
5925	Circuit Breakers	DESC
5930	Switches	DESC
5935	Connectors, Electrical	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers	DESC
5955	Piezolectric Crystals	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5962	Headsets, Handsets, Microphones, and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchors and Resolvers	DESC
5995	Cable, Cord, and Wire Assemblies; Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical	DGSC
6110	Electrical Control Equipment	DGSC

Federal supply class code	Commodity	DLA center [6]
6115 P [9]	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers; Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6550 [4]	Drugs, Biologicals, and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetic and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment and Supplies.	DPSC
6525 [4]	X-Ray Equipment and Supplies; Medical, Dental and Veterinary.	DPSC
6530 [4]	Hopital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DPSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instrumetns.	DGSC
6670	Scales and Balances	DGSC
6675	Drafting, Surveying, and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies	DGSC
6810 [7]	Chemicals	DFSC & DGSC
6820	Dyes	DGSC
6830	Gases; Compressed and Liquified.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850 [7]	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings	DPSC
7310	Food Cooking, Baking, and Serving Equipment.	DGSC
7320	Kitchen Equipmment and Appliances.	DGSC
7360	Sets, Kits, and Outfits; Food Preparation and Serving.	DGSC
7610	Books and Pamphlets	DGSC
7660	Sheet and Book Music	DGSC
7690	Miscellaneous Printed Matter	DGSC
8110	Drums and Cans	DGSC
8120	Commerical and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars	DGSC
8305	Textile Fabrics	
	FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread	DPSC
8315	Notions and Apparel Findings.	
	FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials	DPSC
8330	Leather	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins	DPSC
8345	Flags and Pennants	DPSC
8405	Outerwear, Men's	DPSC
8410	Outerwear, Women's	DPSC
8415	Clothing, Special Purpose	
	FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's	DPSC
8435	Footwear Women's	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infant's Apparel and Accessories.	DPSC
8455	Badges and Insignia	DPSC
8460	Luggage	DPSC
8465	Individual Equipment	DPSC
8470	Armor, Personal	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905 [5]	Meat, Poultry, and Fish	DPSC
8910 [5]	Dairy Foods and Eggs	DPSC
891 [5]	Fruits and Vegetables	DPSC
8920 [5]	Bakery and Cereal Products	DPSC
8925 [5]	Sugar, Confectionery, and Nuts.	DPSC
8930 [5]	Jams, Jellies, and Preserves	DPSC
8935 [5]	Soups and Bouillons	DPSC
8940 [5]	Special Dietary Foods and Food Specialty Preparations.	DPSC
8945 [5]	Food Oils and Fats	DPSC
8950 [5]	Condiments and Related Products.	DPSC
8955 [5]	Coffee, Tea, and Cocoa	DPSC
8960 [5]	Beverages, Nonalcoholic	DPSC
8970 [5]	Composite Food Packages	DPSC
8975 [5]	Tobacco Products	DPSC
9110	Fuels, Solid	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils	DFSC
9150	Oils and Greases; Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials	DGSC
9330	Plastic Fabricated Materials	DGSC
9340	Glass Fabricated Materials	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricatred Nonmetallic Materials.	DGSC
9420 P	Fibers; Vegetable, Animal, and Synthetic.	DPSC
	This partial FSC assignment applies only to raw cotton and raw wool.	
9430 P	Miscellaneous Crude Animal Products, Inedible.	DPSC
	This partial assignment applies only to crude hides.	
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel.	DISC
9515	Plate, Sheet, and Strip, Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil, Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plates, Sheet, Strip, Foil and Wire, Precious Metal.	DISC
9620	Minerals, Natural and Synthetic.	DFSC
	This partial assignment applies only to crude petroleum and crudel shale oil.	
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipmment and Supplies.	DGSC
9999	Miscellaneous Items	DGSC

Foootnotes:

[1] These assignments do not apply to items decentralized by the DLA Center Commander, i.e., designated for purchase by each military department, and to those items in DLA assigned federal supply classes, which may be assigned to GSA for supply management. In addition, see subpart 208.70 which describes conditions under which a military service may purchase (contract for) military service supply managed items in DLA assigned federal supply classes. See notes 2 and 3 for further exceptions pertaining to certain DLA assignments.

[2] DLA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940, and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated acquisition to the Department of the Army. In addition, the assignment in FSC 2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated acquisition to the Department of the Army.

[3] This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a military departemnt. The contracting responsibility for such equipment is assigned to the department which developed or sponsored its development.

[4] DLA has contracting responsibility for all the items in the classes of FS Group 65. In addition, DLA has contracting responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-group 65 classes where the military medical services have the sole or prime interest in such items. The specific item coverage of these Non-group 65 items is published in the DOD section of the Federal Supply Catalog for medial materials C3-1 through C3-12, inclusive.

[5] This assignment includes health and comfort items listed in AR 700-23. It also includes resale items for commissionary stores (including brand name items).

[6] DLA centers are identified as follows—
DCSC—Defense Construction Supply Center

DESC—Defense Electronics Supply Center
DFSC—Defense Fuel Supply Center
DGSC—Defense General Supply Center
DISC—Defense Industrial Supply Center
DPSC—Defense Personnel Support Center

[7] DFSC is responsible for contracting for only petroleum base items in FSC 6810 and 6850.

[8] This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data lists of each respective service.

[9] This partial FSC assignment in FSC 6115 does not apply to Mobile Electric Power Generating Source (MPEGS). The contracting direction responsibility for MPEGS is assigned to the DoD Project Manager, Mobile Electric Power, by DoDD 4120.11. DoD components desiring to use other than the DoD Standard Family of Generator Sets, contained in MIL-STD 633, shall process a Request for Deviation in accordance with Joint Operating Procedures, AR 700-101, AFR 400-50, NAVMATINST 4120.100A, MCO 11310.8c and DLAR 4120.7, Subject: Management and Standardization of Mobile Electric Power Generating Sources, prior to initiating an acquistion.

Part 5—Defense Nuclear Agency Assignments

Federal supply class code	*Commodity*
1105	Nuclear Bombs
1110	Nuclear Projectile
1115	Nuclear Warheads and Warhead Sections
1125	Nuclear Demolition Charges
1127	Nuclear Rockets
1130	Conversion Kits, Nuclear Ordance
1135	Fuzing and Firing Devices, Nuclear Ordnance
1140	Nuclear Components
1145	High Explosive Charges, Propellants, and Detonators; Nuclear Ordnance
1190	Specialized Test and Handling Equipment, Nuclear Ordnance
1195	Miscellaneous Nuclear Ordnance
	In addition to the above, assignments, to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

Part 6—General Services Administration Assignments

("P" after FSC number indicates partial FSC assignment.)

Federal supply class code	Commodity
	302
2310 P	Passenger Motor Vehicles
2320 P	Trucks and Truck Tractors
	These two partial assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Acquisition to the Department of the Army—
	Bus, convertible to ambulance
	Truck, 4x4, convertible to ambulance
	Truck, 4x4 dump, 9,000 pounds GVW, with cut-down cab
	(See Army Coordinated Acquisition assignments in FSC 2310 and 2320)
3540	Wrapping and Packaging Machinery
3550	Vending and Coin Operated Machines
3590	Miscellaneous Service and Trade Equipment
3750	Gardening Implements and Tools
5110	Hand Tools, Edged, Nonpowered
5120	Hand Tools, Nonedged, Nonpowered
5130	Hand Tools, Power Driven
5133	Drill Bits, Counterbores, and Countersinks; Hand and Machine
5136	Taps, Dies, and Collects; Hand and Machine
5140	Tool and Hardware Boxes
5180	Sets, Kits, and Outfits of Hand Tools
5210	Measuring Tools, Craftmen's
5345	Disks and Stones, Abrasive
5350	Abrasive Materials
5610	Mineral Construction Materials, Bulk
5620	Building Glass, Tile, Brick, and Block
5630	Pipe and Conduit, Nonmetallic
5640	Wallboard, Building Paper, and Thermal Insulation Materials
5650	Roofing and Siding Materials
5670	Architectural and Related Metal Products
5680 P*	Miscellaneous Construction Material
7105	Household Furniture
7110	Office Furniture
7125	Cabinets, Lockers, Bins, and Shelving
7195	Miscellaneous Furniture and Fixtures
7220	Floor Coverings
7230	Draperies, Awnings, and Shades
7240	Household and Commercial Utility Containers
7290	Miscellaneous Household and Commercial Furnishings and Appliances
7330	Kitchen Hand Tools and Utensils
7340	Cutlery and Flatware
7350	Tableware
7410	Punched Card System Machines
7420	Accounting and Calculating Machines
7430	Typewriters and Office-type Composing Machines
	This assignment does not apply to machines controlled by the Congressional Joint Committee on Printing
7450	Office-type Sound Recording and Reproducing Machines
7460	Visible Record Equipment
7490	Miscellaneous Office Machines
	This assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing
7510	Office Supplies
	This assignment does not apply to office supplies, including special inks, when DoD requirements of such items are acquired through Government Printing Office channels
7520	Office Devices and Accessories
	This assignment does not apply to office devices and accessories when DoD requirements of such items are acquired through Government Printing Office channels
7530	Stationery and Record Forms
	This assignment does not apply to stationery and record forms when DoD requirements of such items are acquired through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710	Musical Instruments
7720	Musical Instrument Parts and Accessories
7730	Phonographs, Radios, and Television Sets; Home Type
7740	Phonograph Records
7810	Athletic and Sporting Equipment
7820	Games, Toys, and Wheeled Goods
7830	Recreational and Gymnastic Equipment
7910	Floor Polishers and Vacuum Cleaning Equipment
7920	Brooms, Brushes, Mops, and Sponges
7930	Cleaning and Polishing Compounds and Preparations
8010	Paints, Dopes, Varnishes, and Related Products
8020	Paint and Artists Brushes
8030	Preservative and Sealing Compounds
8040	Adhesives
8105	Bags and Sacks
8115	Boxes, Cartons and Crates
8135	Packaging and Packing Bulk Materials
8510	Perfumes, Toilet Preparations and Powders
8520	Toilet Soap, Shaving Preparations and Dentifrices
8530	Personal Toiletry Articles
8540	Toiletry Paper Products
8710	Forage and Feed
8720	Fertilizers
8730	Seeds and Nursery Stock
9310	Paper and Paperboard
9905	Signs, Advertising Displays, and Identification Plates
9910	Jewelry
9915	Collector's Items
9920	Smokers' Articles and Matches

Footnotes:

These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned federal supply classes which have been retained for DLA supply management as listed in the applicable Federal Supply Catalog Management Data lists. In addition, see subpart 208.70 which describes conditions under which a military service may contract for military service managed items in GSA assigned federal supply classes.

*This partial FSC assignment does not include landing mats which are assigned to the Defense Logistics Agency.

Appendix R to Chapter 2—[Removed]

72. Appendix R to Chapter 2 is removed.

[FR Doc. 90-25521 Filed 10-30-90; 8:45 am]

BILLING CODE 3810-01-M

federal register

Wednesday
October 31, 1990

Part III

Department of the Interior

Bureau of Indian Affairs

Liquor and Tobacco Sale of Distribution Ordinance: Apache Tribe of Oklahoma; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor and Tobacco; Sale or Distribution Ordinance; Apache Tribe of Oklahoma

October 15, 1990.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that the Apache Tribe of Oklahoma Liquor Ordinance adopted on December 28, 1989, Relating to the Use and Distribution of Liquor was duly adopted by the Apache Tribe of Oklahoma by Resolution 89–3–HUD and amended by Resolution 90–22–HUD. The Ordinance provides for the regulation of possession, consumption and importation of alcohol into the area of the Apache Tribe of Oklahoma and the surrounding Indian Country under the jurisdiction of the Apache Tribe of Oklahoma.

DATES: This Ordinance is effective as of October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Maria Mendoza, Management Analyst, Branch of Judicial Services, Division of Tribal Government Services, 1849 C Street, NW., Washington, DC 20240; telephone (202) 208–4400, (FTS) 268–4400.

SUPPLEMENTARY INFORMATION: The Ordinance reads as follows: The Apache Tribe of Oklahoma, acting in accordance with the customary law and practice of the Apache Tribal Community hereby adopts the following ordinance governing the possession, consumption and importation of alcohol into the Apache Tribal Community.

Section 1–01 Title and Purpose

1–01.01—This document shall be known as the Apache Tribe of Oklahoma Liquor Ordinance. These regulations are enacted to regulate the sale and distribution of liquor and beer products on Tribal Trust Lands of the Apache Tribe of Oklahoma and to generate revenue to fund needed tribal programs and services.

Section 1–02 Definitions

1–02–01—Unless otherwise required by the context the following words and phrases shall have the designated meanings:

(1). *Tribe* shall mean the Apache Tribe of Oklahoma, P.O. Box 1220, Anadarko, Oklahoma 73005.

(2). *Business Committee* shall mean the Apache Tribe of Oklahoma Business Committee as constituted by Article V of the Constitution and By-Laws of the Apache Tribe of Oklahoma.

(3). *Tribal Trust Lands* shall mean any lands and waters held in trust by the Federal Government within the jurisdiction of the Apache Tribe of Oklahoma. This is to mean Indian Country as defined by 18 U.S.C. 1151.

(4). *Member* shall mean any person whose name appears on the official roll of the Apache Tribe of Oklahoma.

(5). *Commercial Sale* shall mean the transfer, exchange or barter, in any or by any means whatsoever, for a consideration by any person, association, partnership, or corporation, or liquor and beer products.

(6). *Wholesale Price* shall mean the established price for which liquor and beer products are sold to the Apache Tribe of Oklahoma or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.

(7). *Alcohol* is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses or sugar, or other substances including all dilutions and mixtures of this substance.

(8). *Beer* means any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 6 percent of alcohol by weight.

(9). *Liquor* shall mean an alcohol beverage made by distillation rather than by fermentation. A liquid substance such as broth or juice, produced by cooking.

(10). *Liquor Outlet* shall mean tribally licensed retail sale business selling liquor or beer on Tribal Trust Lands.

(11). *Operator* shall mean all enrolled members of twenty-one (21) years of age and over, of the Tribe or enrolled members of twenty-one (21) years of age and over, of another federally recognized tribe of American Indians, or other person twenty-one (21) years of age or older, properly licensed by the Tribe to operate a liquor and beer outlet.

Section 1.3 Licensing of Liquor and Beer Outlets

1–3.01 Licensing. The Apache Tribe of Oklahoma Business Committee shall be the Liquor and Beer Control Commission. The Commission is empowered to:

(1). Administer these regulations by exercising general control, management, and supervision of all liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of these regulations.

(2). Adopt and enforce rules and regulations in furtherance of the purpose of these regulations and in the performance of its administrative functions.

Section 1–4 Nature of Outlet

1–4.01 Nature of Outlet. Each liquor and beer outlet, license granted by the Commission, hereunder, shall be managed pursuant to section 1–7 of this Ordinance.

Section 1–5 Application for Liquor and Beer Outlet License

1–5.01 Application. Any enrolled member, twenty-one (21) years of age and older, of the Tribe or an enrolled member, twenty-one (21) years of age and older, of a federally recognized tribe or other person twenty-one (21) years of age or older, may apply to the Commission for a liquor and beer outlet license.

1–5.02 Licensing Requirements—The person applying for such permit must make a showing once a year, and must satisfy the Commission that he is a person of good moral character; that he has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors, or of any of the gambling laws of the state, or any other state of the United States, within three (3) years immediately preceding the date of his petition, or any of the laws commonly called "prohibition laws", or had any permit or license to sell nonintoxicating liquors revoked in any county of this state within twelve (12) months; and that, at the time of his petition for a license, he is not the holder of a retail liquor dealer's permit or license from the United States Government to engage in the sale of intoxicating liquor. Any license to wholesaler or retail dealer may be refused or removed by the Commission upon ten (10) days notice in writing to such wholesaler or retail dealer, and an opportunity to be heard shall be afforded, after which order of revocation may be issued by the Commission, and the same shall thereupon become final.

1–5.03 Processing of Application—The Tribal Secretary-Treasurer shall receive and process applications and be the official representative of the Tribe and Commission in matters relating to liquor and beer excise tax collections

and related matters. If the Commission or its authorized representative is satisfied that the applicant is suitable and a respectable person, the Commission or its authorized representative may issue a license for the sale of liquor and beer products.

1–5.04 Application Fee—Each application shall be accompanied by an application charge or a fee of twenty-five dollars ($25.00).

Section 1–6 Liquor and Beer Licenses

1–6.01 Upon approval of an application, the Commission shall issue the applicant a liquor and beer outlet license, for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type outlet being permitted. This license shall not be transferable. The licensee must properly and publicly display the license in the place of business. It shall be renewable at the discretion of the Commission by submission of the licensee of subsequent application form and payment of application fee as provided in Section 1–5.

Section 1–7 Regarding Sales by Liquor Wholesalers and Transport of Liquors Upon Trust Lands

1–7.01 Right of commission to Scrutinize Suppliers—The operator of any licensed outlet shall keep the Commission informed, in writing, of the identity of suppliers and/or wholesalers who supply or are expected to supply liquor stocks to the outlet(s). The commission may, at its discretion, limit or prohibit the purchase of said stock from a supplier or wholesaler for the following reasons: Non-payment of Tribal taxes; bad business practices; or sale of unhealthy supplies. A ten day notice of stopping purchases will be given by the Commissioner whenever purchases from a supplier are to be discontinued unless there is a health emergency.

1–7.02 Freedom of Information From Suppliers—Operators shall in their purchase of stock and in their business relations with suppliers cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and operators. The Commission may, at its discretion, require the receipts from the suppliers of all invoices, bills of lading, billings or other documentary receipts of sales to the operators. All records shall be kept according to Section 1–8.08 of this Ordinance.

Section 1–8 Sales by Retail Operators

1–8.01 Commission Regulations—The Commission shall adopt procedures which shall supplement these regulations and facilitate their enforcement. These procedures shall include limitations on sales to minors, where liquor may be consumed, persons not allowed to purchase alcoholic beverages, hours, and days when outlets may be open for business, and other appropriate matters and controls.

1–8.02 Sales to Minors—No Tribal operator shall give, sell, or otherwise supply liquor to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her parents or for the use of any other person.

1–8.03 Consumption of Liquor Upon Licensed Premises—No Tribal operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control: The Commission will allow the consumption of liquor and shall identify where liquor may be consumed on Tribal Trust lands.

1–8.04 Conduct on Licensed Premises.

(1) No Tribal operator shall be disorderly, boisterous, or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous, or intoxicated person to be thereon; nor shall he or she use or allow the use of profane or vulgar language thereon.

(2) No operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the State of Oklahoma.

1–8.05 Employment of Minors—No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein. Employees eighteen (18) years or older may sell or handle beer or wine provided that there is direct supervision by an adult twenty-one (21) years of age or older.

1–8.06 Operator's Premises open to Commission Inspection—the premises of all operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the Commission or its designated representative.

1–8.07 Operator's Record—The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor by operators shall be kept in file in the retail premises of the operator purchasing the same for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible shall be filed in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All cancelled checks, bank statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection and checking.

1–8.08 Records Confidential—All records of the Commission showing the purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representative. The Tribe has adopted a Privacy Act where all records and information are kept confidential.

1–8.09 Conformity with State Law—Operators shall comply with State of Oklahoma Liquor and Beer Control standards to the extent required by 18 U.S.C. 1161. However, the Tribe shall have concurrent jurisdiction, as applicable, with the Federal Government over the sale of liquor and beer products within the boundaries of Tribal Trust Lands.

Section 1–9 Tribal Excise Tax Imposed Upon Distribution of Liquor

1–9.01 Tribal Excise Taxes. The Commission shall have authority, as provided by Tribal law, to assess and collect tax on sales of liquor and beer products to the consumer or purchaser. Such tax shall be in amounts equal to at least 5 percent of all retail sales prices, but the Commission may establish tax rates in excess of that 5 percent for any given class of merchandise.

1–9.02 Added to Retail Price. The excise tax levied hereunder shall be added to the retail selling price of liquor and beer products sold to the ultimate consumer.

Section 1–10 Liability for Bills

1–10.01 Liability for bills—The Tribe shall have no legal responsibility for any unpaid bills owed by a liquor and beer outlet to a wholesale supplier or any other person. The Tribe does not waive any immunity it possesses.

Section 1–11 Other Business by Operator

1–11.01 Other Business by Operator—An operator may conduct another business simultaneously with

managing a liquor and beer outlet. PROVIDED, such other business must be approved prior to initiation by majority vote of the Commission. Said other business may be conducted on the same premises as a liquor and beer outlet, but the operator shall be required to maintain separate books of account for the other business.

Section 1–12 Tribal Liability and Credit

1–12.01 Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Tribe or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The operator shall hold the Tribe harmless from all claims and liability of whatever nature. The Commission shall revoke operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

1–12.02 Insurance—The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Commission may establish as a condition of any license, the required insurance limits and any additional coverages deemed advisable.

Section 1–13 Audit and Inspection

1–13.01 All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative for any reasonable time.

1–13.02 Bond for Excise Tax—The excise tax together with reports on forms to be supplied by the Commission shall be remitted to the tribal office monthly unless otherwise specified in writing by the Commission. The operator shall furnish a satisfactory bond to the Tribe in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

Section 1–14 Revocation of Operator's License

1–14.01 Revocation of Operator's License—Failure of an operator to abide by the requirements of these regulations and any additional regulations or requirements imposed by the Commission will constitute grounds for revocaton of the operator's license as well as enforcement of the penalties provided in 1–15.

Section 1–15 Violation—Penalties

1–15.01 Any person violating these regulations shall be guilty of an offense and subject to a fine of not less than fifty dollars ($50.00) and not to exceed a maximum of two hundred-fifty dollars ($250.00). The Bureau of Indian Affairs Court of Indian Offenses, Anadarko Agency, will have jurisdiction over the proceedings.

1–15.02 Any operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Tribe shall be empowered to seize forfeited products.

Section 1–16 Separability

1–16.01 If any provision of the regulation in its application to any person or circumstance is held invalid, the remainder of the regulation and their application to other persons or circumstances is not affected.

Linda L. Richardson,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 90–25678 Filed 10–30–90; 8:45 am]

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federal register

Wednesday
October 31, 1990

Part IV

Department of Education

34 CFR Part 12

Disposal and Utilization of Surplus Federal Real Property for Educational Purposes; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 12

RIN 1880-AA27

Disposal and Utilization of Surplus Federal Real Property for Educational Purposes

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Disposal and Utilization of Surplus Federal Real Property for Educational Purposes. These amendments are needed to clarify provisions in the current regulations that are vague. These regulations increase the accountability of recipients of surplus Federal real property to the United States in their use of that property and clarify the requirements of the program.

DATES: Comments must be received on or before November 30, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to David B. Hakola, U.S. Department of Education, Office of the Administrator for Management Services, (Room 1175, Mail Stop 4532), 400 Maryland Avenue, SW., Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: David B. Hakola, (202) 401-0500.

SUPPLEMENTARY INFORMATION: The Disposal and Utilization of Surplus Federal Real Property for Educational Purposes regulations are authorized by the Federal Property and Administrative Services Act of 1949, as amended (Act). The Secretary is authorized to request the Administrator of the General Services Administration (GSA) to assign surplus Federal real property to the Secretary for sale or lease to eligible entities for educational purposes. As a credit against the fair market sale or lease value of the property, the transferee or lessee may be granted up to a 100% public benefit allowance (PBA) based upon the type of educational organization it is and the proposed educational use of the surplus Federal real property. Property is conveyed as either off-site or on-site surplus Federal real property. Off-site property is property capable of being removed from the land (e.g., improvements, small buildings, etc.) and does not include the underlying land. In contrast, on-site property generally consists of a parcel of land which is conveyed together with fixtures and other improvements thereon. The conveyance instrument used by the Secretary contains conditions, restrictions, reservations, and convenants with which the transferee or lessee must comply in order to retain title or possession of the surplus Federal real property. The Act directs the Secretary of Education to enforce compliance with the terms and conditions contained in the conveyance instrument and to take corrective action in the case of noncompliance. For on-site property, the Secretary's oversight responsibility may last up to 30 years, while for off-site property it lasts for the useful economic life of the property.

The major issues addressed in these proposed regulations are the following:

Full Use: The transferee or lessee will be required to make full use of the transferred surplus Federal real property. See § 12.12.

Public Benefit Allowance: The United States sells or leases the surplus Federal real property to eligible entities in return for educational uses of the property for a stated period of time. For sales, that period is usually thirty (30) years. In general, the United States receives 100% consideration through educational use of the surplus Federal real property for the stated period. In certain instances, however, the United States may require a portion of the payment for the property to be in cash. The public benefit allowance (PBA) table in appendix A is used to determine the portion of the payment which will be paid in cash. Appendix A indicates both the beginning or basic PBA granted to each type of eligible entity and all subsequent organizational and use allowances granted, depending upon the proposed use or need for the property. Thus, the basic PBA may be increased to a maximum of 100%, depending upon the type of educational use and need for the property. If an entity does not receive the maximum 100% PBA, then it must make payments in cash, in addition to the educational use for the stated period.

These proposed regulations revise the current PBA table in appendix A, to better and more fairly reflect current needs and priorities. Other changes were made in the PBA to remedy the appearance of preferential treatment being given to one type of applicant over another in the same category. In addition, these proposed regulations eliminate Exhibit B from the existing regulations. That Exhibit concerns the sale of surplus Federal real property for health and welfare purpose and is not applicable to the Department of Education.

Period of Restriction: Section 12.14 contains a provision permitting the Secretary to extend the period during which the restrictions in the deed apply to the surplus Federal real property. That extended period would be equivalent to the period during which the surplus Federal real property was not used for an approved use.

Current Need for Surplus Federal Real Property: Section 12.6 requires the applicant for the surplus Federal real property to demonstrate that it has a current need for the surplus Federal real property.

Leasing: Section 12.12 contains the terms and conditions for the leasing of surplus Federal real property by the Secretary.

Use of the Surplus Federal Real Property by Others: Section 12.13 contains the terms and conditions for the use of all or a portion of the transferred surplus Federal real property by entities other than those to whom the transfer of lease was made.

Executive Order 12291: These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification: The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be effected by these regulations are small nonprofit organizations as defined by section 501(c)(3) of the Internal Revenue Code of 1954. However, the regulations would not have a significant impact on the affected small nonprofit organizations because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980: Sections 12.6, 12.11, and 12.12 contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the OMB for review.

(44 U.S.C. 3504(h))

These regulations affect the following types of entities eligible to apply for surplus Federal real property for educational purposes: States, political subdivisions or instrumentalities of States, tax-supported institutions, nonprofit institutions, and any

combinations of these types of entities. The Department needs and uses the information to enable the Secretary to detemine an applicant's eligibility for the property and to increase the accountability of recipients.

Annual public reporting and recordkeeping burden for this collection of information is estimated to average 26 hours per response for 12 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 1175, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Secretary in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 12

Education, Education Department, Federal buildings and facilities, Disposal and utilization of surplus real property, Property, Government property, Surplus government property, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.145 Federal Real Property Assistance Program.)

Dated: October 24, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 12 to read as follows:

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES

Subpart A—General

Sec.

12.1 What is the scope of this part?
12.2 What definitions apply?
12.3 What other regulations apply to this program?

Subpart B—Distribution of Surplus Federal Real Property

12.4 How does the Secretary provide notice of availability of surplus Federal real property?
12.5 Who may apply for Surplus Federal real property?
12.6 What must an application for surplus Federal real property contain?
12.7 How is surplus Federal real property disposed of when there is more than one applicant?
12.8 What transfer or lease instruments does the Secretary use?
12.9 What warranties does the Secretary give?
12.10 How is a Public Benefit Allowance (PBA) calculated?

Subpart C—Conditions Applicable to Transfer or Leases

12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?
12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?
12.13 When is use of the transferred surplus Federal real property by entities other than the transferee permissible?

Subpart D—Enforcement

12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

Subpart E—Abrogation

12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

Appendix A: Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes

Authority: 40 U.S.C. 471–488; 20 U.S.C. 3401 *et seq.*; 42 U.S.C. 2000d (1) *et seq.*; 20 U.S.C. 1681 *et seq.*; 29 U.S.C. 794 *et seq.*; 42 U.S.C. 4332.

Subpart A—General

§ 12.1 What is the scope of this part?

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

(Authority: 40 U.S.C. 484(k))

§ 12.2 What definitions apply?

(a) *Definitions in the act.* The following terms used in this part are defined in section 472 of the Act:

Administrator.

Surplus property.

(b) *Definitions in the Education Department General Administrative Regulations (EDGAR).* The following terms used in this part are defined in 34 CFR 77.1:

Department.

Secretary.

State.

(c) *Other Definitions:* The following definitions also apply to this part:

Abrogation means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance instrument before the term of the instrument expires.

Act means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 *et seq.*).

Applicant means an eligible entity as described in § 12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

Lessee, except as used in § 12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

Nonprofit institution means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

Off-site property means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

On-site property means surplus Federal real property, including any

related personal property—other than off-site property.

Period of restriction means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

Program and plan of use means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

Public benefit allowance ("PBA") means the credit, calculated in accordance with appendix A, to this part given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

Related personal property means any personal property—

(1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or

(2) That is determind by the Administrator to be otherwise related to the surplus Federal real property.

Surplus Federal real property means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

Transfer means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

Transferee means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 *et seq.*)

§ 12.3 What other regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR parts 100, 104, and 106.

(b) 41 CFR parts 101–47.

(c) 34 CFR part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d–1 *et seq.*; 29 U.S.C. 794 *et seq.*; 20 U.S.C 1681 *et seq.*; Executive Order 12549; and 20 U.S.C. 3474)

Subpart B—Distribution of Surplus Federal Real Property

§ 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availabiliy of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101–47.308–4.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.5 Who may apply for surplus Federal real property?

The following entities may apply for surplus Federal real property:

(a) A State.

(b) A political subdivision or instrumentality of a State.

(c) A tax-supported institution.

(d) A nonprofit institution.

(e) Any combination of these entities.

(Authority: 40 U.S.C. 484(k)(1)(A))

§ 12.6 What must an application for surplus Federal real property contain?

An application for surplus Federal real property must—

(a) Contain a program and plan for use;

(b) Contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations;

(c) Demonstrate that the proposed program and plan to use of the surplus Federal real property is for a purpose that the applicant is authorized to carry out;

(d) Demonstrate that the applicant is able, willing, and authorized to assume immediate custody, use, care, and maintenance of the surplus Federal real property;

(e) Demonstrate that the applicant is able, willing, and authorized to pay the administrative expenses incident to the transfer or lease;

(f) Demonstrate that the applicant has the necessary funds, or the ability to obtain those funds immediately upon transfer or lease, to carry out the proposed program and plan of use for the surplus Federal real property;

(g) Demonstrate that the applicant has an immediate need and ability to use all of the surplus Federal real property for which it is applying;

(h) Demonstrate that the surplus Federal real property is needed for educational purposes at the time of application and that it is so needed for the duration of the period of restriction;

(i) Demonstrate that the surplus Federal real property is suitable or adaptable to the proposed program and plan of use; and

(j) Provide information requested by the Secretary in the notice of availability, include information of the effect of the proposed program and plan of use on the environment.

(Authority: 40 U.S.C. 484(k))

§ 12.7 How is surplus Federal real property disposed of when there is more than one applicant?

(a) If there is more than one applicant for the same surplus Federal real property, the Secretary transfers or leases the property to the applicant whose proposed program and plan of use the Secretary determines provides the greatest public benefit, using the criteria contained in appenix A, to this part that broadly address the weight given to each type of entity applying and its proposed program and plan to use. (See example in § 12.10(d)).

(b) If, after applying the criteria described in paragraph (a) of this section, two or more applicants are rated equally, the Secretary transfers or leases the property to one of the applicants after—

(1) Determining the need for each applicant's proposed educational use at the site of the surplus Federal real property;

(2) Considering the quality of each applicant's proposed program and plan of use; and

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

§ 12.8 What transfer or lease instruments does the Secretary use?

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and

conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

§ 12.9 What warranties does the Secretary give?

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

§ 12.10 How is a Public Benefit Allowance (PBA) calculated?

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, any type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under appendix A to this part:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10% hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

Subpart C—Conditions Applicable to Transfers or Leases

§ 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

(a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.

(b) National Historic Preservation Act of 1966, 16 U.S.C. 470.

(c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*

(d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).

(e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).

(f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) *et seq.*

(g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*

(h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 *et seq.*

(i) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

§ 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) *General terms and conditions for transfers and leases.* The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with § 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

(i) Transfer taxes;
(ii) Surveys;
(iii) Appraisals;
(iv) Inventory costs;
(v) Legal fees;
(vi) Title search;
(vii) Certificate or abstract expenses;
(viii) Decontamination costs;
(ix) Moving costs;
(x) Recordation expenses;
(xi) Other closing costs; and
(xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) *Additional terms and conditions for on-site transfers.* The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) *Additional terms and conditions for off-site transfers.*

(1) The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

(i) To post performance bonds;

(ii) To post performance guarantee deposits; or

(iii) To give such other assurances as may be required by the Secretary of the holding agency to ensure adequate site clearance.

(d) *Additional terms and conditions for leases.* In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484 (k)(1))

§ 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) *By eligible entities.* A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) *By ineligible entities.* A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in § 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

§ 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) *General sanctions for noncompliance.* The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases or surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;

(ii) Title or possession to the transferred or leased surplus Federal real property and the right to immediate possession revert to the United States;

(iii) The surplus Federal real property be transferred or leased to another eligible entity as the Secretary directs;

(iv) The transferee or lessee abrogate the conditions and restrictions in the transfer or lease instrument in accordance with the provisions of § 12.15;

(v) The transferee or lessee place the surplus Federal real property into immediate use for an approved purpose and extend the period of restriction in the transfer or lease instrument for a term equivalent to the period during which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If a required report is received by the Secretary more than thirty (30) days after the due date, the Secretary may—

(i) Impose a late fee of $100 per day for each day after the expiration of the 30-day grace period that the report is not received by the Secretary;

(ii) Extend the period of restriction in the conveyance instrument for a term equivalent to the amount of time the report is late; or

(iii) Take both actions described in paragraphs (a)(2) (i) and (ii) of this section.

(3) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;

(B) Acts of God; or

(C) Reasonable alterations made by the transferee or lessee to adapt the surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(4) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in § 12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(5) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may terminate the lease.

(Authority: 40 U.S.C. 484(k)(4)(A)

(b) *Additional sanction for noncompliance with off-site transfer.* In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a

transfer of off-site surplus Federal real property, the Secretary may require that the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

§ 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary's sole discretion, abrogate the conditions and restrictions in the transfer or lease instrument if—

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(iii))

Appendix A.—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes [1]

Classification	Percent allowed												
		Organization allowances							Utilization allowances				
	Basic public benefit allowance	Accreditation	Federal impact	Public service training	Hardship	Inadequacy of existing school plant facilities			Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	Maximum public benefit allowance [4]
						10–25%	26–50%	51–100%					
Elementary or high schools	70	10	10	10	10	10	10	10	10	10	10	10	100
Colleges or Universities	50	20		10	10	10	20	30	10	10	10	10	100
Specialized schools	70			10	10	10	20	30	10	10	10	10	100
Public libraries or educational museums	[2] 100												[2] 100
School outdoor education	40								10	[3] 10	10		70
Central administrative and/or service centers	80												80
Non-profit educational research organizations	50	20		10					10	10		10	100

[1] This Appendix applies to transfers of both on-site and off-site surplus property.

[2] Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall program is applicable when such facilities are conveyed as a minor component of other facilities.

[3] This 10% may include an approvable recreation program which will be accessible to the public and entirely compatible with, but subordinate to, the educational program.

[4] This column establishes the maximum discount from the fair market value for payment due from the transferee at the time of the transfer. This column does not apply for purposes of ranking applicants to determine to which applicant the property will be transferred. Competitive rankings are based on the absolute total of public benefit allowance points and are not limited to the 100% ceiling.

Description of Terms used in this Appendix:

Elementary or High School means an elementary school (including a kindergarten), high school, junior high school, junior-senior high school or elementary or secondary school system, that provides elementary or secondary education as determined under State law. However, it does not include a nursery school even though it may operate as part of a school system.

College or University means a non-profit or public university or college, including a junior college, that provides postsecondary education.

Specialized School means a vocational school, area trade school, school for the blind, or similar school.

Public Library means a public library or public library service system, not a school library or library operated by non-profit, private organizations or institutions that may be open to the general public. School libraries receive the public benefit allowance in the appropriate school classification.

Educational Museum means a museum that conducts courses on a continuing, not *ad hoc*, basis for students who receive credits from accredited postsecondary education institutions or school systems.

School Outdoor Education means a separate facility for outdoor education as distinguished from components of a basic school. Components of a school such as playgrounds and athletic fields receive the basic allowance applicable for that type of school. The outdoor education must be located reasonably near the school system and may be open to and used by the general public, but only if the educational program for which the property is conveyed is given priority of use. This category does not include components of the school such as playgrounds and athletic fields, that are utilized during the normal school year, and are available to all students.

Central Administrative and/or Service Center means administrative office space, equipment storage areas, and similar facilities.

Description of Allowances

Basic Public Benefit Allowance means an allowance that is earned by an applicant that satisfies the requirements of § 12.10 of this part.

Organization Allowance

Accreditation means an allowance that is earned by any postsecondary educational institution, including a vocational or trade school, that is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602.

Federal Impact means an allowance that is earned by any local educational agency (LEA) qualifying for Federal financial assistance as the result of the impact of certain Federal activities upon a community such as the following under Public Law 81–874 and Public Law 81–815: to any LEA charged by law with responsibility for education of children who reside on, or whose parents are employed on, Federal property, or both; to any LEA to which the Federal Government has caused a substantial and continuing financial burden as the result of the acquisition of a certain amount of Federal property since 1938; or to any LEA that urgently needs minimum school facilities due to a substantial increase in school membership as the result of new or increased Federal activities.

Public Services Training means an allowance that is earned if the applicant has cadet or ROTC units or other personnel training contracts for the Federal or State governments. This is given to a school system only if the particular school receiving the property furnishes that training.

Hardship means an allowance earned by an applicant that has suffered a significant facility loss because of fire, storm, flood, other disaster, or condemnation. This allowance is also earned if unusual conditions exist such as isolation or economic factors that require special consideration.

Inadequacies of Existing Facilities means an allowance that is earned on a percentage basis depending on the degree of inadequacy considering both public and nonpublic facilities. Overall plant requirements are determined based on the relationship between the maximum enrollment accommodated in the present facilities, excluding double and night sessions and the anticipated enrollment if the facilities are transferred. Inadequacies may be computed for a component school unit such as a school farm, athletic field, facility for home economics, round-out school site, cafeteria, auditorium teacherages, faculty housing, etc., only if the component is required to meet State standards. In that event, the State Department of Education will be required to provide a certification of the need. Component school unit inadequacies may only be related to a particular school and not to the entire school system.

Utilization Allowances

Introduction of New Instructional Programs means an allowance that is earned if the proposed use of the property indicates that new programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

Student Health and Welfare means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

Research means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

Service to Handicapped means an allowance that is earned if the proposed program and plan of use for the property will be for special education for the physically or mentally handicapped.

APPENDIX*—DISTRIBUTION TABLE

[Disposal and Utilization of Surplus Federal Real Property for Educational Purposes]

Old section	New section	Comments
12.1(a)	12.2(a)	
12.1(b)		Deleted.
12.1(c)	12..2(a)	
12.1(d)		Deleted.
12.1(e)	12.2(b)	
12.1(f)		Deleted.
12.1(g)		Deleted.
12.1(h)		Deleted.
12.1(i)		Deleted.
12.1(j)	12.2(c)	
12.1(k)	12.2(c)	
12.1(l)	12.2(c)	
12.1(m)	12.2(c)	
12.1(n)	12.2(c)	
12.1(o)	12.2(b)	
12.1(p)	12.2(b)	
12.1(q)	12.2(c)	
12.2	12.1	
12.3(a)		Deleted.
12.3(b)	12.5	
12.3(c)		Partially deleted.
12.3(c)	12.6 (g), (h) & (i), 12.12(a)(1) (i) & (ii).	
12.3(d)	12.6(b)	
12.3(e)	12.(6)(c)	
12.3(f)	12.3(a)	
12.4(a)	12.3(a) & 12.9	
12.4(b)		Deleted.
12.5	12.7	
12.6	12.4	
12.7	12.6(j)	
12.8(a)		Deleted.
12.8(b)(1)		Deleted.
12.8(b)(2)	12.6(d)	
12.8(b)(3)	12.6(e)	
12.8(b)(4)	12.6(f)	
12.9(a)	12.10	
12.9(b)		Deleted.
12.9(c)(1)	12.12(a)(1)	
12.9(c)(2)	12.12(a)(3)	
12.9(c)(3)	12.12(a)(6)	
12.9(c)(4)	12.14(a)	
12.9(c)(5)		Partially deleted
12.9(c)(5)	12.12(a) (5) & (6)	
12.9(c)(6)	12.3(b) & 12.14(a)	
12.9(c)(7)	12.14 (a) & (b)	
12.9(c)(8)		Deleted.
12.9(c)(9)	12.12(b), (c)(1) & (d).	
12.9(d)	12.15	
12.9(e)		Deleted.
12.10(a)	12.11	
12.10(b)	12.11	
12.10(c)	12.11	
12.10(d)		Deleted.
12.11(a)	12.12(a)(4)	
12.11(b)	12.12(c)(2)	
12.11(c)		Deleted.
12.11(d)	12.12(a)(7)	
12.11(e)	12.12(a)(7)	
12.11(f)	12.12(a)(7)	
12.12(a)(1)	12.14(a)(1)(v)	
12.12(a)(2)	12.14(a)(1)(iii)	
12.12(a)(3)	12.14(a)(3)(i)(C)(iv)	
12.12(a)(4)	12.14(a)(1)(ii)	
12.12(a)(5)	12.14(a)(1) (ii) & (iv).	
12.12(a)(6)	12.14(a)(4)	
12.12(b)	12.12(a)(2) & 12.13.	
12.13(a)	12.8	
12.13(b)	12.8	
12.14	12.12(a)(6)	
12.15		Deleted.
	12.7(d)(2)	New.
	12.10(b)	New.
	12.13(b)	New.
	12.14(a)(1)(v)	New.
	12.14(a)(1)(vi)	New.

*This Appendix is supplied to the reader as an aid to compare the current regulations with the proposed regulations. It will not be included in the final rulemaking document for these regulations or codified in the Code of Federal Regulations.

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October 31, 1990

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 13

Rules of Practice for FAA Civil Penalty Actions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 25690; Amdt. No. 13-23]

Rules of Practice for FAA Civil Penalty Actions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: In a final rule issued in June 1990, the FAA revised the initiation procedures and the rules of practice for civil penalty actions brought under the agency's assessment authority. The revised procedures and rules were effective on August 2, 1990. In late July 1990, a commenter in the rulemaking proceedings submitted a letter to the FAA, noting what the commenter perceives to be errors or inconsistencies in the provisions of the final rule issued in June 1990. This final rule corrects two sections of the rules of practice in which changes were inadvertently omitted or material was unintentionally deleted when the rules were revised and republished. These corrections will ensure that the rules of practice accurately reflect the agency's intent in revising the rules and will promote clear understanding and consistent interpretation of the revised rules.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Denise Daniels Ross, Special Counsel to the Chief Counsel (AGC-3), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3773.

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center (APA-430), 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of this final rule. Persons interested in being placed on the mailing list for future notices of proposed rulemaking also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

In a notice of proposed rulemaking (NPRM) issued on April 17, 1990, the FAA solicited comment on the initiation procedures and the rules of practice that apply to civil penalty actions (1) not exceeding $50,000, for a violation of the Federal Aviation Act of 1958, or any rule, regulation, or order issued thereunder; and, (2) regardless of amount, for a violation of the Hazardous Materials Transportation Act, or any rule, regulation, or order issued thereunder. 55 FR 15134; April 20, 1990. On June 27, 1990, the FAA issued a final rule revising the initiation procedures and the rules of practice for civil penalty actions in response to the comments submitted to the NPRM. 55 FR 27548; July 3, 1990. The revised rules of practice were effective on August 2, 1990.

In a letter dated July 27, 1990, the Air Transport Association of America (ATA) suggests "technical corrections" to the final rule, and notes "several inconsistencies between the preamble and the final rule * * *." ATA cites four issues, some of which it characterizes as inadvertent omissions, and some of which it believes should be added to the rules of practice. Those issues are: (1) Failure to amend the text of § 13.219(d) to reflect the longer time provided to file an interlocutory appeal; (2) clarification of the appropriate document in which a respondent should express a preferred location for a hearing; (3) deletion of language in § 13.220(k) regarding "separate and complete" responses to interrogatories; and (4) inclusion of a general "defense of timeliness" based on prejudicial delay in the rules of practice so that respondents are aware of this defense. ATA suggests that the FAA publish a "notice of correction" in the **Federal Register** to address its concerns. ATA's request did not arrive sufficiently in advance of the effective date to review and analyze the need for changes to the rules and to prepare and issue an appropriate notice in the **Federal Register** before August 2, 1990. By this notice however, the FAA is amending the rules of practice to correct and clarify two sections in which intended changes either were inadvertently omitted or language was unintentionally deleted.

Discussion

1. *Interlocutory appeals.* ATA correctly notes that the revised text of § 13.219(d) fails to reflect expressly the extended time within which to file an interlocutory appeal, a change suggested by several commenters to the April 1990 NPRM and adopted by the FAA in the June 1990 final rule. The FAA is correcting that omission in the text of § 13.219(d) to ensure that the rule accurately reflects the 10-day period within which to file a notice of interlocutory appeal and any supporting documents.

The agency's review of this section, prompted by ATA's request, highlights several other issues requiring clarification related to interlocutory appeals, issues not identified by ATA. Even as revised to reflect the increased time period, the first sentence of § 13.219(d) would read:

> A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall serve a copy of the notice and supporting documents on each party and the administrative law judge, not later than 10 days *after the administrative law judge's decision forming the basis of the appeal.*

The italicized language in this sentence describes accurately the procedure to file a notice and supporting documents in the case of an interlocutory appeal *of right.* Upon review, however, the FAA is concerned that this section does not adequately address the filing of an interlocutory appeal *for cause,* permitted only if an administrative law judge grants a party's request to file such an appeal. In the case of an interlocutory appeal for cause, an administrative law judge would need time to review a party's request submitted pursuant to § 13.219(b). A party also would need time to prepare a notice of interlocutory appeal and supporting documents (i.e., a brief in support) if the law judge grants the party's request. Although the arguments and any material submitted to the law judge may be very similar to the arguments prepared for the Administrator, the rule should not operate to truncate either the time provided to a party to prepare arguments or the time provided to a law judge to review such arguments.

Therefore, the FAA is amending the first sentence in § 13.219(d). The amendment will ensure that a party has the full 10-day period within which to file the required documents with the Administrator if an administrative law judge grants a request for leave to file an interlocutory appeal for cause. Section 13.219(d) is revised by adding the italicized language and, as revised, the first sentence reads as follows:

> A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall serve a copy of the notice and supporting documents on each party and the administrative law judge, *not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, whichever is appropriate.*

The agency's review of this section also discloses an inconsistency that should be corrected. The third sentence of § 13.219(d) states:

> If the FAA decisionmaker does not issue a decision on the interlocutory appeal or does not seek additional information *within 10 days of the filing of the appeal*, the stay of the proceedings is dissolved."

That provision, which describes the amount of time within which the Administrator must review an interlocutory appeal and issue a decision on that appeal before an automatic stay of the proceedings is dissolved by operation of the rule, was originally promulgated to ensure that an interlocutory appeal is resolved with dispatch and without undue delay to the remainder of the proceedings. However, in light of the extended time period in which to file a notice of interlocutory appeal and supporting documents, the stay of the proceedings under this provision would likely be dissolved automatically before a reply brief would be filed. Increasing the time within which to file an interlocutory appeal brief was not intended to affect any rights of an opposing party to submit written argument or to alter any time period within which the Administrator must resolve an interlocutory appeal. So that the rule does not result in such adverse affects, the FAA is deleting the quoted sentence to eliminate the automatic dissolution of the stay of the proceedings while an interlocutory appeal is pending.

Although previous commenters did not focus specifically on this issue or any apparent inconsistency, automatic dissolution of a stay of the underlying proceedings does not appear to be warranted. Both § 13.219(b) (interlocutory appeals for cause) and § 13.219(c) (interlocutory appeals of right) provide for an absolute stay of the proceedings until the Administrator has issued a decision on the interlocutory appeal. Such a stay seems to be appropriate and necessary for at least two reasons: (1) It encourages swift resolution of issues that may result in dismissal of a case or may otherwise be critical for proper disposition of the case; and (2) it protects the parties from procedural default during the pendency of any interlocutory appeal.

Without correcting the third sentence of § 13.219(d), automatic dissolution of a stay could force the Administrator to issue a decision without the benefit of an opposing party's reply brief or could place the parties in technical noncompliance with some other rule requirement. Because these results were neither intended nor contemplated when the rules were revised, the FAA believes that staying the underlying proceedings while an interlocutory appeal is pending is appropriate. A stay, without automatic dissolution by operation of the rule, serves the interests of both the adjudicators and the parties in these cases by conserving the resources of both the parties and adjudicators, and ensuring final resolution of an issue important enough to warrant interlocutory appeal. Therefore, rather than simply extending the time in which the stay would automatically dissolve to accommodate an extended briefing period, the FAA is deleting the third sentence in § 13.219(d). Thus, as revised, a law judge's decision granting a request for an interlocutory appeal for cause, or a party's filing an interlocutory appeal of right, will stay the proceedings until the Administrator issues a decision on the appeal. Because of the interests served by swift resolution of an interlocutory appeal and the automatic stay of the proceedings imposed by rule, the Administrator will act expeditiously to issue decisions on interlocutory appeals so as not to delay the underlying proceedings.

2. *Interrogatories.* The second issue ATA identifies for correction is § 13.220(k) regarding interrogatories and responses to interrogatories. ATA states that language requiring "separate and complete" responses to interrogatories "may have been inadvertently omitted along with the 'under the oath' language which was purposefully deleted." Because ATA states that it is aware of no previous objections to this language, and also believes that this language serves a "valid and useful" function, ATA urges the FAA to reinsert this language in the rule.

The FAA agrees that the omitted language assists the parties, both in responding to interrogatories and reviewing responses to interrogatories. Because this requirement serves the interests of the parties in full and complete discovery, the FAA is amending § 13.220(k). As revised by adding the italicized language, that section reads as follows:

> (k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. *A party shall answer each interrogatory separately and completely in writing.* If a party objects to an interrogatory, the party shall state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

Although not specifically raised by ATA in its letter, the FAA assumes that ATA and other commenters do not object to the requirement that interrogatory responses be made "in writing." So what seems to be the commenters' preference is reflected in the rule, the FAA is merely reinserting the sentence as it was promulgated in September 1988, omitting only the language "and under oath" as suggested by previous commenters and discussed in the June 1990 final rule.

3. *Location of hearings.* ATA believes that it is "appropriate and reasonable" for a respondent to suggest a location for a hearing when filing the answer to a complaint. In ATA's opinion, a respondent should not be required to suggest a location until after the specific factual allegations have "finally" been determined by the FAA in its complaint. In ATA's opinion, the allegations as stated in the complaint will "most likely suggest what location is most appropriate from the respondent's perspective."

In response to the agency's April 1990 NPRM, ATA objected to any involvement by the docket clerk in determining the location for a hearing and suggested revision to the rules of practice; the FAA adopted ATA's suggested revisions in the June 1990 final rule. ATA's current concern arises because the discussion of the revisions in the preamble to the June 1990 final rule referred to this issue in the context of filing a request for a hearing. ATA correctly notes, however, that § 13.16(f) of the initiation procedures does not impose such a requirement at that point in the proceedings. ATA does not suggest any revision or correction to the initiation procedures or the rules of practice in this regard, and none is required. The procedures and the rules, as revised in June 1990, accurately reflect the agency's intent with respect to a party's suggestion of a hearing location and the law judge's selection of an appropriate location. Notwithstanding the preamble's statement that a respondent is "required" to include a suggested location when filing a request for a hearing, a respondent is obligated to comply only with the initiation procedures and other procedures contained in the rules of practice, not a discussion in the preamble.

That is not to say, however, that a respondent is precluded from suggesting a desired hearing location in a request for a hearing. ATA believes that a law judge's "need to know the desires of the parties for hearing location does not arise until after a complaint and answer have been filed." However, it is possible that a respondent's interests would be well served by ensuring that the law

judge is aware at the earliest possible time of the hearing location preferred by the respondent. Such early notification also could assist the administrative law judge's expeditious scheduling of hearings.

Although ATA may prefer to wait until agency counsel has "finalized" the allegations by filing a complaint, the FAA does not believe that the complaint would be so drastically different from prior notices that it would significantly affect or alter a logical location for a hearing. The FAA also is not convinced that a respondent would gain any appreciable advantage by suggesting a hearing location in an answer rather than some document that may be filed earlier. Nevertheless, the initiation procedures and the rules of practice impose no contrary obligation and, so long as a respondent complies with the rules, the choice is left to the respondent.

4. *Prejudicial delay.* The final issue of concern to ATA is identified as the availability and codification of a "defense of timeliness." In both the April 1990 NPRM and the June 1990 final rule, the FAA expressed its view that a respondent's demonstration of actual prejudice resulting from unreasonable or excessive delay in initiation of a case could be asserted as a defense in an appropriate case.

ATA believes the agency's recognition of such a defense should be specifically referenced in the rules of practice. Failure to do so, in ATA's opinion, will make it "likely that a presumption of its unavailability will arise." ATA claims that the administrative law judges who hear these cases "may be likely to prohibit this defense from being raised as a matter of course absent its recognition" expressly in the rules of practice for civil penalty actions.

The FAA disagrees. The rules of practice governing proceedings before the National Transportation Safety Board (NTSB) do not contain a provision that codifies a "defense of timeliness" other than the "stale complaint" provisions in 49 CFR 821.33. Nevertheless, the NTSB has noted the potential availability of such a defense to respondents in certificate actions before the NTSB. For example, in *Administrator* v. *Shrader*, EA–3018 (October 16, 1989), the NTSB stated, *in dicta*, that even if the stale complaint rule does not apply, delay in prosecuting and enforcement action could warrant dismissal if the delay has demonstrably prejudiced a respondent's defense. *Shrader* at 7–8. The NTSB noted that a respondent may not simply claim that the passage of time has or may adversely affect preparation of a defense; instead, a respondent must show that any delay "* * * significantly undermines, in a way that can be objectively identified, [a respondent's] ability to prepare a defense." *Id.*

The administrative law judges employed by the Department of Transportation and the Administrator clearly have similar authority to consider such a claim in defense of a civil penalty action, and the agency believes that the adjudicators will exercise that authority in appropriate cases. As evidence of this belief, a recent decision of the Administrator in a civil penalty case recognizes the availability of this defense in the agency's civil penalty actions. See *In the Matter of Carroll*, FAA Order No. 90–21 (August 16, 1990), in which the Administrator noted his willingness to consider such a defense in an appropriate case. Pursuant to § 13.233(j)(3), a final decision and order of the Administrator is precedent in any other civil penalty action. Thus, the Administrator's express recognition of the availability of this defense certainly provides notice of the availability of a "timeliness defense," the Administrator's willingness to apply it in appropriate cases, and the authority of administrative law judges to consider this defense if it is asserted by a respondent in a civil penalty case before them. ATA's assertion that the administrative law judges will be hostile to such a defense in an appropriate case, simply because the defense is not "codified" in the rules, is belied by the *Carroll* decision. Indeed, the administrative law judge in that case recognized the defense of prejudicial delay, even before the Administrator had expressly recognized it in a decision.

Publication and Effective Date of the Final Rule

This final rule makes minor corrections and clarifications to the final rule issued on June 27, 1990. The amendments will convey more accurately the agency's intent, as expressed in the June 1990 final rule, and will not place any new restriction or requirement on persons or entities involved in a civil penalty action. This notice makes only minor, technical corrections to the revised rules adopted in June 1990, on which public comment was solicited in notices issued in February 1990 and April 1990. For these reasons, and because an additional period for comment would unduly delay correction and clarification of the rules, the initiation of new cases, and continued processing of cases already initiated, the FAA finds that further notice and opportunity for public comment under the Administrative Procedure Act (5 U.S.C. 553(b)) are unnecessary and contrary to the public interest.

It is important that these corrections and clarifications be issued and published as soon as possible so that the public is aware of the corrections. It also is important that these amendments be effective immediately to ensure that they are applied in new civil penalty actions initiated by the FAA and cases already initiated. The FAA also believes that these corrections will prevent public misunderstanding of procedural requirements, will ensure consistent interpretation of the rules, and will conserve the resources of the parties and the adjudicators in civil penalty actions initiated pursuant to the agency's assessment authority. Accordingly, the FAA finds that good cause exists to make these amendments effective less than 30 days after publication in the **Federal Register.**

Regulatory Evaluation

The FAA has determined that this final rule is not a major action under the criteria of Executive Order 12291; thus, the FAA is not required to prepare a regulatory impact analysis under either the Executive Order or the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). In nonmajor rulemaking actions, procedures of the Department of Transportation require the FAA to analyze the economic consequences of regulations and quantify, to the extent practicable, the estimated costs and anticipated benefits and impacts of the regulations. The FAA discussed its analysis and evaluation of changes to the rules of practice adopted in June 1990. In that final rule document, the FAA concluded that the agency was not required to prepare a full regulatory evaluation of the changes because neither the commenters nor the FAA identified any specific economic consequences attributable to the revisions. 55 FR at 27573. This final rule makes only technical changes and minor corrections to two sections of the rules of practice that were revised in June 1990, actions that do not impose new obligations and do not result in any costs or appreciable benefits for respondents in civil penalty actions. For these reasons, the FAA has determined that preparation of a full regulatory evaluation is not required and revision of the analysis set forth in the June 1990 final rule is not necessary.

Conclusion

For the reasons stated above, the FAA has determined that this notice is not a major action under the criteria of Executive Order 12291 and is not a significant rule under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). The FAA also has determined that this action does not warrant preparation of a regulatory evaluation, or revision of the evaluation previously set forth, because the action will have no impact on, or economic consequences to, persons or entities involved in civil penalty actions initiated pursuant to the agency's general assessment authority.

For the same reasons, the FAA certifies that the corrections noted herein will not have a significant economic impact, positive or negative, on a substantial number of small entities, as those terms are defined in the Regulatory Flexibility Act of 1980. There also will be no impact on trade opportunities for U.S. firms operating outside the United States or foreign firms operating within the United States. Moreover, these corrections will not have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that these amendments do not have sufficient Federalism implication to warrant preparation of a Federalism assessment.

List of Subjects in 14 CFR Part 13

Enforcement procedures, Investigations, Penalties.

The Amendments

Accordingly, the FAA amends part 13 of the Federal Aviation Regulations (14 CFR part 13) as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1428, 1471, 1475, 1481, 1482 (a), (b), and (c), and 1484–1489, 1523 (Federal Aviation Act of 1958) (as amended, 49 U.S.C. App. 1471(a)(3) (Federal Aviation Administration Drug Enforcement Assistance Act of 1988); 49 U.S.C. App. 1475 (Airport and Airway Safety and Capacity Expansion Act of 1987); 49 U.S.C. App. 1655(c) (Department of Transportation Act, as revised 49 U.S.C.106(g)); 49 U.S.C. 1727 and 1730 (Airport and Airway Development Act of 1970); 49 U.S.C. 1808, 1809, and 1810 (Hazardous Materials Transportation Act); 49 U.S.C. 2218 and 2219 (Airport and Airway Improvement Act of 1982); 49 U.S.C. 2201 (as amended, 49 U.S.C. App. 2218, Airport and Airway Safety an Capacity Expansion Act of 1987)); 18 U.S.C. 6002 and 6004 (Organized Crime Control Act of 1970); 49 CFR § 1.47 (f), (k), and (q) (Regulations of the Office of the Secretary of Transportation).

2. Section 13.219 is amended by revising paragraph (d) to read as follows:

§ 13.219 Interlocutory appeals.

* * * * *

(d) *Procedure.* A party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, and shall serve a copy of the notice and supporting documents on each party and the administrative law judge, not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, whichever is appropriate. A party shall file a reply brief, if any, with the FAA decisionmaker and serve a copy of the reply brief on each party, not later than 10 days after service of the appeal brief. The FAA decisionmaker shall render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

* * * * *

3. Section 13.220 is amended by revising paragraph (k) to read as follows:

§ 13.220 Discovery.

* * * * *

(k) *Interrogatories.* A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party shall answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party shall state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

* * * * *

Issued in Washington, DC, on October 26, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–25701 Filed 10–30–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, a subject-matter index, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. These indexes and digests will increase the public's awareness of the Administrator's decisions and orders and will assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC-400), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3661.

SUPPLEMENTARY INFORMATION: In section 905 of the Federal Aviation Act, Congress authorized the Administrator of the Federal Aviation Administration (FAA) to assess civil penalties not to exceed $50,000 for violations of the Federal Aviation Act, or any rule, regulation, or order issued thereunder, after written notice and finding of violation by the Administrator. 49 U.S.C. app. 1475. As extended, this civil penalty assessment authority is effective through July 1992. Under the rules of practice governing hearings and appeals of civil penalty actions (14 CFR part 13, subpart G), the Administrator, or his delegate, is designated as the FAA decisionmaker to review and decide appeals of initial decisions issued by administrative law judges who hold adjudicatory hearings in these civil penalty actions. The Administrator, as the decisionmaker, issues the final decisions and order of the agency in those cases.

In the Federal Avaiation Administration Drug Enforcement Assistance Act of 1988, Congress extended the Administrator's authority in section 901 to include the assessment of civil penalties, not to exceed $50,000, in the case of aircraft registration and recordation violations related to drug trafficking. 49 U.S.C. app. 1471(a)(3). This civil penalty assessment authority is identical to the authority under section 905 except that it is permanent. In addition, the Administrator is authorized to initiate and assess civil penalties, regardless of amount, for violations of the Hazardous Materials Transportation Act. 49 U.S.C. 1809. This assessment authority is also permanent.

Under the Administrative Procedure Act, Federal agencies are required to make available for public inspection and copying, or publish and offer for sale, certain specified materials, including all "final opinions and orders made in the adjudication of cases." 5 U.S.C. 552(a)(2)(A). In a notice issued on May 1, 1990, and published in the **Federal Register**, the FAA announced the public availability of the Administrator's final decisions and orders in civil penalty cases. *See* 55 FR 18430-18431; May 2, 1990.

The Administrative Procedure Act also requires Federal agencies to maintain and make available for public inspection and copying current indexes that contain identifying information as to those materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register**, the FAA announced the public availability of several indexes and summaries that provide identifying information about the final decisions and orders issued by the Administrator in civil penalty actions. *See* 55 FR 29148; July 17, 1990. As described in that notice, and in accordance with the indexing requirements of the Administrative Procedure Act, the FAA maintains an index of the Administrator's decisions and orders, with identifying information about each decision or order, organized by order number. (The alphabetical arrangement of this index, which was made available in connection with the notice published in the **Federal Register** on July 17, 1990, is being discontinued as repetitive.) The FAA also maintains a subject-matter index, and digests of the Administrator's final decisions and orders in civil penalty cases. As noted at the beginning of each of these documents, *these indexes and digests do not constitute legal authority, and should not be cited or relied upon as such. The indexes and digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.*

The index arranged by order number lists the service date, the name and docket number of the case, and the regulations that were discussed in the Administrator's final decision and order. That index, which appears in full below, lists all final decisions and orders issued by the Administrator through September 30, 1990. The FAA will publish noncumulative supplements to this index on a quarterly basis (e.g., in October, January, April, and July of each year).

Civil Penalty Actions—Decisions Issued by Administrator, Index by Order Number (Current as of September 30, 1990)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

Order No. (service date)	Name and docket No.	Regulations discussed in 14 CFR
89-0001 (11/13/89)	Humbert L. Gressani, CP89NE0103	13.233(c); 13.233(d)(2).
89-0002 (11/13/89)	Gail M. Lincoln-Walker, CP89NM0017	
89-0003 (11/13/89)	Steven G. Sittko, CP89NM0013	
89-0004 (11/13/89)	Richard Willford Metz, CP89CE0003	13.233(d)(1).
89-0005 (11/13/89)	Charles A. Schultz, CP89NM0092	13.232; 13.233(f); 107.21(a)(1).
89-0006 (12/21/89)	American Airlines, CP89GL0118, CP89GL0120, CP89GL0127, CP89GL0128.	13.202; 13.211(e); 13.218; 13.219(b); 13.220(d).
89-0007 (12/21/89)	Betty A. Zenkner, CP89NM0068	13.211(e); 13.233(d).
89-0008 (12/22/89)	Thunderbird Accessories, CP89SW0251	13.233(c).
90-0001 (1/19/90)	Robert J. Jibben, CP89CE0192	
90-0002 (1/19/90)	Clifford B. Smith, CP89CE0247	
90-0003 (1/29/90)	Richard Willford Metz, CP89CE0003	13.209; 13.211(e); 13.233(a).

Order No. (service date)	Name and docket No.	Regulations discussed in 14 CFR
90-0004 (1/19/90)	Richard C. Nordrum, CP89GL0109	
90-0005 (1/19/90)	Hy C. Sussman, CP89SO0210	
90-0006 (2/16/90)	Peter M. Dabaghian, CP89WP0277	
90-0007 (2/16/90)	Darnita Lynn Steele, CP89SO0320	
90-0008 (2/16/90)	Jack L. Jenkins, CP89SO0173	
90-0009 (2/16/90)	Jessica S. Van Zandt, CP89WP0083	
90-0010 (3/19/90)	Merlin R. Webb, CP89WP0141	107.21(a)(1).
90-0011 (3/19/90)	Thunderbird Accessories, CP89SW0251	13.211(e); 13.212; 13.218; 13.233; 13.235; 43.13(a); 145.53; 145.61.
90-0012 (4/25/90)	Continental Airlines, CP89NE0031	13.201(a)(1); 13.203; 108.5(a); 108.5(b); 108.13; 121.367(a); Part 191.
90-0013 (3/14/90)	Tamara Ann O'Dell, CP89SW0172	
90-0014 (3/14/90)	Royce L. Miller, CP89CE0371	
90-0015 (3/19/90)	Budde Playter, CP89GL0257	13.209; 13.235; 91.9; 91.79.
90-0016 (4/5/90)	Rocky Mntn. Helicopter, CP89SO0498	13.16.
90-0017 (4/9/90)	Ernest Wilson, CP90SW0166, EAJA90SW0001	13.235; 14.05(e).
90-18 (8/22/90)	Continental Airlines, CP89NE0036	108.5(a); 108.7; 121.133(a).
90-20 (8/16/90)	Paul Degenhardt, CP89CE0389	13.205(a)(9); 13.232; 13.233; 107.1(b)(5); 107.21(a).
90-21 (8/16/90)	John J. Carroll, CP89NE0285	13.203; 13.208(d); 13.220(1)(3); 13.227; 135.87.
90-22 (8/16/90)	USAir, CP89SP0497	13.16(d); 13.16(e); 13.16(j)(2); 302.8(c).
90-23 (9/14/90)	Gordon B. Broyles, CP89SW0214	107.21(a); 108.11(c).
90-24 (9/14/90)	Marcia Bayer, CP89SO0130	107.20.
90-25 (9/14/90)	Lucious L. Gabbert, CP89WP0287	13.233(f); 43.15(a).
90-28 (9/25/90)	Frank Puleo, Jr., CP89SO0397	
90-29 (9/25/90)	John C. Sealander, CP89SO0473	
90-30 (9/27/90)	John A Steidinger, CP89NE0267	

The subject-matter index arranges final decisions and orders (identified by name and order number) by subject matter. Many decisions are listed under more than one subject heading or subheading. The subject-matter index, which appears in full below, is current as of September 30, 1990. The FAA will update and republish this index in full on a quarterly basis (e.g., in October, January, April, and July of each year).

Civil Penalty Actions—Decisions Issued by the Administrator, Subject Matter Index (Current as of September 30, 1990)

This index does not constitute legal authority, and should not be cited or relied upon as such. This index is not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

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The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator as of September 30, 1990. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (e.g., in October, January, April, and July of each year).

Civil Penalty Case Decisions Digests (Current as of September 30, 1990)

These digests do not constitute legal authority, and should not be cited or relied upon as such. These digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

FAA v. *Humbert L. Gressani*, Order No. 89–0001 (11/13/89)

Failure to Perfect Appeal. Respondent failed to perfect appeal within the 50-day time period after entry of the ALJ's oral initial decision. The Administrator dismissed Complainant's appeal.

FAA v. *Gail M. Lincoln-Walker*, Order No. 89–0002 (11/13/89)

Withdrawal of Appeal. Complainant withdrew notice of appeal from an Order Assessing Civil Penalty recited in the inital decision issued by the ALJ at the conclusion of the hearing. The Administrator dismissed Complainant's appeal.

FAA v. *Steve G. Sittoko*, Order No. 89–0003 (11/13/89)

Withdrawal of Appeal. Complainant withdrew notice of appeal from an Order Assessing Civil Penalty recited in the inital decision issued by the ALJ at the conclusion of the hearing. The Administrator dismissed Complainant's appeal.

FAA v. *Richard Willford Metz*, Order No. 89–0004 (11/13/89)

Appeal Brief. The Administrator determined that Respondent's letter of July 28, 1989, satisfied the requirements for an appeal brief. Respondent's letter shall be regarded as both notice of appeal and a brief on the merits. FAA counsel is ordered to respond to Respondent's brief within 30 days of issuance of Order.

FAA v. *Charles A. Schultz*, Order No. 89–0005 (11/13/89)

Respondent appealed the ALJ's decision arguing that FAA did not prove that he had knowledge of the presence of the revolver in his carry-on baggage; that the judge erred in finding that the weapon was "concealed" because Respondent had not knowingly or intentionally concealed it, and that the penalty assessed is excessive.

Intent to carry a weapon. The Administrator affirmed the ALJ's decision on all counts. He said that Respondent should have known that he was carrying a personal firearm when he attempted to board a flight; that the FAA did not have to have proof of Respondent's intent to carry the weapon on an aircraft because it is not a required element of a violation of section 901(d) of the Act (49 U.S.C. 1471(d)), or of § 107.21(a)(1) of the FAR.

Sanction. The Administrator held that the $2000 civil penalty should not be further reduced. Respondent has not argued that he lack the ability to pay the penalty, the only relevant fctor not considered by the ALJ.

FAA v. *American Airlines, Inc.*, Order No. 89–0006 (12/21/89)

Respondent filed an interlocutory appeal from the written decision of the Administrative Law Judge (ALJ) issued denying Respondent's Motion to Compel. The ALJ held that Complainant's responses to Respondent's discovery requests were timely filed. He held that the information Respondent seeks pertaining to whether Complainant complied with its internal procedures is irrelevant to the matters alleged in the complaint and that the information is protected from discovery by the deliberative process privilege.

Interlocutory Appeals, in General. Generally speaking, law judges should not permit interlocutory appeals to resolve discovery matters.

Timeliness of Discovery Responses. The Administrator held that Complainant's responses to Respondent's discovery requests were untimely. But Administrator held that FAA did not thereby waive its right to object. Although that sanction is sometimes imposed by Federal courts, the Administrator is not bound by Federal Rules of Civil Procedure. Also, Respondent did not argue that it has been prejudiced.

Relevance of Discovery Request. The Administrator agreed with the ALJ that internal deliberations of employees of the FAA pertaining to the selection of the sanction are irrelevant and that information sought by Respondent regarding internal deliberation is protected from discovery by the deliberative process privilege. That privilege was not overcome here by a showing that Respondent's need for disclosure outweighs the harm that could result from disclosure.

Completeness of Responses. Since the ALJ did not rule on the issue of the completeness of the Complainant's responses to Respondent's discovery request, he remanded the case to the ALJ for findings on that issue.

FAA v. *Betty A. Zenkner*, Order No. 89–0007 (12/21/89)

Failure to Perfect Appeal. Respondent filed a notice of appeal from an Order Assessing Civil Penalty recited in the oral initial decision of the Administrative Law Judge. At Respondent's request, a 20-day extension of time was granted. The Administrator dismissed Respondent's appeal for failure to file brief within the extended filing period.

FAA v. *Thunderbird Accessories, Inc.*, Order No. 89–0008 (12/22/89)

"Good Cause" for Extension of Time. Respondent requested an extension of time in which to file its appeal brief from the initial oral decision of the Administrative Law Judge (ALJ).

Rspondent states that the extension is necessary because Complainant has failed to provide color copies of photographs introduced into evidence at the hearing. Complainant opposed Respondent's request stating that Respondent should not have waited until one week before its brief was due before realizing that more information was needed to prepare its brief. Complainant failed to agree on disagree with Respondent's assertion that the ALJ had ordered the production of the color photographs. The Administrator granted Respondent's 10-day extension of time to file its appeal brief based on the "weak showing of good cause", but warned that a stronger showing may be required in the future.

FAA v. *Robert J. Jibben*, Order No. 90–0001 (01/19/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from an Order Assessing Civil Penalty recited in the initial decision at the conclusion of the hearing. The Administrator dismissed Complainant's appeal.

FAA v. *Clifford B. Smith*, Order No. 90–0002 (01/19/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from the Order Assessing Civil Penalty recited in the initial decision at the conclusion of the hearing. The Administrator dismissed Complainant's appeal.

FAA v. *Richard Willford Metz*, Order No. 90–0003 (01/29/90)

Administrator issued a previous order ordering Complainant to respond to Respondent's letter of July 28, 1989, which he determined satisfied the requirements for an appeal brief. Complainant filed a Motion for Reconsideration of the Decisionmaker's Order, or in the Alternative, Reply Brief. Complainant argues that Respondent's appeal was not timely and should be dismissed and that Respondent never filed an Answer to the Order of Civil Penalty and has never explained the reason for this failure.

Untimely Notice of Appeal. Administrator determined that Respondent's notice of appeal was late. But he waived the requirement for filing the notice of appeal timely for good cause—in that it appeared that Respondent was not provided a copy of the Rules of Practice or information from the ALJ regarding his appeal rights.

Untimely Answer to Complaint. Administrator determined that without a copy of the Rules of Practice or other guidance provided by the Complainant, Respondent had good cause for failing to file an Answer which contained specific denials to the allegations in the Complaint.

He remanded the matter to the ALJ for further proceedings and required that Complainant serve Respondent with a copy of the Rules of Practice. He ordered Respondent to file an Answer in accordance with the Rules of Practice within 30 days of receipt of the copy of the Rules.

FAA v. *Richard C. Nordrum*, Order No. 90–0004 (01/19/90/

Withdrawal of Appeal. Complainant withdrew notice of appeal from the ALJ's Order Dismissing Complaint and Canceling Hearing. The Administrator dismissed Complainant's appeal.

FAA v. *Hy C. Sussman*, Order No. 90–0005 (01/19/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from an Order Assessing Civil Penalty incorporated in a written order and decision of the ALJ. The Administrator dismissed Complainant's appeal.

FAA v. *Peter M. Dabaghian*, Order No. 90–0006 (02/16/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from the oral initial decision of the Administrative Law Judge issued at the conclusion of the hearing. Complainant's appeal is dismissed.

FAA v. *Darnita Lynn Steele*, Order No. 90–0007 (02/16/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from the oral initial decision of the ALJ issued at the conclusion of the hearing. Complainant's appeal is dismissed.

FAA v. *Jack L. Jenkins*, Order No. 90–0008 (02/16/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from the written initial decision of the ALJ. Complainant's appeal is dismissed.

FAA v. *Jessica S. Van Zandt*, Order No. 90–0009 (02/16/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal of the ALJ's oral initial decision issued at the conclusion of the hearing. Complainant's appeal is dismissed.

FAA v. *Merlin R. Webb*, Order No. 90–0010 (03/19/90)

Complainant appealed from the oral initial decision of the ALJ's decision issued December 5, 1989. The ALJ held that Respondent had violated § 107.21(a)(1) of the Federal Aviation Regulations as alleged in the Complaint, but held that circumstances of this case did not warrant the maximum civil penalty, and he reduced the civil penalty from $1000 to $100.

Complainant argued that the ALJ erred in reducing the sanction to $100 because the maximum civil penalty in gun cases under the Act is $10,000, not $1,000, as stated by the ALJ.

Complainant Bound by Complaint. The Administrator determined that the ALJ's reduction in the amount of civil penalty was not inappropriate. Complainant failed to allege in the Complaint that Respondent violated section 901(d) of the Federal Aviation Act. Complainant only alleged violation of § 107.21(a)(1) of the Federal Aviation Regulations. Only a violation of section 901(d) of the Act can support a civil penalty of up to $10,000. The ALJ

correctly stated that $1,000 is the maximum civil penalty for a violation of § 107.21 of the FAR alone. The Administrator agreed that the maximum civil penalty is not warranted in this case. The Administrator affirmed the ALJ's initial decision.

FAA v. *Thunderbird Accessories, Inc.*, Order No. 90–0011 (03/19/90)

Both Respondent and Complainant appealed from the oral initial decision of the Administrative Law Judge (ALJ) issued at the conclusion of the hearing. The ALJ found that Respondent violated 14 CFR 145.53 by performing maintenance on a Chrysler aircraft alternator for which it was not rated and 14 CFR 145.61 by failing to maintain adequate records of the work. He also found that the preponderance of evidence did not establish a violation of 14 CFR 43.13(a), which required maintenance to be performed in accordance with the manufacturer's maintenance manual. The ALJ reduced the civil penalty from $2,500 to $1,500.

Respondent's appeal alleged that Complainant's notice of appeal was untimely. Respondent's calculation of when Complainant's notice of appeal was due is incorrect because Respondent counted the day of the hearing in the 10-day filing period. Complainant appealed stating that Respondent's appeal brief was untimely filed; that the preponderance of evidence proves that Respondent violated § 43.13(a) of FAR and that the ALJ should not have dismissed the charge and should not have reduced the civil penalty.

Failure to Perfect Appeal. On the issue of the timeliness of Respondent's appeal brief, the Administrator determined that Respondent's brief was due on January 8, 1990. The brief was dated January 19, 1990 (postmarked January 22, 1990). Thus the brief was untimely filed. The Administrator dismissed Respondent's appeal.

Violation of Section 43.13(a). Administrator stated that the evidence clearly demonstrates that Respondent had not received approval for use of a procedure not prescribed in the current manufacturer's maintenance manual. Therefore, the procedure was not acceptable to the Administrator and in violation of § 43.13(a). Additionally, the ALJ appears to have reduced the penalty solely because he dismissed the allegation of § 43.13(a). The Administrator reversed the findings and reinstated the $2,500 civil penalty.

In the Matter of Continental Airlines, Inc., Order No. 90–0012 (04/25/90)

The ALJ held that Respondent had violated § 108.5(a)(1) of the Federal Aviation Regulations by failing to carry out a particular provision of the Standard Security Program which Respondent had adopted. Administrator denied Respondent's appeal and affirmed the ALJ's decision. Respondent is assessed a civil penalty in the amount of $10,000.

Consolidation of cases. There is no requirement under law or regulation that Complainant must consolidate in one civil penalty action all cases involving alleged security regulation violations which may have been initiated at or about the same time simply because they involve the same air carrier.

Rules of Procedure. It would be an inappropriate exercise of Administrator's decisionmaking authority to consider in this proceeding a challenge to rules which are not implicated in this proceeding. Federal Courts of Appeals constitute a more appropriate forum to attack administrative regulations as not consistent with the U.S. Constitution, the AP, and/or the agency's enabling act. Rules effective September 7, 1988, apply to this proceeding. Procedural regulations in force at the time administrative proceedings occur are the ones that govern, rather than the procedural rules in effect at the time the alleged violation occurred.

Discovery—Privilege. Information relating to FAA's decisionmaking process prior to the issuance of the complaint is irrelevant. Such information is protected from discovery by the deliberative process privilege. Moreover, in the absence of specific allegations of agency failure to comply with required separation of functions, there is no need to discover informatoin relating to agency's compliance.

Standard Security Program. Respondent's failure to implement (i.e., "carry out") its security program is a violation of 14 CFR 108.5(a).

Circumstantial evidence. A party may use circumstantial evidence to sustain its burden of proof.

FAA v. *Tamara Ann O'Dell*, Order No. 90–0013 (03/14/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from the oral initial decision of the ALJ issued at the conclusion of the hearing. Complainant's appeal is dismissed.

FAA v. *Royce L. Miller*, Order No. 90–0014 (03/14/90)

Withdrawal of Appeal. Complainant withdrew notice of appeal from the oral initial decision of the ALJ. Complainant's appeal is dismissed.

FAA v. *Budde W. Playter*, Case No. 90–0015 (03/19/90)

Complainant appealed from the oral initial decision of the ALJ issued at the conclusion of the hearing. The ALJ found that Respondent did not violate § 91.79(a), 91.97(b), and 91.9 of the Federal Aviation Regulations as alleged in the complaint. He reversed the complaint seeking $3,000 in penalty.

Failure to File Answer. Complainant appealed stating that the ALJ should have deemed the allegations in the complaint admitted because Respondent failed to file an answer to the complaint. The Administrator reversed the ALJ's initial decision stating that because Respondent has not demonstrated good cause for his failure to file an answer, the allegations in the complaint are deemed admitted.

In the Matter of Rocky Mountain Helicopters, Inc., Order No. 90–0016 (04/05/90)

Withdrawal of Order Assessing Civil Penalty. This case is before the Administrator for the resolution of a dispute as to whether an Order Assessing Civil Penalty was properly issued against Respondent. Because of confusion resulting from a consolidated informal conference and the FAA attorney's letter regarding a settlement offer, the Administrator remanded this case to the Southern Region Counsel's office for withdrawal of the Order Assessing Civil Penalty and to give Respondent an opportunity to request a hearing on the allegations contained in the Notice of Proposed Civil Penalty.

In the Matter of Ernest Wilson, Order No. 90–0017 (04/09/90)

Counsel for FAA issued a Notice of Proposed Civil Penalty seeking $2,000 from Respondent for alleged violations of FAR. After an informal conference the agency attorney withdrew the Notice of Proposed Civil Penalty stating that the legal enforcement action was not warranted. Counsel for Respondent filed application for attorney fees and expenses under the Equal Access to Justice Act (EAJA) seeking $1,035 in attorney fees and $60.39 in expenses which were incurred in connection with the Notice of Civil Penalty.

Denial of Application for Attorney Fees. The Administrator denied Respondent's application for attorney fees and expenses stating that FAA rules implementing the EAJA states that fees may be awarded for work performed only after the issuance of an Order of Civil Penalty which serves as the complaint and which begins the adversary adjudication. Legal expenses

incurred before the adversary adjudication are not covered by the EAJA and the FAA regulations.

In the Matter of Continental Airlines, Inc., Order No. 90–18 (8/22/90)

Respondent's security screener failed to detect an FAA-approved test object during a no-notice test conducted by the FAA, as required by the Standard Security Program. The ALJ held that Respondent violated 14 CFR 108.5(a)(1) by failing to carry out a provision of the SSP which Respondent adopted pursuant to that regulation, and affirmed the $1,000 civil penalty sought by Complainant.

Consolidation of cases. There is no requirement that all cases involving alleged security violations be consolidated in one civil penalty action merely because they were initiated at or about the same time and involve the same air carrier. *Citing*, FAA Order No. 90–12.

Rules of Procedure. Respondent's attack on the procedural rules in effect at the time of the hearing fails to provide any basis for overturning the ALJ's decision in this case because Respondent does not demonstrate how it was prejudiced by any of those rules. Federal Courts of Appeals constitute a more appropriate forum in which to attack the rules as not consistent with the U.S. Constitution, the APA, and/or the agency's enabling act. *Citing*, FAA Order No. 90–12. Administrative proceedings are governed by the procedural regulations in force at the time the proceedings occur, not those in effect at the time of the alleged violation. *Citing*, FAA Order No. 90–12.

Discovery—Privilege. Information relating to the agency's decisionmaking process prior to the issuance of the complaint is irrelevant, and protected from discovery by the deliberative process privilege. *Citing*, FAA Order No. 90–12.

Standard Security Program. The FAA may take enforcement action against a carrier, such as Respondent, that fails to implement the provisions of its security program because carriers are specifically required under 14 CFR 108.5(a) to "adopt and *carry out* a security program that meets the requirements of § 108.7 * * * ." *Citing*, FAA Order No. 90–12. While it is true that 14 CFR 108.7 sets forth general requirements and identifies various types of procedures which must be described in a carrier's security program, it does not follow that a carrier's program is enforceable only under § 108.5 to the extent that it meets, but does not exceed, those minimum criteria.

The SSP has to be interpreted so as to permit tests of security checkpoints to be conducted in individual segments, each involving one component of the checkpoint. The agency attorney is not obligated to prove, as an element of the violation in this type of case, that test objects were rotated prior to the test at issue, or that the FAA test screeners rather than checkpoints. These issues are irrelevant to whether a violation occurred in this case. The test protocol is not intended to serve as a shield for the carrier in enforcement proceedings. The intended beneficiary is the traveling public.

Discovery—Effect of Failure to Produce. Complainant's failure to produce an intra-agency memorandum discussing agency policy on what civil penalty amounts should be sought in test object cases provides no basis for overturning the ALJ's decision in this case. Respondent was not prejudiced by Complainant's failure to produce the memorandum because: The agency attorney did provide another memorandum containing virtually identical sanction criteria; the criteria were not even followed in this case; and Respondent's counsel could have requested a continuance of the hearing in order to prepare a response if he felt it necessary.

Failure to Detect Test Object—Sanction. The policy of seeking a civil penalty for every failure to detect a test object is not arbitrary, capricious, or unreasonable. Each such failure is evidence of a weakness in the carrier's security screening procedures, and represents a potential threat to the safety of the traveling public.

Failure to Detect Test Object—Proof of Violation. Although there is no direct evidence that the test object was visible on the screen the first time it passed through the x-ray device, there is ample circumstantial evidence to establish that fact. Testimony that the test object was clearly discernible when it passed through the x-ray device immediately after the test failure raises a strong inference that the object was equally visible when it passed through the device during the test itself a few moments earlier. Respondent has not rebutted this strong circumstantial evidence. Accordingly, the preponderance of the evidence supports the ALJ's finding that Respondent, through its security screener, failed to detect an FAA-approved test object as required by its security plan, in violation of 14 CFR 108.5(a).

In the Matter of Paul Degenhardt, Order No. 90–20 (8/16/90)

The law judge held Respondent violated 14 CFR 107.21(a) when he attempted to pass through a security checkpoint with a package containing an unloaded rifle, and assessed a $1,000 civil penalty. However, the law judge stated he would vacate his decision upon appropriate motion if Respondent published a letter in a local newspaper in order to "raise awareness" on the issue of passengers' responsibility to ascertain the contents of packages which are carried onboard aircraft.

Intent to Carry a Weapon. Intent to carry a weapon is not a required element of a violation of § 107.21(a). That section is violated so long as a respondent knew or should have known that he had a weapon on or about his person or accessible property. Respondent in this case should have taken further steps to ascertain the contents of the package he was carrying and, accordingly, he should have known he was carrying a weapon.

Authority of Law Judge to Vacate Initial Decision. The law judge's offer to vacate his initial decision was improper. To the extent it goes beyond making findings of fact and conclusions of law with regard to the alleged violation before him, he exceeded his authority. The Rules of Practice do not empower a law judge to condition the assessment of a civil penalty on subsequent remedial conduct by the respondent, or to "vacate" a finding of violation, or otherwise dismiss a complaint, upon a showing of subsequent remedial conduct. A law judge loses jurisdiction over a case upon the issuance of the initial decision, and thereafter has no authority to entertain a motion to vacate. The initial decision issued by the law judge is affirmed to the extent that it finds a violation and upholds the agency's assessment of a $1,000 civil penalty, and it is reversed to the extent that it provides Respondent with an opportunity to move that the initial decision be vacated.

In the Matter of John J. Carroll, Order No. 90–21 (8/16/90)

The law judge found Respondent had flown with a piece of carry-on baggage in the aisle obstructing access to the exits and the aisle, in violation of 14 CFR 135.87(c)(4) and (6).

Inexcusable Delay in Initiating Case. FAA has expressed its willingness to consider a laches-type defense in civil penalty actions by allowing respondents who believe they have been prejudiced by the agency's delay in initiating their case to assert such prejudice as a defense in the administrative proceeding. The pace of the agency's

pursuit of this case against Respondent during the eight-month period between the subject incident and FAA's first notification to Respondent that it was investigating the matter, and the additional four months which passed before Respondent received the Notice of Proposed Civil Penalty, was not unreasonably or inexcusable dilatory. The 1-year interval between the alleged violation and notification to Respondent of the agency's proposed civil penalty did not constitute an unreasonable or inexcusable delay. Respondent has also failed to demonstrate that he was prejudiced by the FAA's delay in this case. He has not alleged that the delay resulted in a loss of evidence or witnesses supporting his position, or that he changed his position in a way that would not have occurred but for the delay.

ALJ's Credibility Findings. Because law judges are in the best position to evaluate the demeanor of witnesses in administrative proceedings, their credibility determinations are entitled to special deference on review by the agency. But an agency is not inextricably bound by its law judges' credibility determinations. It is free to substitute its own judgment for that of the law judge. In applying only a minimum of deference the Administrator finds no reason to question the law judge's credibility finding.

Validity of the Rule of Practice. The issue of whether the Rules of Practice were properly promulgated without prior notice and comment has already been disposed of in *Air Transport Association* v. *Department of Transportation*, 900 F.2d 369 (DC Cir. 1990), where the court ruled that pre-promulgation notice and comment was required. The court noted that respondents whose cases were initiated and partially prosecuted under the "old" rules can raise the defense that the FAA could not have successfully prosecuted the case "but for the agency's reliance on some aspect of the * * * Rules abandoned in the new scheme." The Administrator reviewed the case with that potential defense in mind and found nothing in the new rules that would have changed the result in this case. Respondent's argument that the rules were improperly promulgated without notice and comment, standing alone, provides no ground for reversal of the law judge's decision.

Respondent also argues that the Rules of Practice fail to separate investigative and prosecutorial functions from decisionmaking functions until after a notice of proposed civil penalty is issued. However, he has not alleged any actual breach of the required separation of functions and the Administrator finds none. In any event, 14 CFR 13.203 as originally promulgated did satisfy the requirements of the Administrative Procedure Act. Respondent also asserts that the rules violate the APA because "FAA decisions are [appealable] not to an independent United States District Court of Appeals [sic], but back to the FAA decisionmaker." However, the APA expressly contemplates intra-agency adjudication and appellate review.

In the Matter of USAir, Order No. 90–22 (8/16/90)

Respondent filed a "Petition to Reconsider" an Order Assessing Civil Penalty which was issued without a hearing due to Respondent's failure to timely respond to the Notice of Proposed Civil Penalty, arguing that its delay in responding to the NPCP was due to the agency's improper service of that document.

Effect of Changes in Rules of Procedure. Under the new procedural rules an Order Assessing Civil Penalty would not have been issued following Respondent's untimely response to the NPCP. Further, although it is impossible to say for certain whether the response to the NPCP would have been timely if it had been directed to a specific individual such as Respondent's president (as the rules now require), Respondent should be given the benefit of the new rules on this point. Accordingly, the Order Assessing Civil Penalty shall be withdrawn. If the agency attorney elects to re-initiate this case by the issuance of a new NPCP, the case shall be governed by the new initiation procedures and Rules of Practice.

In the Matter of Gordon Barrett Broyles, Order No. 90–23 (9/14/90)

ALJ found Respondent violated 14 CFR 108.11(c) by tendering a bag containing a loaded gun for transport as checked baggage and assessed a $500 civil penalty; Respondent did not appeal from this finding. ALJ also found Respondent violated 14 CFR 107.21(a) and 49 U.S.C. app. 1471(d) when Respondent (after retrieving his checked bag) attempted to carry the bag containing the loaded gun through a security checkpoint. But the ALJ reduced the $2,500 civil penalty sought in the complaint for those violations to a "token" $50 civil penalty in light of what the ALJ saw as the "unique situation" surrounding those violations. Complainant appealed from the reduction in sanction.

Effect of ATA Decision. Respondent contends that the assessment of any civil penalty in this case is improper in light of the court's decision in *ATA* v. *DOT*, 900 F.2d 369 (DC Cir. 1990). The court there held that a respondent whose case was initiated under the old rules could "raise the defense that the FAA could not have successfully prosecuted him but for the agency's reliance on some aspect of the * * * [r]ules abandoned in the new scheme," but Respondent does not point to any change in the rules that would have affected the result in this case. The holding in *ATA*, standing alone, does not require dismissal.

Sanction—Weapons Violations. The Sanction Guidance Table contained in FAA Order 2150.3A, Compliance and Enforcement Program, prescribes appropriate sanctions for violations involving concealment of a deadly or dangerous weapon which would be accessible in flight: $1,000 when the weapon is unloaded and ammunition is not accessible; $2,000 when the weapon is unloaded but ammunition is accessible; and $2,500 when, as in this case, the weapon is loaded. While other penalties in the Sanction Guidance Table are expressed in terms of a range of potential sanctions, and the agency attorney has discretion even to seek a sanction outside the prescribed range, the prescribed penalties for these weapons violations are fixed and there are no other mitigating or aggravating factors appropriate to consider. Accordingly, the Administrator held the ALJ's reduction of the penalty of this case was improper and reinstated the $2,500 civil penalty.

In the Matter of Marcia Bayer, Order No. 90–24 (9/14/90)

The ALJ apparently held that Respondent violated § 107.20 of the FAR by entering a sterile area without permission. (At the time in question, the Concourse to the gate areas were closed because part of the Concourse was under construction.) Respondent appealed from the ALJ's decision, arguing in pertinent part that she proved that she had submitted to screening. Respondent testified at the hearing that she had walked through the metal detector while the security agent was at a desk away from the device. The security agent testified that Respondent had walked around the metal detector and that she had not placed her purse on the x-ray device conveyor belt prior to entering the sterile area.

The Administrator remanded the case to the ALJ to resolve the critical factual dispute regarding whether Respondent

had walked through or around the metal detector and whether Respondent had a purse with her, and if so, did she put it on the conveyor belt. The Administrator explained that the ALJ had mistakenly focused on the issue of whether Respondent had permission to enter the sterile area. The issue (when the only regulation alleged to have been violated is 14 CFR 107.20) is whether or not Respondent submitted herself and her property, if any, to screening.

In the Matter of Lucious Laken Gabbert, Order No. 90–25 (9/14/90)

Respondent's attorney submitted a Petition to File Amicus Curiae Brief of Norman de Witte, asserting that Mr. de Witte "has testimony material to this case," but that he was unable to appear at the hearing in this case.

Amicus Curiae Brief. Respondent testified at the hearing that the aircraft involved in this case was regularly maintained by Mr. de Witte, and that Mr. de Witte was not present at the hearing because he "got called away." The hearing record contains no further mention of Mr. de Witte's relevance to this case, nor does it reflect any request by Respondent's counsel for a continuance of the hearing.

While 14 CFR 13.233(f) does not provide that the Administrator may allow any person to submit an amicus curiae brief, on the record before him the Administrator cannot find that Mr. de Witte has a substantial interest that is not represented by the parties to this case, or that an amicus curiae brief from Mr. de Witte is otherwise necessary for a proper disposition of this case.

In the Matter of Frank Puleo, Jr., Order No. 90–28 (9/25/90)

Withdrawal of Appeal. Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of John C. Sealander, Order No. 90–29 (9/25/90)

Withdrawal of Appeal. Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

In the Matter of John A. Steidinger, Order No. 90–30 (9/27/90)

Withdrawal of Appeal. Complainant withdrew its notice of appeal of the oral initial decision. Complainant's appeal is dismissed.

The Administrator's final decisions and orders, indexes, and digests are all available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, room 924A, Washington, DC 20591; (202) 267–3641.

In addition, those materials are available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AAC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 917–1035

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; 312 (694–7108

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7310

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 3400 Norman Berry Drive, East Point, GA 30344; (404) 763–7204

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Forth Worth, TX 76193; (817) 624–5707

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 484–6605

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (213) 297–1270

This notice constitutes the FAA's publication of an index of decisions and orders issued by the Administrator in the adjudication of civil penalty actions, as required by 5 U.S.C. 552(a)(2). This notice also publishes a subject-matter index and digests of decisions that provide identifying information about civil penalty cases decided by the Administrator. The FAA still is considering various means by which the Administrator's decision and orders, and the indexes and digests of those decisions, could be published and offered for sale, such as by subscription through either a public or private reporting service. If the FAA completes such subscription arrangements, the agency will provide further notice of such publication or sale in the Federal Register. The FAA may discontinue publication of the subject-matter index and the digests at some future time if a commercial reporting service publishes similar information and provides it to the public in a timely and accurate manner.

Issued in Washington, DC, on October 26, 1990.

Gregory S. Walden,

Chief Counsel.

[FR Doc. 90–25702 Filed 10–30–90; 8:45 am]

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federal register

Wednesday
October 31, 1990

Part VI

Environmental Protection Agency

40 CFR Part 721

Significant New Uses of Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50581A; FRL-3799-2]

RIN 2070-AB27

Significant New Uses of Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are subject to TSCA section 5(e) consent orders issued by EPA. In addition EPA is promulgating an amendment to subpart B of 40 CFR part 721—Significant New Uses of Chemical Substances.

This rule requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur. The amendment to subpart B would add standard language to be used to designate significant new uses of chemical substances.

EFFECTIVE DATE: The effective date of this rule is December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543-B 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This SNUR will require persons to notify EPA at least 90 days before commencing any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published at 55 FR 17376 on April 24, 1990. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data. The amendment to subpart B will add standard language to § 721.72 (hazard communication program) which will be used to designate certain activities as significant new uses.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

III. Amendment to 40 CFR Part 721 Subpart B

EPA is amending § 721.72 (hazard communication program). This section establishes EPA's workplace hazard communication program and is cited when EPA determines it is necessary to inform workers of hazards and exposures in the workplace and how to protect themselves from these hazards. Section 721.72(g) provides standard language that EPA generally specifies for labels and material safety data sheets ("MSDSs"). The standard language in § 721.72(g) currently provides for the same hazard and precautionary statements on both the labels and MSDSs for a substance. In most cases, this is consistent with the terms of consent orders EPA issues under section 5(e). However, some section 5(e) orders require different statements on the label and MSDS. The amendment in this rule would add a new paragraph (h) to § 721.72 to match the terms of such section 5(e) orders. The amendment will allow EPA to include in SNUR requirements different hazard and precautionary statements on labels and MSDSs.

The amendment will also establish the following additional precautionary statements for labels and MSDSs not currently designated in § 721.72: (a) The health effects of this chemical substance have not been determined; (b) when using this substance, use skin protection; (c) use respiratory protection when there is a reasonable likelihood of exposure in the work area from dust, mist, or smoke from spray application; and (d) chemicals similar in structure to this substance have been found to cause cancer in laboratory animals.

IV. Background

The Agency proposed a SNUR for these substances which was published in the **Federal Register** of July 2, 1990 (55 FR 27257). The background of each PMN and the reasons for proposing the SNUR are set forth in the preamble to the proposed rule.

EPA received comments on two points. The first was a brief statement supporting the proposed SNUR by one commenter. The second was noted by three different commenters. It was a typographical error in each SNUR under section "(a)(2)(ii) Hazard communication program. Requirements as specified in § 721.72(h)(1)(v)." This provision requires that labels contain statements regarding environmental hazards which are not required in the underlying section 5(e) consent orders. This provision should be "(h)(1)(vi)", which requires the label to state "See MSDS for details" after each precautionary statement, and is consistent with the consent orders. The Agency has made the correction in the final rule.

V. Objectives and Rationale of the Proposed Rule

During review of the PMNs submitted for the chemical substances that would

be subject to this SNUR, EPA concluded, that for certain of the substances, regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance. The basis for such findings for these substances is outlined in the preamble of the proposed rule for these substances. Based on these findings, a section 5(e) consent order requiring the use of appropriate controls was negotiated with the PMN submitter, and the SNUR proposed for such substances is consistent with the provisions of the section 5(e) order.

EPA is promulgating this SNUR for 30 specific chemical substances which have undergone premanufacture review to ensure the following objectives: (1) EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins; (2) EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; (3) when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs; and (4) all manufacturers, importers, and processors of the same chemical substance which is subject to a section 5(e) order are subject to similar requirements.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submission of a SNUR notice. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. SNUR notice submitters should be aware that the Agency will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

VIII. Applicability of Proposed Rule to Uses Occurring Before Effective Date of the Final Rule

For a use to be a significant "new" use, EPA must determine that the use is not ongoing. When the PMN submitter begins manufacture or import of the substances, the submitter must send EPA a Notice of Commencement of Manufacture/Import and the substances will be added to the Inventory. In those cases where a section 5(e) order has been issued, the notice submitters are prohibited by the section 5(e) orders from undertaking activities which the Agency is designating as a significant new use. In addition, because most of these substances have CBI chemical identities and only a very few *bona fide* inquiries have been received for substances that have undergone PMN review, there is little chance that others are undertaking activities which the Agency is designating as a significant new use. Therefore, at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the promulgation of the SNUR, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this proposal before promulgation of the rule.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. If uses which had commenced between the date of proposal and the effective date were considered ongoing, rather than new, persons could defeat the SNURs by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances contained in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPTS–50581A).

X. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-50581A). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of this record, without any confidential business information, is available in the TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice.

EPA believes that, because of the nature of the rule and the substances involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: October 19, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.72(h) to read as follows:

§ 721.72 Hazard communication program.

* * * * *

(h) *Human health, environmental hazard exposure and precautionary statements.* (1) Whenever referenced in subpart E of this part for a substance, the following human health, environmental hazard, exposure, and precautionary statements shall appear on each label as specified in paragraph (b) of this section. Additional statements may be included as long as they are true and do not alter the meaning of the required statements.

(i) *Precautionary statements.* (A) The health effects of this chemical substance have not been determined.

(B) When using this substance, use skin protection.

(C) Use respiratory protection when there is a reasonable likelihood of exposure in the work area from dust, mist, or smoke from spray application.

(D) Chemicals similar in structure to this substance have been found to cause cancer in laboratory animals.

(ii) *Human health hazard statements.* This substance may cause:

(A) Skin irritation
(B) Respiratory complications
(C) Central nervous system effects
(D) Internal organ effects
(E) Birth defects
(F) Reproductive effects
(G) Cancer
(H) Immune system effects
(I) Developmental effects

(iii) *Human health hazard precautionary statements.* When using this substance:

(A) Avoid skin contact
(B) Avoid breathing substance
(C) Avoid ingestion
(D) Use respiratory protection
(E) Use skin protection

(iv) *Environmental hazard statements.* This substance may be:

(A) Toxic to fish
(B) Toxic to aquatic organisms

(v) *Environmental hazard precautionary statements.* Notice to Users:

(A) Disposal restrictions apply
(B) Spill clean-up restrictions apply
(C) Do not release to water.

(vi) *Additional statements.* Each human health or environmental precautionary statement identified in subpart E of this part for the label on the substance container must be followed by the statement, "See MSDS for details."

(2) Whenever referenced in subpart E of this part for a substance, the following human health, environmental hazard, exposure, and precautionary statements shall appear on each MSDS

as specified in paragraph (c) of this section. Additional statements may be included as long as they are true and do not alter the meaning of the required statements.

(i) *Precautionary statements.* (A) The health effects of this chemical substance have not been determined.

(B) When using this substance, use skin protection.

(C) Use respiratory protection when there is a reasonable likelihood of exposure in the work area from dust, mist, or smoke from spray application.

(D) Chemicals similar in structure to this substance have been found to cause cancer in laboratory animals.

(ii) *Human health hazard statements.* This substance may cause:

(A) Skin irritation
(B) Respiratory complications
(C) Central nervous system effects
(D) Internal organ effects
(E) Birth defects
(F) Reproductive effects
(G) Cancer
(H) Immune system effects
(I) Developmental effects

(iii) *Human health hazard precautionary statements.* When using this substance:

(A) Avoid skin contact
(B) Avoid breathing substance
(C) Avoid ingestion
(D) Use respiratory protection
(E) Use skin protection

(iv) *Environmental hazard statements.* This substance may be:

(A) Toxic to fish
(B) Toxic to aquatic organisms

(v) *Environmental hazard precautionary statements.* Notice to Users:

(A) Disposal restrictions apply
(B) Spill clean-up restrictions apply
(C) Do not release to water.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

3. By adding new § 721.273 to subpart E to read as follows:

§ 721.273 Aliphatic diurethane acrylate ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as aliphatic diurethane acrylate ester (PMN P–85–1013) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

4. By adding new § 721.275 to subpart E to read as follows:

§ 721.275 Alkyldicarboxylic acids, polymers with alkanepolyol and TDI, alkanol blocked, acrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as akyldicarboxylic acids, polymers with alkanepolyol and TDI, alkanol blocked, acrylate (PMN P–69–77) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

5. By adding new § 721.278 to subpart E to read as follows:

§ 721.278 Amino acrylate monomer.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as amino acrylate monomers (PMNs P–85–296 and PMN P–85–298) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070-0012)

6. By adding new § 721.289 to subpart E to read as follows:

§ 721.289 Alkenoic acid, trisubstituted-benzyl-disubstituted-phenyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, trisubstituted- benzyl-disubstituted-phenyl ester (PMN P–89–697) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e)[concentration set at 0.1 percent], (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

7. By adding new § 721.290 to subpart E to read as follows:

§ 721.290 Alkenoic acid, trisubstituted-phenylalkyl-disubstituted-phenyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, trisubstituted- phenylalkyl-disubstituted-phenyl ester (PMN P–89–694) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

8. By adding new § 721.607 to subpart E to read as follows:

§ 721.607 Bisphenol A, epichlorohydrin, methylenebis (substituted carbomonocycle), polyalkylene glycol, alkanol, methacrylate polymer.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as Bisphenol A, epichlorohydrin, methylenebis (substituted carbomonocycle), polyalkylene glycol, alkanol, methacrylate polymer (PMN P–88–2380) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

9. By adding new § 721.759 to subpart E to read as follows:

§ 721.759 Caprolactone, polymer with hexamethylene diisocyanate, hydroxyalkyl acrylate ester, reaction products with substituted alkanoic acid and metal heteromonocycle.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as caprolactone, polymer with hexamethylene diisocyanate, hydroxyalkyl acrylate ester, reaction products with substituted alkanoic acid and metal heteromonocycle (PMN P–89–946) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

10. By adding new § 721.767 to subpart E to read as follows:

§ 721.767 Carbamic acid, (trialkyloxy silyalkyl)-substituted acrylate ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as carbamic acid, (trialkyloxy silyalkyl)-substituted acrylate ester (PMN P–89–424) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i),

(a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(ii)(b).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

11. By adding new § 721.960 to subpart E to read as follows:

§ 721.960 Acid modified acrylated epoxide.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as acid modified acrylated epoxides (PMN P–85–1169 and P–85–1170) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

12. By adding new § 721.1045 to subpart E to read as follows:

§ 721.1045 Trimethylolpropane fatty acid diacrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as trimethylolpropane fatty acid diacrylate (PMN P–88–2463) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

13. By adding new § 721.1282 to subpart E to read as follows:

§ 721.1282 Reaction product of a monoalkyl succinic anhydride with an ω-hydroxy methacrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as reaction product of a monoalkyl succinic anhydride with an ω-hydroxy methacrylate (PMN P–88–701) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

14. By adding new § 721.1285 to subpart E to read as follows:

§ 721.1285 Hydroxyalkyl methacrylate, alkyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as hydroxyalkyl methacrylate, alkyl ester (PMN P–89–507) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are

applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

15. By adding new § 721.1290 to subpart E to read as follows:

§ 721.1290 Substituted oxide-alkylene polymer, methacrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted oxide-alkylene polymer, methacrylate (PMN P–88–2566) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

16. By adding new § 721.1390 to subpart E to read as follows:

§ 721.1390 Methylenebis(4-isocyanato benzene), polymer with polycaprolactone triol and alkoxylated alkanepolyol, hydroxyalkyl methacrylate ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as methylenebis(4-isocyanato benzene), polymer with polycaprolactone triol and alkoxylated alkanepolyol, hydroxyalkyl methacrylate ester (PMN P–89–749) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

17. By adding new § 721.1500 to subpart E to read as follows:

§ 721.1500 Reaction product of hydroxyethyl acrylate and methyl oxirane.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as reaction product of hydroxyethyl acrylate and methyl oxirane (PMN P-86832) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

18. By adding new § 721.1612 to subpart E to read as follows:

§ 721.1612 Polymer of alkyl carbomonocycle diisocyanate with alkanepolyol polyacrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polymer of alkyl carbomonocycle diisocyanate with alkanepolyol polyacrylate (PMN P–89–73) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

19. By adding new § 721.1617 to subpart E to read as follows:

§ 721.1617 Polyalkylpolysilazane, bis(substituted acrylate).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyalkyl polysilazane, bis(substituted acrylate) (PMN P–89–423) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), (h)(2)(i)(D), and (h)(2)(ii)(b).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

20. By adding new § 721.1700 to subpart E to read as follows:

§ 721.1700 Poly(oxy-1,4-butanediyl), α-(1-oxo-2-propenyl)-ω-[(1-oxo-2-propenyl)oxy]-.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,4-butanediyl), α-(1-oxo-2-propenyl)-ω-[(1-oxo-2propenyl)oxy]- (PMN P–84–274) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

21. By adding new § 721.1710 to subpart E to read as follows:

§ 721.1710 Polyol carboxylate ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyol, carboxylate ester (PMN P–84–27) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

22. By adding new § 721.1715 to subpart E to read as follows:

§ 721.1715 Alkoxylated alkane polyol, polyacrylate ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkoxylated alkane polyol, polyacrylate ester (PMN P–84–713) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o) and (q).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

23. By adding new § 721.1725 to subpart E to read as follows:

§ 721.1725 Polysubstituted polyol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance

identified generically as polysubstituted polyol (PMN P–84–814) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

24. By adding new § 721.1740 to subpart E to read as follows:

§ 721.1740 Substituted acrylated alkoxylated aliphatic polyol.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted acrylated alkoxylated aliphatic polyol (PMN P–86–346) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

25. By adding new § 721.1778 to subpart E to read as follows:

§ 721.1778 Poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-hydroxy-, C_{10-16}-alkyl ethers.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), α-(2-methyl-1-oxo-2-propenyl)-ω-hydroxy-, C_{10-16}-alkyl ethers (PMN P–86–588) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

26. By adding new § 721.1780 to subpart E to read as follows:

§ 721.1780 Poly(oxy-1,2-ethanediyl), α-(1-oxo-2-propenyl)-ω-hydroxy-, C_{10-16}-alkyl ethers.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as poly(oxy-1,2-ethanediyl), α-(1-oxo-2-propenyl)-ω-hydroxy-, C_{10-16}-alkyl ethers (PMN P–86–554) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

27. By adding new § 721.1810 to subpart E to read as follows:

§ 721.1810 2-Propenoic acid, 2-hydroxybutyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-hydroxybutyl ester (PMN P–87–930) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

28. By adding new § 721.1814 to subpart E to read as follows:

§ 721.1814 2-Propenoic acid, 1-(hydroxymethyl) propyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 1-(hydroxymethyl) propyl ester (PMN P–87–931) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

29. By adding new § 721.1818 to subpart E to read as follows:

§ 721.1818 2-Propenoic acid, 2-methyl-, 1,1-dimethylethyl ester.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, 2-methyl-, 1,1-dimethylethyl ester (PMN P–89–422) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xii), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (a)(6)(v), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

30. By adding new § 721.2555 to subpart E to read as follows:

§ 721.2555 Urethane acrylate.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as urethane acrylate (PMN P–85–301) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(iv) *Disposal.* Requirements as specified in § 721.85(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: § 721.125(a) through (j).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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Wednesday
October 31, 1990

Part VII

Federal Communications Commission

47 CFR Part 1, et al.
Multipoint Distribution Service, etc.; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 43, 74, and 78

[Gen. Docket No. 90-54, Gen. Docket No. 80-113; FCC 90-341]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report and Order* adopts a number of rule changes proposed in the *Notice of Proposed Rule Making and Notice of Inquiry* (*Notice*) [1] concerning wireless cable service. This *Report and Order*, together with a companion *Further Notice of Proposed Rulemaking* (also published in Part V of this issue), is intended to facilitate the development of wireless cable by unifying and updating the rules governing the various microwave radio channels that can be collectively used to provide wireless cable service. First, the *Report and Order* modifies several rules to increase the availability of Multipoint Distribution Service (MDS) channels for use in wireless cable systems. This action eliminates MDS ownership restrictions and simplifies various rules governing the application process, the initiation of service of new channels, and the modification of existing facilities, licenses, or applications to permit authorization of larger and more serviceable wireless cable systems. It also modifies equipment standards and other technical requirements to increase service capabilities and improve the quality of various aspects of wireless cable service. Finally, the Commission relaxes certain administrative requirements to reduce the burdens they impose.

EFFECTIVE DATE: November 30, 1990, except §§ 21.23(e), 21.901(d)(2), 21.912 and 21.914, effective on October 31, 1990, and §§ 11307(b), 21.901(d)(1), 21.902(i), 21.905(c), 21.911, 21.913, 74.903(a)(2), 74.961(c), and 74.985, effective on January 24, 1991.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, Policy and Rules Division (202) 632-7792; Bruce Romano, Mass Media Bureau, Policy and Rules Division (202) 632-5414; Lynne Milne, Common Carrier Bureau (202) 634-1772; or Mike Lewis, Private Radio Bureau (202) 632-6940.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended. (44 U.S.C. 3501 *et seq.*). Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, suite 140, 210 M street, NW., Washington, DC 20037 (202) 857-3800.

Title: Amendment of parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service.

OMB Number: None.

Action: New and Modified Collections.

Respondents: Businesses (including small businesses); Individuals or households.

Frequency of Response: On Occasion; Annually for MDS Reports.

1. Section 21.901(d)(1)—Frequencies (ITFS Coordination Requirements).

a. Engineering Analysis.

Estimated Annual Burden: 6,000 responses; 240,000 on total industry, 40 hours each.

b. ITFS Service Notice.

Estimated Annual Burden: 6,000 responses; 2,000 hours on total industry, ⅓ hour each.

c. Diligent Efforts to Serve Notice.

Estimated Annual Burden: 2,000 responses; 1,000 hours on total industry, ½ hour each.

d. Late ITFS Service Notice.

Estimated Annual Burden: 1,000 responses; 333 hours on total industry, ⅓ hour each.

e. ITFS Petition to Deny.

Estimated Annual Burden: 2,000 responses; 80,000 hours on total industry, 40 hours each.

2. Section 21.902(i)—Frequency Interference.

Estimated Annual Burden: 10 responses; 100 hours on total industry, 10 hours each.

3. Section 21.902(j)—Frequency Interference.

Estimated Annual Burden: 100 responses; 33 hours on total industry, ⅓ hour each.

4. Section 21.9111—Annual Reports.

Estimated Annual Burden: 100 responses; 100 hours total, 1 hour each.

5. Section 21.912—Cable Television Company Eligibility Requirements.

Estimated Annual Burden: 200 responses; 100 hours on total industry, ½ hour each.

6. Section 21.913—Signal Booster Stations.

Estimated Annual Burden: 100 responses; 200 hours on total industry, 2 hours each.

Needs and Uses: In fulfilling its obligation under the Communications Act of 1934, as amended, the Commission collects information from applicants and licensees for Multichannel Multipoint Distribution Service stations to determine eligibility and to ensure compliance with this Act and the Commission's regulations.

Estimated public reporting burdens for the collections of information are indicated above. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

Public reporting burden for the collection of information in § 74.985 is estimated to average 30 minutes per response. The burden for § 78.11 (3060-0339) is estimated to average 30 minutes yearly per recordkeeper and 30 minutes per notification. The burden for § 78.33 (3060-0288) is estimated to average 4 hours per response. The burden for FCC Form 327 (3060-0055) is estimated to average 3 hours per response. The burden for FCC Form 330 (3060-0062) is estimated to average 6 hours and 50 minutes per response. Each of these estimates includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of these collections of information/recordkeeping requirements, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503. This is a synopsis of the Commission's *Report*

[1] 55 FR 7344, March 1, 1990.

and Order in Gen. Docket Nos. 90–54 and 80–113, adopted October 11, 1990, and released October 26, 1990. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. This *Report and Order* modifies existing rules and adopts new rules relating to the various services that can be collectively used for the provision of wireless cable. Wireless cable is a service which provides multiple channels of video entertainment and informational programming using a combination of old and relatively new technologies. As we stated in the *Notice*, most of the rules at issue in this proceeding were established in the infancy of the various services they govern, long before the development of the wireless cable industry. Consequently, these rules not only contain possibly obsolete limitations but also vary substantially from service to service. Thus, the Commission takes this action to conform the rules in the affected services to afford wireless cable operators a more flexible regulatory framework.

2. This *Report and Order* enacts most of the rule changes proposed in the *Notice*. The Commission anticipates that the rule and policy changes adopted here, and the additional modifications proposed in the accompanying *Further Notice* will remove or reduce a number of barriers to the development of wireless cable service as a competitive force in the multichannel video marketplace.

3. Specifically, this *Report and Order* adopts the following rule changes proposed in the *Notice:*

(a) Elimination of the MDS multiple ownership restrictions; (b) acceleration and facilitation of the introduction of service on additional channels by permitting additional modifications to reduce interference for existing MDS stations by (c) simplifying procedures for notifing ITFS licensees of a proposed MDS station or station modification [2] and by (d) permitting MDS applicants use of the 0 dB interference standard at older ITFS sites where the MDS applicant will provide new equipment capable of operation at the interference level; (e) provision for the migration of point-to-point ITFS operations grandfathered on the MDS E and F channels; (f) elimination of some restrictions on the leasing of ITFS excess capacity; (g) prohibition of cable operators from holding licenses or leases for MDS or ITFS facilities in their franchise areas when they are sole cable service providers; (h) increase of permissible power limits and modification of the output power standard; (i) tightening of transmitter performance standards for new stations, including (j) tightening out-of-band emissions and (k) revising permissible aural power levels; (l) provision for the use of signal boosters to fill in areas of weak signals; (m) qualification of wireless cable operators to use auxiliary frequencies and the CARS band where necessary; and (n) adoption of a one-day filing procedure for MDS applicants.[3]

4. Finally, many of the rule changes adopted in this *Report and Order* affect ITFS service. The Commission emphasizes that its effort to facilitate the expansion of wireless cable service as a competitive multichannel source of programming should not be interpreted as diminishing its commitment to the further development of ITFS. The modifications adopted here should not jeopardize the current or future ability of ITFS to fulfill its primary intended purpose of providing educational material for instructional use. On the contrary, the Commission believes that these changes will enhance ITFS by improving service quality and potentially increasing the revenues received by ITFS entities through the leasing of excess capacity. In addition, the *Report and Order* avers that educational institutions should be treated differently than commercial entities in many situations due to limited financial and staff resources, governmental constraints, and similar factors. The Commission states that it has endeavored in this proceeding to compensate for these limitations and to afford ITFS licensees as much latitude as possible in designing and operating their systems.

Regulatory Flexibility Act Analysis

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules will have a significant impact on a substantial number of small entities by significantly reducing the amount and complexity of information required in annual reports from MDS common carrier operators. In addition, the Commission believes that by providing uniform, effective regulations for those services which can be used for wireless cable, this decision will not only increase channel availability for wireless cable operations, it will also ease the regulatory burden on those affected services.

6. The Secretary shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

7. Accordingly, *it is ordered*, That pursuant to the authority contained in sections 4(i) and 303(r) or the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), parts 1, 21, 43, 74, and 78 of the Commission's Rules, 47 CFR 21, 43, 74, 78, are amended as set forth below.

8. *It is further ordered*, That General Docket No. 80–113 is terminated.

9. *It is further ordered*, That this *Report and Order* will be effective 30 days after publication in the **Federal Register**, except as follows:

(1) Sections 21.28(e), 21.901(d)(1), 21.912, and 21.914 of the Commission's Rules, 47 CFR 21.28(e), 21.901(d)(2), 21.912, 21.914, are effective upon publication of a summary of this *Report and Order* in the **Federal Register**; [4]

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[2] The changes to § 21.901(d) of the Commission's Rules, 47 CFR 21.901(d), adopted in this *Report and Order* become effective on January 24, 1991. Any MDS application for the E and F channels filed after that date must comply with this rule change. Any MDS application for the E and F channels filed between October 11, 1990, and January 24, 1991, must be amended no later than January 25, 1991, to include the ITFS interference analysis specified in this *Report and Order*. The applicant must mail the copies no later than January 25, 1991, and must file the written notice as to receipt of ITFS analysis no later than February 15, 1991. MDS applicants for the E and F channels filing before October 11, 1990, must file the specified ITFS interference analysis and notification after a conditional license is granted, but before construction commences.

[3] *See* § 21.914, *infra*. After this rule change is published in the **Federal Register**, this rule will apply to all pending applications that have not appeared on a public notice for competing applications. Current cut-off periods, however, will continue to run, so that pending applications which have appeared on public notice will be subject to any competing applications filed during an established cut-off period.

[4] The elimination of the ownership limitations is a substantive rule change which relieves a restriction, and therefore can be made effective on less than 30 days' notice. See 5 U.S.C. 553(d)(1). Moreover, we find good cause for making the rule change effective upon publication in the **Federal Register**. By doing so, we hope to conform this rule with the one-day MDS application filing procedure adopted in the *Report and Order*.

The shortening of the cut-off period for MDS applications is a procedural rule change, and therefore can be made effective on less than 30

Continued

(2) Sections 1.1307(b), 21.901(d)(1), 21.902(i), 21.905(c), 21.911, 21.913, 74.903(b)(1), 74.961(c), and 74.985 of the Commission's Rules, 47 CFR §§ 1.1307(b), 21.901(d)(1), 21.902(i), 21.905(c), 21.911, 21.913, 74.903(a)(2), 74.961(c), and 74.985, are effective on January 24, 1991.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 21

Communications common carriers, Domestic public fixed radio services.

47 CFR Part 43

Communications common carriers, Reports of communication common carriers and Certain affiliates.

47 CFR Part 74

Television broadcasting, Experimental, auxiliary, and special broadcast and Other program distributional service.

47 CFR Part 78

Cable television, Cable television relay service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 1, 21, 43, 74, and 78 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

2. Section 1.227 is amended by revising paragraph (b)(4) to read as follows:

§ 1.227 Consolidations.

* * * * *

(b) * * *

(4) This paragraph applies when mutually-exclusive applications subject to section 309(b) of the Communications Act are filed in the Private Radio Services or when there are more such applications for initial licenses than can be accommodated on available frequencies. In such cases, the applications either will be consolidated for hearing or designated for random selection (see § 1.972 of this part). An application which is substantially amended (as defined by § 1.962(c) of this part) will, for the purpose of this section, be considered to be a newly-filed application as of the receipt date of the amendment. Except for applications filed under part 94, Private Operational Fixed Microwave Service, mutual exclusivity will occur if the later application or applications are received by the Commission's offices in Gettysburg, PA (or Pittsburgh, PA for applications requiring the fees set forth at part 1, subpart G of the rules) in a condition acceptable for filing within 30 days after the release date of public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing or within such other period as specified by the Commission. For applications in the Private Operational Fixed Microwave Service, mutual exclusivity will occur if two or more acceptable applications that are in conflict are filed on the same day.

* * * * *

3. Section 1.1307, paragraph (b), is amended by revising Note 1 to read as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

Note 1: Paragraph (b) shall apply to facilities and operations licensed or authorized under the following Parts of the Commission's Rules: 5, 21 (subpart K), 25, 73, 74 (subparts A, C, I, and L), and 80. With respect to part 21 (subpart K) and part 74 (subpart I), paragraph (b) is applicable only to MDS and ITFS stations transmitting with an equivalent isotropically radiated power (EIRP) in excess of 200 watts. With respect to part 74 (subpart L), paragraph (b) is applicable only to FM booster stations with a transmitter output power in excess of 10 watts. With respect to part 80, paragraph (b) is applicable only to ship earth stations. Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under paragraph (b).

* * * * *

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

4. The authority citation for part 21 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1982, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

5. Section 21.2 is amended by revising the definition for "Repeater station" and by adding definitions for "Equivalent Isotropically Radiated Power" and "Signal booster station," in alphabetical order to read as follows:

§ 21.2 Definitions.

* * * * *

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the transmitting antenna and the antenna gain in a given direction relative to an isotropic antenna radiator. This product may be expressed in watts or dB above 1 watt (dBW).

* * * * *

Repeater station. A fixed station established for the automatic retransmission of radiocommunications received from one or more stations and directed to a specified receiver site.

* * * * *

Signal booster station. A low-power repeater station automatically retransmitting on the same frequency as the received signal, and located within the protected service area of a Multipoint Distribution Service station.

* * * * *

6. Section 21.13 is amended by revising paragraph (a)(6) to read as follows:

§ 21.13 General application requirements.

(a) * * *

(6) Show compliance with the special requirements applicable to each radio service and make all special showings that may be applicable (*e.g.*, those required by §§ 21.100(d), 21.700, 21.706, 21.900, 21.912, 21.913 of this part, etc.).

* * * * *

7. Section 21.20 is amended by revising paragraph (b)(9) to read as follows:

§ 21.20 Defective applications.

* * * * *

(b) * * *

---

days' notice. See 5 U.S.C. 553(d). In any event, we find good cause for making the rule change effective upon its publication in the **Federal Register**. By doing so, we hope to avoid the filing of numerous speculative applications that would hamper our processing efforts. After this effective date, this rule will apply to all second and subsequent applications if the first conflicting application did not appear on public notice on or before the effective date. However, if the first conflicting application appeared on public notice on or before the effective date, second and subsequent applications may be filed, and mutual exclusivity determinations will be made pursuant to 47 CFR 21.31.

In addition, we find good cause for making the rule restricting cable television ownership of wireless cable facilities effective upon its publication in the **Federal Register**. See 5 U.S.C. 553(d). By doing so, we will prevent the filing of applications by cable entities which would circumvent the limitation adopted here.

(9) The application is filed after the cutoff date prescribed in § 21.31 or § 21.914 of this part; or

* * * * *

8. Section 21.28 is amended by adding paragraph (e) to read as follows:

§ 21.28 Dismissal and return of applications.

* * * * *

(e) The Commission will dismiss an application filed by a cable television company which fails to comply with the provisions of § 21.912 of this part.

9. Section 21.30 is amended by revising paragraph (a)(4) to read as follows:

§ 21.30 Opposition to applications.

(a) * * *

(4) Except as provided in § 21.901(d)(1) of this part regarding Instructional Television Fixed Service licensees, be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto, or identifying the tentative selectee of a random selection proceeding in the Multichannel Multipoint Distribution Service (unless the Commission otherwise extends the deadline); and

* * * * *

10. Section 21.33 is amended by correcting the word "changes" in paragraph (b) to read the word "chances," and by revising paragraph (a) to read as follows:

§ 21.33 Grants by random selection.

(a) If an application for a license in the Digital Electronic Message Service (DEMS) is mutually exclusive with another such application and satisfies the requirements of § 21.31 of this part, the applicants may be included in the random selection process set forth in part 1, §§ 1.821, 1.822, and 1.825 of this chapter. If an application for a license in the Multichannel Multipoint Distribution Service (MMDS) is mutually exclusive with another such application and satisfies the requirements of §§ 21.31 and 21.914 of this part, the applicants may be included in the random selection process set forth in part 1, §§ 1.821, 1.822, and 1.824 of this chapter. Renewal applications shall not be included in a random selection process.

* * * * *

11. Section 21.41 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 21.41 Special processing of applications for minor facility modifications.

* * * * *

(c) * * *

(1) * * *

(i) In all radio services other than Multipoint Distribution Service and Digital Electronic Message Service, any increase in transmitter output power is less than three dB over the previously authorized output power; and in Digital Electronic Message Service, any increase in transmitter output power is one and one-half dB or less over the previously authorized output power; and in the Multipoint Distribution Service, any increase in EIRP is one and one-half dB or less over the previously-authorized power value.

* * * * *

§ 21.101 [Amended]

12. Section 21.101 is amended by adding footnote 6 to the entries for "2,110 to 2,200" and "2,200 to 12,200" in the column titled "Frequency range (MHz)" in the table in paragraph (a) to read as follows:

[6] Beginning November 1, 1991, equipment authorized to be operated in the frequency bands 2150-2162 MHz and 2596-2644 MHz for use in the Multipoint Distribution Service shall maintain a frequency tolerance within ± 1 KHz of the assigned frequency.

* * * * *

§ 21.107 [Amended]

13. Section 21.107 is amended by revising footnote 1 to the table in paragraph (b) to read as follows:

[1] In the 2,150-2,162 MHz and 2,500-2,690 MHz frequency bands, when used for the Multipoint Distribution Service, EIRP up to 2000 watts may be authorized pursuant to § 21.904 of this part.

* * * * *

14. Section 21.901 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 21.901 Frequencies.

* * * * *

(d) * * *

(1) Each applicant for facilities in the 2596-2644 MHz frequency band must:

(i) Submit with its application an analysis demonstrating that operation of the applicant's transmitter will not cause harmful interference to any existing co-channel or adjacent-channel Instructional Television Fixed Service (ITFS) station with a transmitter site within 50 miles of the Multichannel Multipoint Distribution Service (MMDS) applicant's proposed transmitter site;

(A) This analysis may presume the displacement or discontinuation of a co-channel, grandfathered ITFS station, if such displacement or discontinuation is necessary for an analysis demonstrating the applicant's transmitter will not cause harmful interference to such ITFS station.

(B) This analysis may presume the displacement of any point-to-point operation of an ITFS station if such displacement or discontinuation is necessary for an analysis demonstrating the applicant's transmitter will not cause harmful interference to such ITFS station.

(C) In the alternative, an applicant for an MDS station on the E or F channels may submit a statement from the ITFS licensee stating that the ITFS licensee does not object to operation of the MDS station.

(ii) Serve a copy of the analysis described in paragraph (d)(1)(i) of this section on the licensee of each co-channel or adjacent-channel ITFS station with a transmitter site located within 50 miles of the MMDS applicant's proposed transmitter site;

(iii) Include in its application a certification of service demonstrating that, on or before the filing date of the application, a copy of the analysis described in paragraph (d)(1)(i) of this section was sent, certified mail, return receipt requested, to each licensee of a co-channel or adjacent-channel ITFS station with a transmitter site located within 50 miles of the MMDS applicant's proposed transmitter site; and

(iv) File with the Commission on or before the 20th day after the filing date of the application a written notice which contains the following:

(A) Caption—ITFS Service Notice;

(B) Applicant's name, address, proposed service area and channel group(s);

(C) A list of each licensee of a co-channel or adjacent-channel ITFS station with a transmitter site within 50 miles of the MMDS applicant's proposed transmitter site;

(D) A notation of the date each such ITFS licensee received a copy of the analysis described in paragraph (d)(1)(i) of this section, or a notation of lack of receipt by the ITFS licensee of a copy of the interference analysis as of such 20th day.

(v) Within 90 days of the day of filing of the MDS application, for each such ITFS licensee for which there is a notation of the lack of receipt of the analysis described in paragraph (d)(1)(i) of this section, the MDS applicant must submit a demonstration prior to grant of its application that it made diligent efforts for the ITFS licensee to receive the analysis.

(vi) Within 90 days of the day of filing of the MDS application, for each such ITFS licensee for which there is a notation in the ITFS Service Notice of the lack of receipt of the analysis described in paragraph (d)(1)(i) of this

section, and the ITFS licensee receives the analysis on or after the 20th day after the application filing date, the MDS applicant must submit a demonstration prior to grant of its application that the ITFS licensee received the analysis.

(vii) Notwithstanding the provisions of § 21.31(a)(4) of this part, any licensee of an existing co-channel or adjacent-channel ITFS station with a transmitter site within 50 miles of the MDS applicant's proposed transmitter site may file a petition to deny the application for an MDS station on the E or F channels within 90 days of the day of filing of the MDS application with the Commission. In the alternative, the ITFS licensee may file such petition to deny within 60 days of its receipt of the analysis described in paragraph (d)(1)(i) of this section.

(A) Except for the requirements as to the filing time deadline, this petition to deny must otherwise comply with the provisions of § 21.30 of this part.

(B) In addition, the ITFS licensee must demonstrate in its petition to deny that it made efforts to reach agreement with the MDS applicant but was unable to do so and must demonstrate by interference analysis that operation of the proposed MDS station on the E or F channels will cause harmful interference to its ITFS station. In cases where the MDS application is dependent on modification(s) to the ITFS facility, the ITFS licensee must demonstrate that the harmful interference cannot be avoided by the proposed substitution of new or modified equipment to be supplied and installed by the MDS applicant, at no expense to the ITFS licensee.

(C) The subject matter of this petition to deny filed by the ITFS licensee is limited to raising objections concerning the potential for harmful interference to its ITFS station or concerning a failure by the MDS applicant for the E or F channels to serve the ITFS licensee with a copy of the analysis described in paragraph (d)(1)(i) of this section.

(2) Each applicant for facilities in the 2596–2644 MHz frequency band may submit only a single application for the same channel group in each service area. The stockholders holding more than one percent of an entity's stock, the partners, the owners, the trustees, the beneficiaries, the officers, the directors, or any other person or entity holding a similar cognizable interest in one applicant for a service area and channel group, directly or indirectly, must not have a cognizable interest, directly or indirectly, in another applicant for that same service area and channel group.

* * * * *

15. Section 21.902 is amended by revising paragraphs (f)(2) and (i) and by adding paragraph (j) to read as follows:

§ 21.902 Frequency interference.

* * * * *

(f) * * *

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level. Harmful interference will be considered present when a free space calculation determines that this ratio is less than 0 dB. In the alternative, harmful interference will be considered present for an Instructional Television Fixed Service (ITFS) station constructed before May 26, 1983, when a free space calculation determines that this ratio is less than 10 dB, unless the license for a Multipoint Distribution Service station in the 2596–2644 MHz frequency band is conditioned on the proffer to the affected ITFS station licensee of equipment capable of providing a ratio of less than 0 dB at no expense to the ITFS station licensee, and also conditioned, if necessary, on installation of such equipment, absent a showing by the affected ITFS station licensee demonstrating good cause and that the proposed equipment will not provide a ratio of less than 0 dB or that installation of such equipment, at no expense to the ITFS station licensee, is not possible.

* * * * *

(i) If the initial application for facilities in the 2596–2644 frequency band was filed on September 9, 1983, an applicant proposing to modify such facilities must include with its modification application:

(1) An analysis demonstrating that the modification will not increase the size of the geographic area suffering harmful interference within the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596–2644 MHz frequency band with a transmitter site within 50 miles of the modifying station's transmitter site if the initial application for the interfered-with station was filed on September 9, 1983; and

(2) An analysis demonstrating that the modification will not cause harmful interference to any new portion of the protected service area of existing or proposed co-channel or adjacent-channel facilities in the 2596–2644 frequency band with a transmitter site within 50 miles of the modifying station's transmitter site, if the initial application for the interfered-with station was filed on September 9, 1983.

(j) If an initial application for facilities in the 2596–2644 frequency band was filed on September 9, 1983, a licensee proposing to modify a constructed station may request exclusion from the interference analysis prescribed at § 21.902(c) (1) and (2) with respect to another specified application for E or F channel facilities, if the modifying licensee files as part of its modification application a demonstration that:

(1) The MDS application for which exclusion is requested was proposed by an initial application filed on September 9, 1983;

(2) The MDS application for which exclusion is requested is not yet perfected by the submission of the information necessary for processing, as of the date of filing of the modification application; and

(3) A copy of the licensee's modification application, including the demonstration specified in this paragraph, was served on the MDS applicant for which exclusion is requested, on or before the date of filing of the modification application.

16. Section 21.904 is revised in its entirety to read as follows:

§ 21.904 Transmitter power.

(a) The maximum equivalent isotropically radiated power (EIRP) of a transmitter station in this service shall not exceed 2000 watts (33 dBW) except as provided in paragraph (b) of this section.

(b) If a station uses a transmitting antenna with a non-omnidirectional horizontal plane radiation pattern, the maximum equivalent isotropically radiated power (EIRP) in dBW in a given direction shall be determined by the following formula:

$$EIRP = 33\ dBW + 10 \log (360/\text{beamwidth})$$

[where $10 \log (360/\text{beamwidth}) < 6$ dB].

Beamwidth is the total horizontal plane beamwidth of the transmitting antenna system in degrees, measured at the half-power points.

(c) An increase in station transmitter power, above currently-authorized or previously-proposed values, to the maximum values provided in paragraphs (a) and (b) of this section, may be authorized, if an applicant demonstrates that the requested power increase will not cause harmful interference to any authorized or previously-proposed co-channel or adjacent-channel station with a transmitter site within 50 miles of the applicant's transmitter site, or if an applicant demonstrates that:

(1) A station, that must be protected from interference, potentially could

suffer interference that would be eliminated by increasing the power of the interfered-with station; and

(2) That the interfered-with station may increase its own power consistent with the rules; and

(3) The applicant requesting authorization of a power increase agrees to pay all expenses associated with the increase in power to the interfered-with station.

(d) For television transmission if the authorized bandwidth is 4.0 MHz or more for the visual and accompanying aural signal, the peak power of the accompanying aural signal must not exceed 10 percent of the peak visual power of the transmitter. The Commission may order a reduction in aural signal power to diminish the potential for harmful interference.

17. Section 21.905 is amended by adding paragraph (c) to read as follows:

§ 21.905 Emissions and bandwidth.

* * * * *

(c) Any licensee of a station in the 2150–2162 MHz or 2569–2644 MHz frequency bands, after notice and opportunity for hearing, may be required to use the frequency offset technique to avoid or to minimize harmful interference to another licensed station in the 2150–2162 MHz and 2569–2644 MHz frequency bands or to make other changes as provided in §§ 21.100, 21.107, 21.900, 21.901, 21.902, 21.904, 21.905(a), 21.905(b), 21.906, 21.907, and 21.908 of this part.

18. Section 21.908 is revised in its entirety to read as follows:

§ 21.908 Television transmitting equipment.

(a) Except as otherwise provided in this section, the requirements of paragraphs (a), (b), (c), (d), and (e) of § 73.687 of this chapter shall apply to stations in this service transmitting standard television signals.

(b) On or after November 1, 1991, the maximum out-of-band power of a transmitter operating in the frequency bands 2150–2162 MHz and 2596–2644 MHz shall be attenuated 38 dB relative to the peak visual carrier at the channel edges and constant slope attenuation from this level to 60 dB relative to the peak visual carrier at 1 MHz below the lower band edge and 0.5 MHz above the upper band edge. All out-of-band emissions extending beyond these frequencies shall be attenuated at least 60 dB below the peak visual carrier power. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed, and does not comply with this paragraph, may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any non-conforming transmitter replaced after November 1, 1991, must be replaced by a transmitter meeting the requirements of this paragraph.

(c) The requirements of § 73.687(c)(2) of this chapter will be considered to be satisfied insofar as measurements of operating power are concerned if the transmitter station is equipped with instruments for determining the combined visual and aural operating power. However, licensees must maintain the operating powers within the limits specified in § 21.904 of this part. Measurements of the separate visual and aural operating powers must be made at sufficiently frequent intervals to insure compliance with the rules, and in no event less than once a month.

(d) Television transmitting equipment designed for stations whose authorized bandwidth in 4 MHz or less for the visual and accompanying aural signal is subject to the provisions of § 21.101 of this part with respect to the frequency tolerance of the visual and aural carriers. Such equipment is also subject to paragraphs (a) and (b) of this section, except that the provisions of § 73.687 (a), (b), and (c)(1) of this chapter shall not apply.

(e) As a further exception to the other requirements of this section, transmitting equipment characteristics may vary from these requirements to the extent necessary to insure that transmitted information is not likely to be received in intelligible form by unauthorized subscribers or licensees, provided such variations permit recovery of the transmitted information without perceptible degradation as compared to the same information transmitted without such variations.

19. Section 21.911 is added to read as follows:

§ 21.911 Annual reports.

(a) No later than March 1 of each year for the preceding calendar year, each licensee in the Multipoint Distribution Service shall file with the Commission two copies of a report which must include the following:

(1) Name and address of licensee;

(2) Station(s) call letters and primary geographic service area(s);

(3) The following statistical information, preferably in tabular form, for the licensee's station (and each channel thereof):

(i) The total number of separate subscribers served during the calendar year;

(ii) The total hours of transmission service rendered during the calendar year to all subscribers;

(iii) The total hours of transmission service rendered during the calendar year in the following categories: entertainment, education and training, public service, data transmission, and other services;

(iv) A list of each period of time during the calendar year in which a station was not operational due to removal or alteration of equipment or facilities; and

(v) A list of each period of time during the calendar year in which the station rendered no service as authorized, if the time period was a consecutive period longer than 48 hours.

(b) The licensee, by an appropriate corporate officer, controlling partner, or individual proprietor, must certify this report as to the accuracy and completeness of the information contained therein.

(c) A copy of each year's report shall be retained in the principal office of the licensee and shall be readily available to the public for reference and inspection.

20. Section 21.912 is added to read as follows:

§ 21.912 Cable television company eligibility requirements.

(a) Notwithstanding the provisions of § 21.900 of this part, initial or modified authorizations for stations in the 2150–2162 MHz and 2596–2644 MHz frequency bands may not be granted to a cable television company if a portion of the Multipoint Distribution Service (MDS) station's protected service area is within the cable television company's franchise area, unless that cable television company is not the sole provider of cable television service in the franchise area. No cable television company may acquire such an authorization either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable television company.

(b) No licensee of a station in this service may lease transmission time or capacity to a cable television company either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with a cable television company, if a portion of the Multiport Distribution Service (MDS) station's protected service area is within the cable television company's franchise area.

(c) Applications for new stations, station modifications, assignment, or transfer of control by cable television companies for stations in the 2150–2162 and 2596–2644 MHz frequency bands shall include a showing that no portion of the protected service area of the proposed MDS station is within the franchise area of the cable television company or of any entity indirectly affiliated, owned, operated, controlled, or under common control with the cable television company.

Note 1: (A) As used above, the terms "control" and "affiliate" bar any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the Multipoint Distribution Service (MDS) station applicant or licensee and the cable television company.

(B) Examples of situations in which an MDS applicant or licensee will be deemed to be controlled or to have a relationship include, among others:

(1) If one is the debtor or creditor of the other;

(2) If they have a common officer, director, or other employee at the management level;

(3) If there is any element of ownership or other financial interest by one in the other; and

(4) If any person or company has a financial interest in both.

Note 2: In applying the provisions of this section to the stockholders of a corporation which has more than 50 stockholders:

(A) Only those stockholders need be considered who are officers or directors or who directly or indirectly own 1 percent or more of the outstanding voting stock.

(B) Stock ownership by an investment company, as defined in 15 U.S.C. 80a–3 (commonly called a mutual fund), need be considered only if it directly or indirectly owns 3 percent or more of the outstanding voting stock or if officers or directors of the corporation are representatives of the investment company. Holdings by investment companies under common management shall be aggregated. If an investment company directly or indirectly owns voting stock in an intermediate company which in turn directly or indirectly owns 50 percent or more of the voting stock of the corporation, the investment company shall be considered to own the same percentage of outstanding shares of such corporation as it owns of the intermediate company: *Provided, however,* That the holding of the investment company need not be considered if the intermediate company owns less than 50 percent of the voting stock, but officers or directors of the corporation who are representatives of the intermediate company shall be deemed to be representatives of the investment company.

(C) In cases where record and beneficial ownership of voting stock is not identical (*e.g.*, bank nominees holding stock as record owners for the benefit of mutual funds, brokerage houses holding stock in street name for the benefit of customers, trusts holding stock as record owners for the benefit of designated parties), the party having the right to determine how the stock will be voted will be considered to own it for the purposes of this section.

21. Section 21.913 is added to read as follows:

§ 21.913. Signal booster stations.

(a) Authorizations for Multipoint Distribution Service (MDS) booster stations may be granted to an MDS applicant, conditional licensee or licensee, to an Instructional Television Fixed Service (ITFS) applicant, permittee or licensee, or to a third party with a fully-executed lease agreement with an MDS or ITFS applicant, conditional licensee, permittee, or licensee. A signal booster station may not extend service beyond the boundaries of an MDS station's protected service area. No booster station may be authorized for the retransmission of signals from an MDS, ITFS, or OFS station without the written consent of the licensee of the station whose signals are retransmitted.

(b) In addition to the other application requirements of this part and of Form 494, each application for a signal booster station that would retransmit an MDS signal must include a demonstration that the proposed booster station site is within the protected service area of the MDS station.

(c) In addition to the other application requirements of this Part and of Form 494, each application for a signal booster station that would retransmit an MDS signal must include a demonstration that the power flux density at the edge of the MDS protected service area does not exceed −75.6 dBW/m2.

(d) In addition to the other application requirements of this part and of Forms 494 and 330, each application for a signal booster station must include a demonstration that the proposed booster station will cause no harmful interference to co-channel and adjacent-channel existing or previously-proposed ITFS and MDS stations with transmitters within 50 miles of the proposed booster station's transmitter site.

(e) In addition to the other application requirements of this part and of Forms 494 and 330, each application must include a written consent statement of the licensee of each MDS, ITFS, and OFS station whose signal is retransmitted.

(f) The output power of the signal booster transmitter station must not exceed 18 dBW EIRP.

22. Section 21.914 is added to read as follows:

§ 21.914 Mutually-exclusive MDS applications.

Notwithstanding the provisions of § 21.31 (b)(2)(i) and (ii) of this part, to be entitled to be included in a random selection process or to comparative consideration with one or more conflicting applications, an application for frequencies at 2150–2162 MHz or 2596–2644 MHz must be received by the Commission in a condition acceptable for filing on the same calendar day as the first of the conflicting applications is received by the Commission in a condition acceptable for filing.

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

23. The authority citation for part 43 continues to read as follows:

Authority: Sec. 4, 48 State. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219, 220.

§ 43.72 [Removed and reserved]

24. Section 43.72 is removed and reserved.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

25. The authority citation for part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307.

26. Section 74.832 is amended by adding paragraph (a)(6) to read as follows:

§ 74.832 Licensing requirements and procedures.

(a) * * *

(6) Licensees and conditional licensees of stations in the Multipoint Distribution Service and Multichannel Multipoint Distribution Service as defined in § 21.2 of this chapter, or entities that hold an executed lease agreement with an MDS or MMDS licensee or conditional licensee or with an Instructional Television Fixed Service licensee or permittee.

* * * * *

27. Section 74.901 is amended by adding definitions for "Equivalent Isotropically Radiated Power," "Point-to-point ITFS station," and "Studio to transmitter link" in alphabetical order to read as follows:

§ 74.901 Definitions.

* * * * *

Equivalent Isotropically Radiated Power (EIRP). The product of the power supplied to the antenna and the antenna gain in a given direction relative to an isotropic antenna radiator. This product may be expressed in watts or dB above 1 watt (dBW).

* * * * *

Point-to-point ITFS station. An ITFS station that transmits a highly directional signal from a fixed transmitter location to a fixed receive location.

* * * * *

Studio to transmitter link (STL). A directional path used to transmit a signal from a station's studio to its transmitter.

* * * * *

28. Section 74.902 is amended by adding new paragraph (h) to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(h) On the E and F-channel frequencies, a point-to-point ITFS station may be displaced by an MDS licensee, provided that suitable alternative spectrum is available and that the MDS licensee bears the expenses of the migration.

29. Section 74.903 is amended by revising paragraph (a)(2) to read as follows:

§ 74.903 Interference.

(a)* * *

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the antenna input terminals of the affected receiver, when the ratio is less than 0 dB, except in cases where the stations were constructed before May 26, 1983. In such cases, the desired to undesired signal ratio shall not be less than 10 dB unless the individual receive site under consideration has been subsequently upgraded with up-to-date reception equipment, in which case the ratio shall not be less than 0 dB. Absent information presented to the contrary, the Commission will assume that reception equipment installation occurred simultaneously with original station equipment.

* * * * *

30. Section 74.911 is amended by revising paragraph (a)(1) to read as follows:

§ 74.911 Processing of ITFS station applications.

(a)* * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. These applications are subject to the provisions of paragraph (c) of this section. A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another, or increase transmitter output power. However, the Commission may, within 15 days after the acceptance of an application, or 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change, and subject to the provisions of paragraph (c) of this section.

* * * * *

31. Section 74.931 is amended by revising paragraph (e) to read as follows:

§ 74.931 Purpose and permissible service.

* * * * *

(e) A licensee may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a), (b), (c), and (d) of this section subject to the following conditions:

(1) The licensee must preserve at least 40 hours per week, including at least 6 hours per weekday (Monday through Friday), excluding holidays and vacations days, for ITFS purposes on that channel. The 40-hour preservation may consist of airtime strictly reserved for ITFS use and not used for non-ITFS programming, or of time used for non-ITFS programming but subject to ready recapture by the licensee for ITFS use with no economic or operational detriment of the licensee. At least 20 hours per week of the preserved time on each channel must be used for ITFS programming, including at least 3 hours per weekday, excluding holidays and vacation days, except that for the first two years of operation, an ITFS entity may lease excess capacity if it uses at least 12 hours per channel per week for ITFS programming, including up to four hours of ITFS usage per day. Only ITFS programming and preserved airtime scheduled between 8 a.m. and 10 p.m., Monday through Saturday, will qualify to meet these requirements.

(2) All of the capacity available on any subsidiary channel of any authorized channel may be used for the transmission of material to be used by others.

(3) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation. A licensee operating as a common carrier is required to apply for the appropriate authorization and to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is a common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(4) Leasing activity may not cause unacceptable interference to co-channel and adjacent-channel operations.

(5) No licensee of a station in this service may lease transmission time or capacity to any cable television company either directly, or indirectly through an affiliate owned, operated, controlled by, or under common control with the cable television company, if the ITFS station is within 20 miles of the cable television company's franchise area.

* * * * *

32. Section 74.935 is revised to read as follows:

§ 74.935 Power limitations.

(a) The maximum equivalent isotropically radiated power (EIRP) of a transmitter station in this service shall not exceed 2000 watts (33 dBW) except as provided in paragraph (b) of this section.

(b) If a station uses a transmitting antenna with a non-omnidirectional horizontal plane radiation pattern, the maximum equivalent isotropically radiated power (EIRP) in dBW in a given direction shall be determined by the following formula:

EIRP = 33 dBW + 10 log (360/beamwidth)
[where 10 log (360/beamwidth) <6 dB].

Beamwidth is the total horizontal plane beamwidth of the transmitting antenna system in degrees, measured at the half-power points.

(c) An increase in station transmitter power, above currently-authorized or previously-proposed values, to the maximum values provided in paragraphs (a) and (b) of this section, may be authorized, if an applicant demonstrates that the requested power increase will not cause harmful interference to any authorized or previously-proposed co-channel or adjacent-channel station with a transmitter site within 50 miles of the applicant's transmitter site, or if an applicant demonstrates that:

(1) A station, that must be protected from interference, potentially could suffer interference that would be eliminated by increasing the power of the interfered-with station; and

(2) That the interfered-with station may increase its own power consistent with the rules; and

(3) The applicant requesting authorization of a power increase agrees to pay all expenses associated with the increase in power to the interfered-with station.

(d) For television transmission, the peak power of the accompanying aural signal must not exceed 10 percent of the peak visual power of the transmitter. The Commission may order a reduction in aural signal power to diminish the potential for harmful interference.

33. Section 74.936 is amended by revising paragraphs (b) and (c) and adding new paragraph (d) to read as follows:

§ 74.936 Emissions and bandwidth.

* * * * *

(b) On or after November 1, 1991, the maximum out-of-band power of a transmitter operating in this service shall be attenuated 38 dB relative to the peak visual carrier at the channel edges and constant slope attenuation from this level to 60 dB relative to the peak visual carrier at 1 MHz below the lower band edge and 0.5 MHz above the upper band edge. All out-of-band emissions extending beyond these frequencies shall be attenuated at least 60 dB below the peak visual carrier power. However, should interference occur as a result of emissions outside the assigned channel, additional attenuation may be required. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed, and does not comply with this paragraph, may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any non-conforming transmitter replaced after November 1, 1991, shall be replaced by a transmitter meeting the requirements of this paragraph.

(c) The requirements of § 73.687(c)(2) of this chapter will be considered to be satisfied insofar as measurements of operating power are concerned if the transmitter is equipped with instruments for determining the combined visual and aural operating power. However, licensees are expected to maintain the operating powers within the limits specified in § 74.935 of this part. Measurements of the separate visual and aural operating powers must be made at sufficiently frequent intervals to insure compliance with the rules, and in no event less than once a month.

(d) As a further exception to the other requirements of this section, transmitting equipment characteristics may vary from these requirements to the extent necessary to insure that transmitted information is not likely to be received in intelligible form by unauthorized subscribers or licensees, provided such variations permit recovery of the transmitted information without perceptible degradation as compared to the same information transmitted without such variations.

§ 74.938 [Amended]

34. Section 74.938(b) is removed and the paragraph designator for paragraph (a) is removed accordingly.

35. Section 74.950 is amended by revising paragraph (b) to read as follows:

§ 74.950 Equipment performance and installation.

* * * * *

(b) The overall attenuation characteristics of the transmitter may vary from those specified in § 73.687 of this chapter, provided that the provisions of § 74.936 of this part are met. However, care should be exercised in the adjustment of the transmitter to insure correct overall response of the transmitter for proper transmission of the upper and vestigial lower sideband.

* * * * *

36. Section 74.961 is revised to read as follows:

§ 74.961 Frequency tolerance.

(a) Beginning November 1, 1991, the frequency of the visual carrier shall be maintained within ± 1 KHz of the assigned frequency at all times when the station is in operation. Until that date, the frequency of the visual carrier shall be maintained within 60 KHz of the assigned frequency at all times when the station is in operation. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed and does not comply with this paragraph may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any non-conforming transmitter replaced after November 1, 1991, must be replaced by a transmitter meeting the requirements of this paragraph.

(b) For television transmission, the peak power of the accompanying aural signal must not exceed 10 percent of the peak visual power of the transmitter.

(c) Any licensee with transmission equipment conforming to the transmitter tolerance standard of this section can be required to use frequency offset where it is demonstrated to be necessary to avoid harmful interference with another station.

37. Section 74.985 is added to read as follows:

§ 74.985 Signal booster stations.

(a) Authorizations for Instructional Television Fixed Service (ITFS) booster stations may be granted to an ITFS applicant, permittee or licensee, or to a third party with a fully-executed lease agreement with an ITFS applicant, permittee, or licensee. The eligibility requirements of § 74.932 of this part will not apply to such third-party booster station applicants. No booster station may be authorized for the retransmission of signals from an ITFS station without the written consent of the licensee of the station whose signals are retransmitted.

(b) In addition to the other application requirements of this part and of Form 330, each application for a signal booster station must include a demonstration that the proposed booster station will cause no harmful interference to co-channel and adjacent-channel existing or previously-proposed ITFS and MDS stations with transmitters within 50 miles of the proposed booster station's transmitter site.

(c) In addition to the other application requirements of this Part and of Form 330, each application must include a written consent statement of the licensee of each ITFS station whose signal is retransmitted.

(d) The output power of the signal booster transmitter station must not exceed 18 dBW EIRP.

PART 78—CABLE TELEVISION RELAY SERVICE

38. The authority citation for part 78 continues to read:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

39. Section 78.3 is revised to read as follows:

§ 78.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to the cable television relay service (CARS) are included in the following parts of this chapter:

Part 0—Commission Organization.
Part 1—Practice and Procedure.
Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations.
Part 17—Construction Marking and Lighting of Antenna Structures.
Part 21—Domestic Public Fixed Radio Services.
Part 74—Experimental, Auxiliary, and Special Broadcast, and Other Program Distribution Services.
Part 76—Cable Television Service.

40. Section 78.5 is amended by adding paragraph (j) to read as follows:

§ 78.5 Definitions.

* * * * *

(j) *Other eligible system.* A system comprised of microwave radio channels in the Multipoint Distribution Service and Multichannel Multipoint Distribution Services (as defined in § 21.2 of this chapter, and, on a part-time basis, in the Instructional Television Fixed Service (as defined in § 74.901 of this chapter) that delivers multichannel television service over the air to subscribers.

41. Section 78.11 is amended by revising paragraphs (a), (c), (d), (e), (f), and (g) to read as follows:

§ 78.11 Permissible service.

(a) CARS stations are authorized to relay TV broadcast and low power TV and related audio signals, the signals of AM and FM broadcast stations, signals of instructional TV fixed stations, and cablecasting intended for use by one or more cable television systems or other eligible systems. LDS stations are authorized to relay television broadcast and related audio signals, the signals of AM and FM broadcast stations, signals of instructional television fixed stations, cablecasting, and such other communications as may be authorized by the Commission. Relaying includes retransmission of signals by intermediate relay stations in the system. CARS licensees may interconnect their facilities with those of other CARS, common carrier, or television auxiliary licensees, and may also retransmit the signals of such CARS, common carrier, or television auxiliary stations, provided that the program material retransmitted meets the requirements of this paragraph.

* * * * *

(c) CARS station licenses may be issued to cable television owners or operators or other eligible system owners or operators, and to cooperative enterprises owned by cable television owners or operators or other eligible system owners or operators. Television translator licensees may be members of such cooperative enterprises.

(d) CARS systems shall supply program material to cable television systems, other eligible systems, and translator stations only in the following circumstances.

(1) Where the licensee of the CARS station or system is owner or operator of the cable television systems or other eligible systems supplied with program material; or

(2) Where the licensee of the CARS station or system supplies program material to cable television systems, other eligible systems, or television translator stations either without charge or on a non-profit, cost-sharing basis pursuant to a written contract between the parties involved which provides that the CARS licensee shall have exclusive control over the operation of the CARS stations licensed to him and that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis, prorated on an equitable basis among all cable television systems or other eligible systems being supplied with program material in whole or in part. Charges for the programming material are not subject to this restriction and cable network-entities may fully charge for their services. Records showing the cost of the service and its nonprofit, cost-sharing nature shall be maintained by the CARS licensee and held available for inspection by the Commission.

(e) The license of a CARS pickup station authorizes the transmission of program material, and related communications necessary to the accomplishment of such transmission, from the scenes of events occurring in places other than a cable television studio or the studio of another eligible system, to the studio, headend, or transmitter of its associated cable television system or other eligible system, or to such other cable television or other eligible systems as are carrying the same program material. CARS pickup stations may be used to provide temporary CARS studio-to-headend links, studio-to-transmitter links, or CARS circuits consistent with this part without further authority of the Commission: *Provided, however,* That prior Commission authority shall be obtained if the transmitting antenna to be installed will increase the height of any natural formation or manmade structure by more than 20 feet and will be in existence for a period of more than 2 consecutive days: *And provided, further,* That if the transmitting equipment is to be operated for more than 1 day outside of the area to which the CARS station has been licensed, the Commission, the Engineer in charge of the district in which the station is licensed to operate, and the Engineer in charge of the district in which the equipment will be temporarily operated shall be notified at least 1 day prior to such operation. If the decision to continue operation for more than 1 day is not made until the operation has begun, notice shall be given to the Commission and the relevant Engineers in charge within 1 day after such decision. In all instances, the Commission and the relevant Engineers in charge shall be notified when the transmitting equipment has been returned to its licensed area.

(f) A cable network-entity may use CARS stations to transmit their own television program materials to cable television systems, other eligible systems, other cable network-entities, broadcast stations, and broadcast network-entities: *Provided, however,* That the bands 1990–2110 MHz, 6425–6526 MHz and 6875–7125 MHz may be used by cable network-entities only for CARS pick-up stations.

(g) The provisions of paragraph (d) of this section and § 78.13 of this part shall not apply to a licensee who has been licensed in the CARS service pursuant to § 21.709 of this chapter, except that paragraph (d) of this section shall apply with respect to facilities added or cable television and other eligible systems first served after February 1, 1966.

42. Section 78.13 is amended by adding paragraph (d) to read as follows:

§ 78.13 Eligibility for license.

* * * * *

(d) Licensees and conditional licensees of channels in the Multipoint Distribution Service and Multichannel Multipoint Distribution Service as defined in § 21.2 of this chapter, or entities that hold an executed lease agreement with an MDS or MMDS licensee or conditional licensee or with an Instructional Television Fixed Service licensee or permittee.

43. Section 78.27 is amended by revising paragraph (a) to read as follows:

§ 78.27 License conditions.

(a) Authorizations (including initial grants, modifications, assignments or transfers of control, and renewals) in the Cable Television Relay Service to serve cable television systems and other eligible systems, shall contain the condition that cable television systems shall operate in compliance with the provisions of part 76 (Cable Television Service) of this chapter and that other eligible systems shall operate in compliance with the provisions of part 21 and part 74 of this chapter.

* * * * *

44. Section 78.33 is amended by revising paragraph (b) to read as follows:

§ 78.33 Special temporary authority.

* * * * *

(b) Special temporary authority may also be requested to conduct a field survey to determine necessary data in connection with the preparation of a formal application for installation of a

radio system under this part. Such authority may be granted to equipment suppliers and others who are not operators of cable television systems or other eligible systems, as well as to cable operators or other eligible system operators, to conduct equipment, program, service, and path tests.

* * * * *

[FR Doc. 90–25773 Filed 10–30–90; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, 78, and 94

[Gen. Docket No. 90-54; FCC 90-342]

Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, Private Operational-Microwave Fixed Service, and Cable Television Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopts a *Further Notice of Proposed Rulemaking (Further Notice)* inviting comment on several proposals to amend the rules and policies that govern use of the channels that collectively are utilized for provision of "wireless cable" service. Specifically, this *Further Notice* proposes (a) reallocation of the three Operational-Fixed Microwave Service (OFS) H channels to Multipoint Distribution Service (MDS); (b) reassignment of a number of the MDS, Instructional Television Fixed Service (ITFS), and OFS response channels; and (c) authorizations for the use of vacant ITFS channels by non-ITFS entities, subject to certain restrictions and obligations. The *Further Notice* also solicits comment on standards to be employed in: (a) Determining requests to permit involuntary station modifications; (b) migration of point-to-point ITFS facilities grandfathered on the MDS E and F channels; (c) cable operation of wireless cable facilities in rural areas; and (d) procedures to ease colocation of facilities. The *Further Notice* and an associated *Report and Order* in this proceeding, adopted at the same time (also published in Part V of this issue), aim to modernize and conform the rules in various services in order to reduce the impediments to and enhance the viability of MDS services offering multiple channels of premium video programming over-the-air directly into homes.

DATES: Comments are due by November 26, 1990, and reply comments are due by December 19, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley, Mass Media Bureau, Policy and Rules Division (202) 632-7792; Bruce Romano, Mass Media Bureau, Policy and Rules Division (202) 632-5414; Lynne Milne, Common Carrier Bureau (202) 634-1772; or Mile Lewis, Private Radio Bureau (202) 632-6940.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Commission's *Further Notice of Proposed Rulemaking* in Gen. Docket No. 90-54, FCC 90-342 adopted October 11, 1990, and released October 26, 1990.

2. The complete text of this *Further Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. and also may be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Further Notice of Proposed Rulemaking

3. This proceeding was initiated by *Notice of Proposed Rule Making and Notice of Inquiry* (*Notice*) [1] to review, simplify, and update, wherever possible, the disparate technical, procedural, ownership, and other requirements and restrictions applicable to MDS, OFS, and ITFS stations, with the aim of facilitating wireless cable service.[2] The *Report and Order* associated with this *Further Notice* enacts several of the proposals presented in the *Notice*. This *Further Notice* seeks comment on a number of additional issues not resolved in the *Report and Order*.

4. First, the Commission proposes to reallocate the three H channels from OFS to MDS. It also proposes that a subsequent conversion to MDS use of any station already operating on such channels will initiate the application of MDS rules for that station. In this connection, the *Further Notice* seeks comment on whether current licenses or applications for H channels should be grandfathered, and whether the assignment or transfer of OFS stations should be permitted, unless they are used in conjunction with other MDS or ITFS stations or the licensee or applicant prefers application of the MDS rules.

5. Second, the Commission proposes: (1) That the response channels associated with the H channels be disassociated from those channels and remain allocated to OFS; (2) that half of the response channels associated with MDS channels and one quarter of those associated with ITFS channels be reallocated to OFS; (3) that unused response channels associated with primary chennels that are now in use be available for OFS use by OFS operators; and (4) that all applications for OFS use of the response channels, whether by OFS, MDS, or ITFS entities be subject to the prior frequency coordination procedures found in § 21.100(d) of the Commission's Rules (47 CFR 21.100(d)). The Commission also seeks comment on the procedures it should adopt to register existing operations for purposes of achieving grandfathered status, as well as for determining which channels should not be subject to the proposed reallocation and should remain available for OFS use on an individual basis.

6. The *Report and Order* determines that involuntary equipment modifications should be permitted in certain situations. First, as suggested in the *Notice*, the Commission will consider forced upgrades of ITFS operations by new applicants desiring to invoke the 0 dB interference protection standard and in conjunction with the revision of permissible aural power levels. Second, a station that is prevented from operating at 100 watts because the higher power will cause adjacent-channel or co-channel interference to another station may upgrade the interfered-with station to eliminate interference. Third, a licensee may upgrade another licensee's facility if the other licensee is unable to meet the revised transmitter tolerance or out-of-band emissions standards promulgated in the *Report and Order*. In all these situations, the *Further Notice* proposes to condition Commission approval of the initiating party's application upon completion of the facilities change.

The Commission also proposes that the initiating party be responsible for all necessary upgrades or modifications necessitated by its proposal, not just those it initially causes, and that the affected licensee must accept the modification unless it can demonstrate that the change would be impracticable. The *Further Notice* seeks comment regarding what standards should be used to determine impracticability in each of the above situations, what types of equipment are necessary to achieve the desired result, and what the role of the initiating party should be. Finally, the *Further Notice* seeks comment regarding what residual or continuing expenses will fall upon the upgraded or modified licensee as a result of the modification. In addition, the *Report and*

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[1] See 55 FR 7344, March 1, 1990.

[2] For purposes of this proceeding, references to "cable" systems, services or operators refer to systems that deliver their signals to subscribers by a closed transmission system as opposed to over the airwaves. In contrast, "wireless cable" uses the airwaves to provide subscribers with multiple channels of video entertainment and informational programming in conjunction with the standard broadcast television signals they already receive. By use of the term "wireless cable," we do not intend to suggest that these services constitute "cable" service for statutory or regulatory purposes.

Order modifies the Commission's Rules to permit MDS operations to displace ITFS point-to-point operations on the E and F channels, provided that suitable alternative spectrum is available and that the MDS station pays for the migration. We now request comment on what factors should be used to evaluate suitability of spectrum in determining whether displacement should occur.

7. The Commission also solicits comment on a number of issues relating to colocation of facilities. Section 21.42 of the Commission's Rules (47 CFR 21.42) defines certain types of modifications which do not require an interference analysis or any other showing. The *Further Notice* invites comment on a proposal by Mitchell Communications that additional types of modifications be added to that list. What types of changes should be considered *de minimis?* What additional steps could be taken to streamline the colocation process while protecting other licensees from interference? The Commission further requests comment on the suggestion of Hispanic Information and Telecommunications Network that an existing licensee be required to colocate if such colocation will not negatively affect its provision of service and another operator is willing to bear all expenses related to colocation. What limitations should there be in exposing an ITFS station to an involuntary colocation? What standards should apply in determining suitability of the new location? What types of expenses would ensue in implementing this proposal?

8. The *Report and Order* also prohibits cable systems that are sole providers in their franchise areas from holding licenses for MDS stations and from leasing time on MDS or ITFS stations. At the same time, the Commission created an exception allowing them to do so in areas that otherwise would remain unserved by wireless cable. In that regard, the *Further Notice* seeks comment on what factors should be considered in evaluating the cable operator's application and on whether the exception should be limited to areas with fewer than 2,500 residents, as established for telephone companies at 47 CFR 63.58. There is also the possibility that development by cable systems of locally produced programming will create a need for channels such as those available in the MDS, OFS, and ITFS services to simultaneously distribute such programming locally to multiple cable headends. The *Further Notice* seeks comment on the extent to which cable systems are planning or are likely to implement local programming that requires distribution to multiple points, and whether the existing spectrum available in the CARS service or other spectrum is sufficient, or whether cable access to these other channels is necessary or desirable. If such use is needed, how many channels might be required and would a specifically limited number of ITFS channels with excess capacity be sufficient to fulfill this demand? What types of uses should be permitted under such an exception?

9. Finally, the *Further Notice* advances a proposal for use of several vacant ITFS channels, emphasizing that it is not the Commission's intent to foreclose potential future ITFS uses of that spectrum. The Commission recognizes that the use of ITFS as an educational tool is growing, and that it is in the areas with the least current use of ITFS channels that one of the primary benefits of ITFS is most important—access to quality education materials for a variety of widely-scattered individuals. Accordingly, in order to preserve an opportunity for at least two different institutions to apply for ITFS facilities in the future, the *Further Notice* proposes to require that eight ITFS channels be left vacant in a community, but that a non-ITFS entity may apply for use of vacant channels beyond those eight. Should a non-ITFS applicant be limited to a total of eight ITFS channels? The Commission proposes that such applications be on ITFS application forms, with ITFS applications requirements and procedures followed, except for the eligibility requirement. It also proposes to put such applications on a 60-day cutoff period for the filing of mutually-exclusive ITFS applications. Mutually-exclusive non-ITFS applications must be filed on the same day to be considered, however, pursuant to the rule adopted in the *Report and Order* for the filing of MDS applications. Non-ITFS licensees of ITFS facilities will be entitled to the MDS protected service area. Should eligibility be limited to only those entities that already hold licenses or leases for a minimum number of MDS/MMDS channels in the same area? In order to further ensure the opportunity for ITFS entities to use facilities built for ITFS channels, the Commission proposes that non-ITFS licensees be required to provide and install up to four receive sites for each channel utilized by an ITFS entity. In order to permit orderly transition, the Commission also proposes that the licensee will not be required to provide for the ITFS service until 30 days after the ITFS service authorized.

Paperwork Reduction Act Statement

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ex Parte Considerations

11. This is a non-restricted proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Comment Information

12. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 26, 1990, and reply comments on or before December 19, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

Initial Regulatory Flexibility Act Analysis

13. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding is intended to improve wireless cable service by making the regulations governing that service as comprehensible and effective as possible, and as relevant as possible to the technology and conditions now existing in the wireless cable service. As part of this effort, the Commission proposes involuntary station modifications in certain situations. Additionally, one of the proposals in the *Further Notice* would require that all applications for use of Operational-Fixed Microwave Service response channels be subject to the precoordination procedures contained in 47 CFR 21.00(d). Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

14. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must

have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Inquiry, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

15. Accordingly, *it is ordered* That pursuant to sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, this *Further Notice of Proposed Rulemaking* is adopted.

List of Subjects

47 CFR Part 21

Communications common carriers, Domestic public fixed radio services.

47 CFR Part 74

Television broadcasting, Experimental, auxiliary, and special broadcast and other program distributional service.

47 CFR Part 78

Cable television, Cable television relay service.

47 CFR Part 94

Radio, Private operational-fixed microwave service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90–25774 Filed 10–30–90; 8:45 am]

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federal register

Wednesday
October 31, 1990

Part VIII

Environmental Protection Agency

40 CFR Parts 280 and 281

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-3857-1]

Underground Storage Tanks Containing Petroleum; Financial Responsibility Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a final rule to amend the financial responsibility regulations promulgated on October 26, 1988 (53 FR 43322) for underground storage tanks (USTs) containing petroleum. Specifically, EPA is modifying the compliance dates under 40 CFR 280.91(d). Under the modifications, all petroleum marketing firms owning 1 to 12 USTs (or fewer than 100 USTs at one facility) and nonmarketers whose net worth is less than $20 million will be required to comply with the requirements of 40 CFR part 280 subpart H—Financial Responsibility—as of October 26, 1991. Local government entities will be required to comply with these requirements one year from the date of publication of final regulations that will provide additional mechanisms that they may use to comply with financial responsibility requirements for USTs containing petroleum in 40 CFR part 280. These modifications establish two new deadlines, both extended from the original date of October 26, 1990. The amendments published today will provide additional time for the development of financial assurance mechanisms (especially state assurance funds and mechanisms for use by local governments) to enable these UST owners and operators to comply. The Agency is also modifying 40 CFR part 281.37(b) to allow approved state programs a comparable amount of time during which they must phase in their financial responsibility requirements.

DATES: The amendments to 40 CFR part 280,281 contained in this rulemaking are effective October 31, 1990.

ADDRESSES: The final rule, the proposed rule, and EPA's responses to comments on this rulemaking may be inspected in the public docket, located in room 2427 (Mall), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in Washington, DC.

SUPPLEMENTARY INFORMATION: On October 26, 1988 EPA promulgated financial responsibility requirements applicable to owners and operators of underground storage tanks (USTs) containing petroleum (53 FR 43322). (These requirements are referred hereinafter as "the final rule.") In the final rule, EPA established a phased schedule of compliance for owners and operators of petroleum USTs. Petroleum marketing firms with 1 to 12 USTs (or fewer than 100 USTs at one facility), local government entities, and non-marketers whose net worth is less than $20 million were required to comply with the financial responsibility requirements by October 26, 1990. The principal reason for adopting the phased compliance approach in the final rule was to provide the time necessary for providers of financial assurance mechanisms (including private insurance companies and States intending to establish state assurance funds) to develop new policies and programs or conform their policies and programs to EPA requirements. (See 53 FR 43324.) The final rule required those organizations with the greatest ability to comply to obtain financial assurance first. Others, particularly smaller businesses and local governments, were allowed more time to obtain coverage. EPA has since proposed additional mechanisms for use by local government entities to comply with the financial responsibility requirements (55 FR 24692, June 18, 1990).

Since October 1988, EPA has monitored the development of financial assurance markets, especially (1) insurance for corrective action and third party liability, and (2) state assurance funds, to determine whether financial assurance mechanisms were becoming available to satisfy the needs of the regulated community. Based on this on-going review, EPA believes that tank owners required to comply by October 26, 1990 need additional time to meet insurers' standards for coverage. Also, States need additional time to develop state assurance funds, to submit them to EPA for review and approval as financial assurance mechanisms, and to make any modifications necessary for approval. On July 6, 1990, EPA published a proposed rule to extend the compliance deadline for these owners and operators by one year and invited comments on the proposed action (55 FR 27837).

After reviewing the comments submitted in response to the proposed rule, EPA is now extending the compliance date for owners and operators of 1 to 12 USTs, or fewer than 100 USTs at one facility, and non-marketers whose net worth is less than $20 million from October 26, 1990 to October 26, 1991. EPA is also deferring the compliance date for local government entities from October 26, 1990 to one year from the date of publication of final regulations for additional mechanisms for use by local government entities to comply with financial responsibility requirements for USTs containing petroleum in 40 CFR part 280. Publication of a final rule is now expected during the summer of 1991. The Agency believes that these extensions will provide adequate time for tank owners and operators to obtain assurance. EPA is also modifying the State Program Approval Objective (40 CFR part 281) to allow state programs approved to administer and enforce UST programs to modify their regulations to match the new federal standards.

I. Authority

These regulations are issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9009 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c 6991d, 6991e, 6991f, and 6991h).

II. Background

The financial responsibility regulations promulgated on October 26, 1988 (53 FR 43322) included a phased schedule for compliance by UST owners and operators. When devising the phased compliance approach, the Agency wanted to achieve the best balance between the need to ensure financial capability for cleaning up or redressing UST releases and the need to allow necessary time for owners and operators to obtain assurance mechanisms. The Agency attempted to establish compliance dates that were as early as possible, considering the type of assurance different types of facilities were likely to obtain. The Agency established four categories for purposes of setting compliance deadlines. Owners or operators in Category I (petroleum marketers owning or operating 1,000 or more USTs and non-marketers with more than $20 million in tangible net worth) were required to comply by January 24, 1989 based primarily on their ability to qualify for self-insurance. Of the remaining tank owners and operators, those in Category II (petroleum marketers with 100 to 999 USTs) were projected to be the most able to obtain insurance; some of them were also expected to qualify as self-insurers. These marketers were required

to comply by October 26, 1989. Owners or operators in Category III (petroleum marketers owning 13 to 99 USTs at more than one facility) which were estimated to be less likely to be able to obtain insurance than members of Category II compliance group, were originally required to comply by April 26, 1990; on May 2, 1990 the Agency published an Interim Final Rule (40 FR 18566) extending the compliance date of April 26, 1991. Owners or operators in Category IV (petroleum marketers owning or operating fewer than 13 USTs or owning or operating a single facility with fewer than 100 USTs, and UST owners and operators, including local government entities, that were not petroleum marketers) were required to comply by October 26, 1990. This group was expected to rely primarily on state assurance funds for compliance.

Through monitoring the development of financial assurance mechanisms, and as the Agency has learned more about the way insurers operate in the UST insurance market, EPA now believes that the original compliance date for owners or operators in Category IV did not allow adequate time for compliance. When devising the original phased compliance schedule, the Agency expected that members of this compliance group would rely on insurance and State funds. The Agency had believed that 24 months from promulgation of the final rule would provide adequate time for owners and operators to upgrade their USTs to meet insurers' requirements, for States to develop and submit funds to EPA, and for EPA to approve those funds meeting its criteria. Since promulgation of the final rule, however, EPA has learned that UST owners and operators require additional time to comply with conditions imposed by the insurance industry. Some of these conditions include having tanks younger than 15 years of age, a clean site, a reliable method of leak detection, etc. For example, some insurers have informed EPA that they have rejected UST coverage applications because of existing contamination, poor tank management, and inadequate leak detection monitoring. Many members of this compliance group may not be able to meet these standards by October 26, 1990 and thus would be required to seek an alternative financial assurance mechanism.

Consequently, the Agency believes that more members of this compliance group than the Agency had originally projected must rely on State assurance funds and other mechanisms, rather than on insurance, to demonstrate compliance with the financial responsibility requirements. In order for owners and operators to rely on State assurance funds as compliance mechanisms, States must submit their funds to EPA. Although owners and operators are deemed to be in compliance when the State funds are submitted, the Agency has not considered submitted funds when determining availability, because the funds ultimately could be disapproved. To date, fourteen State assurance funds have been approved by EPA to serve as compliance mechanisms. Eleven more States have submitted funds and some are in the process of making modifications necessary for approval. The remaining States either have not submitted their funds to EPA or have not yet developed assurance funds. Since many of the members of this compliance group must rely on State assurance funds to comply with the requirements, additional time is needed to allow States to develop, submit, and receive approval for the funds.

EPA is also in the process of developing several new mechanisms, including a self-insurance test, that could be used by local governments to meet the financial responsibility requirements. The Agency proposed some additional financial responsibility mechanisms on June 18, 1990 (55 FR 24692) for use by local governments. The Agency is in the process of responding to comments on the proposed rule and plans to promulgate a final rule in the summer of 1991. EPA believes that local governments will need additional time to comply with financial responsibility requirements, particularly any of the new mechanisms that EPA has proposed become final and local governments use them.

Today's rule accommodates these unanticipated delays in the development of the private insurance market, State funds, and financial responsibility mechanisms by extending the compliance deadline for UST owners and operators in Category IV. Marketers owning or operating 1 to 12 USTs (or fewer than 100 USTs at a single facility) and non-marketers with net worth of less than $20 million must comply by October 26, 1991. Local government owners or operators must comply within one year of promulgation of additional mechanisms for meeting the financial responsibility requirements. EPA proposed several new mechanisms on June 18, 1990 (55 FR 24692). Barring unanticipated delays, EPA now expects to promulgate a final rule during the summer of 1991.

The Agency reviews State UST programs based on criteria established in 40 CFR 281 and may approve them to operate in lieu of the Federal program if the State program is no less stringent than the requirements set out at 9004(a)(1–8) and the program provides for adequate enforcement of compliance with the requirements. Under 40 CFR 281.37(b), State programs must phase in their financial responsibility requirements within 21 months of the effective date of the Federal financial responsibility requirements, which is considered to be October 26, 1988. In the absence of an amendment to part 281, the effect of today's modifications to the final compliance date would be to require that State programs be more stringent than the Federal rules by requiring compliance with financial responsibility requirements sooner than the amended Federal Regulations. Consequently, the Agency is also amending 40 CFR 281.37 so that approved State programs may phase in their financial responsibility requirements on a schedule comparable to the Federal phase-in, as modified under today's amendment to 40 CFR 280.91. These changes do not require States to change any existing compliance schedule, because States may have more stringent requirements.

III. Analysis of Today's Rule

On July 6, 1990 the Agency proposed to amend the financial responsibility compliance dates under 40 CFR 280.91(d) and the schedule for phase-in of financial responsibility requirements for approved State programs under 40 CFR 281.37(b) (55 FR 27837). The Agency provided a 30-day comment period. The following section of the preamble describes the final rule, some of the major comments that were made on the proposed rule, and the rationale for the changes. A Comment/Response Document ("Summary of Comments and EPA's Response to Comments on the July 6, 1990, Proposed Amendments to the Financial Responsibility Rule for Petroleum Underground Storage Tanks") containing a detailed summary of all comments on the proposed rule and the Agency's responses to those comments has been placed in the public docket.

Today's rule extends the financial responsibility compliance deadline for UST owners or operators in Category IV of the final rule. Petroleum marketers owning 1 to 12 USTs, or owning fewer than 100 USTS at only one facility, and non-marketers whose net worth is less than $20 million must comply by one year from the previous date of October 26, 1990. Local government entities are

given an additional period of time to comply and are now required to demonstrate compliance within one year from the date of promulgation of additional mechanisms for use by local government entities to comply with financial responsibility requirements for USTs containing petroleum. Additional mechanisms were proposed on June 18, 1990, 55 FR 24692. The Agency believes that the extensions promulgated in today's rule will allow sufficient time for these UST owners to come into compliance. Specifically, the rule will have four effects: (1) Owners and operators will have additional time to meet insurers' standards, (2) States will have additional time to submit their state assurance funds to EPA for approval, (3) the Agency will have adequate time to complete work on alternative compliance mechanisms for local governments, and (4) local governments will have additional time to select and implement a compliance mechanism. Thus owners and operators will be able to make much greater use of all these mechanisms to comply with the financial responsibility requirements.

Comments on EPA's proposed rule were generally supportive of action to extend the compliance deadline for UST owners and operators in Category IV by one year, although some requested a longer extension and one supported a shorter extension. The major concerns expressed by commenters include the limited availability of private insurance, the lack of approved state assurance funds, the lack of financial responsibility mechanisms available to local governments, and the increasing cost of compliance with other regulatory requirements.

Several commenters indicated that the high cost, strict qualification requirements, and limited supply of private insurance providers are critically hampering owners and operators efforts to obtain pollution liability insurance. EPA acknowledges the validity of many of these points which justify today's extension of the original October 26, 1990 compliance deadline.

A number of commenters agreed that the proposed extension of the Category IV financial responsibility compliance deadline will afford the insurance industry the time necessary to respond to the needs of UST owners or operators with few USTs or those not engaged in petroleum marketing. A few commenters, however, suggested that EPA re-evaluate extending the compliance deadline beyond the proposed date of October 26, 1991. EPA believes that, barring any severe contraction of the pollution liability insurance market or slowdown in the progress of approval of state funds, one additional year will provide sufficient time for Category IV owners or operators, excluding local government entities, to obtain financial assurance and come into compliance. Currently, EPA is aware of at least 12 companies providing UST insurance to owners and operators, four of which offer policies in most or all States. In addition, another recently entered the market and is expected eventually to write policies across the country. Furthermore, 14 States currently have approved funds and another 11 States have funds that are under review and therefore tentatively approved. EPA understands that an additional 11 States have passed legislation establishing state funds, and that almost all remaining States are considering or have considered such legislation. EPA expects that both the availability of private insurance and the number of approved state funds will be higher by this time next year. Nonetheless, although EPA expects that the availability of private assurance mechanisms and state funds will improve sufficiently to accommodate Category IV owners or operators, EPA will continue to monitor the availability of assurance mechanisms.

The majority of the commenters conceded that state assurance funds are an increasingly important financial responsibility mechanism, and, likewise, supported the proposed extension of the financial responsibility compliance deadline. The Agency's primary intent in proposing the extend the financial responsibility compliance deadline for Category IV owners and operators was to provide additional time for the development of financial assurance mechanisms, particularly state assurance funds, to enable this group to comply. Toward this end, 14 state funds have been approved and another 11 funds have received tentative approval while they are under review. EPA continues to encourage States to enact trust fund legislation and submit state funds for review.

One commenter expressed concern that the approval of funds is occurring slowly. The commenter claims that EPA proceeds much too slowly on state assurance fund approval to allow marketers to use them as a financial responsibility mechanism. The commenter further indicated that some States have not been willing to consider enacting trust fund legislation to date and may never do so. For those States, the commenter believes that the existence of a deadline extension will have no affect on the State's willingness to develop a State assurance fund mechanism.

With respect to these comments, EPA believes that there is noticeable progress in the approval of state funds. Twenty-five States have submitted funds to EPA for review, and are providing at least temporary coverage for eligible owners and operators; fourteen of these States' funds have been formally approved by the Agency. EPA expects that more States will develop and submit funds for approval, and that more state funds will receive approval in the coming year. The rate of approval of these assurance mechanisms, however, is not based solely on the time necessary for EPA to approve funds, but it is also contingent on the time it takes for States to develop and submit funds to EPA for review. While the Agency plans to continue supporting States in their efforts to develop and implement assurance funds, EPA cannot guarantee that all States will choose to develop funds. Twelve States with legislation authorizing funds have not yet submitted them to EPA for review. It is EPA's understanding, however, that state fund legislation is or has been under consideration in virtually all other States. EPA believes that the extension of the compliance deadline will allow those States actively considering funds to develop and submit them to EPA for approval. Nevertheless, States are not required to establish assurance programs, and EPA does not have control over whether States develop or submit funds.

One commenter supported an extension of EPA's financial responsibility compliance deadline for local governments, claiming that EPA needs to allow itself sufficient time to develop financial responsibility mechanisms for local governments. However, the commenter maintains that the proposed compliance date of October 26, 1991 does not allow local governments sufficient time to review, select, and implement a sound compliance program. It was argued that the additional mechanism proposed by EPA for local governments, such as the creation of a dedicated fund, would require at least one full budget cycle to implement. The commenter, therefore, requests EPA to further extend the compliance date by one year from the date of publication of a final financial responsibility rule for local governments.

The Agency agrees with the commenter that additional time may be necessary for local governments to comply with the financial responsibility requirements, particularly if they are to

use any of the new mechanisms that EPA may promulgate. The Agency has concluded that the budgetary constraints under which local governments operate, and the current timetable for promulgating a final municipal test of self-assurance, justify granting them an exception to the deadline that will apply to the other members of this compliance group. The final rule, therefore, incorporates the commenter's suggestion for extending the compliance deadline for local governments by one year from the date of publication of a final regulations for additional mechanisms for use by local government entities to comply with financial responsibility requirements for USTs containing petroleum.

One commenter suggested extending the compliance date to December 22, 1991, remarking that the incremental UST regulatory compliance costs, in addition to costs imposed by other statutory mandates, make the financial responsibility requirements truly burdensome. The commenter stated that Reid vapor pressure controls, Stage II vapor recovery, community right-to-know and toxic reporting requirements, drug testing, and hazardous materials transportation programs are all imposing significant burdens on the independent segment of the petroleum marketing industry. The commenter stated that extending the compliance date to December 22, 1991 would alleviate some of the burden.

The Agency acknowledges that all new regulations have incremental costs. However, Congress gave no indication that other regulatory costs were to be considered in determining the dates for demonstrating financial responsibility compliance. Although complying with the financial responsibility requirements may pose an incremental burden for some owners or operators, EPA is not aware of any evidence that the additional two-month extension suggested will provide any additional significant relief over the one-year extension proposed.

IV. Economic and Regulatory Impacts

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires all Federal agencies to review the impact of their regulations to determine whether the regulations will have a significant economic impact on a substantial number of small entities. If so, the Agency must prepare a Regulatory Flexibility Analysis. EPA believes that this rule will not have a significant economic impact on a substantial number of small entities. The extension of the compliance date will provide regulatory relief to members of the Category IV compliance group by allowing them the additional time necessary to achieve compliance with the financial responsibility requirements. Accordingly, the Agency has concluded that the law does not require a Regulatory Flexibility Analysis, and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements of EPA's UST financial responsibility rule have been previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0066. Because today's rule does not require collection of any information or change the paperwork burden, EPA has not amended the estimate of burden.

If you wish to submit comments regarding any aspect of this collection of information, including suggestions for reducing the burden, or if you would like a copy of the information collection request (please reference ICR #1359), contact Rick Westlund, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202–382–2745); and the Desk Officer for Underground Storage Tanks, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 40 CFR 280 and 281

Administrative practice and procedure, Environmental protection, Hazardous materials insurance, Oil pollution, Penalties, Petroleum, Reporting and recordkeeping requirements, State program approval, Surety bonds, Underground storage tanks, Water pollution control.

Dated: October 25, 1990.

William Reilly,

Administrator.

For the reasons set out in the preamble, parts 280 and 281 of title 40 of the Code of Federal Regulations are amended as set forth below.

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

1. The authority citation for part 280 is revised to read as follows:

Authority: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, and 6991h.

2. Section 280.91 is amended by revising paragraph (d) and by adding paragraph (e) to read as follows:

§ 280.91 Compliance dates.

* * * * *

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; October 26, 1991.

(e) All local government entities; one year from the date of promulgation of additional mechanisms for use by local government entities to comply with financial responsibility requirements for underground storage tanks containing petroleum.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

4. The authority citation for part 281 continues to read as follows:

Authority: Secs. 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991(c), 6991(d), 6991(e).

5. Section 281.37 is amended by revising paragraph (b) to read as follows:

§ 281.37 Financial responsibility for UST systems containing petroleum.

* * * * *

(b) Phase-in of requirements. Financial responsibility requirements for petroleum UST systems must, at a minimum, be scheduled to be applied at all UST systems on an orderly schedule that completes a phase-in of the financial responsibility requirements within the time allowed in the Federal regulations under 40 CFR 280.91.

* * * * *

[FR Doc. 90–25820 Filed 10–29–90; 9:16 am]

BILLING CODE 6560–50–M

federal register

Wednesday
October 31, 1990

Part IX

Department of State

Bureau of Consular Affairs

22 CFR Part 41

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, As Amended; Final Rule

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[1235]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended

AGENCY: Bureau of Consular Affairs, (DOS).

ACTION: Final rule.

SUMMARY: This final rule adds a new paragraph to § 41.112(d) to withdraw from Iraqi nationals the privilege of automatically extending the validity of nonimmigrant visas presently accorded to certain aliens who meet the criteria promulgated in § 41.112(d). The rule will adversely affect nationals of Iraq seeking readmission at ports of entry who, because of this rule, will be required to be in possession of valid nonimmigrant visas at the time of application for admission to the United States. Consequently, they will have to apply for a visa at a consular post abroad.

EFFECTIVE DATE: October 31, 1990.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, or Guida Evans-Magher, Legislation and Regulations Division, Visa Office, Washington, DC, 20522–0113, (202) 663–1204 or 663–1206.

SUPPLEMENTARY INFORMATION: Under present regulations at 22 CFR 41.112(d), an alien who departs the United States and is seeking readmission may have his or her visa automatically extended under very specific circumstances, thereby foregoing the necessity of applying for a new visa abroad. These regulations provide for the automatic extension of the expired nonimmigrant visa, if the alien has been absent from the United States not more than thirty days, is seeking readmission from travel only to territory contiguous to the United States, and is in possession of Form I–94 showing an unexpired period of initial admission or extension of stay endorsed by the Immigration and Naturalization Service. Presently, an Iraqi national whose visa has expired might benefit from the automatic extension of the visa validity by applying for readmission at a port of entry under 22 CFR 41.112(d).

In view of the current crisis involving Iraq, the Department has determined that it is in the security interests of the United States to withdraw from nationals of Iraq the privilege of the automatic extension of the validity of nonimmigrant visas at ports of entry.

The impact of the rule is that Iraqi nationals will be required to apply for issuance of a nonimmigrant visa at a consular post abroad and be fully documented in order to gain entry into the United States. Additionally, this rule will enable the Department, through normal visa procedures, to screen nationals of Iraq who may be seeking admission to the United States.

Compliance with the provisions of the Administrative Procedure Act, 5 U.S.C. 553, relative to notice of proposed rulemaking and delayed effective date is impracticable and contrary to the public interest in this instance since expeditious implementation of this rule is required by security considerations resulting from the crisis caused by the invasion of Kuwait by Iraq. This rule is not considered to be a major rule nor is it expected to have a significant impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Visas, Validity of Visa.

Accordingly, part 41 is amended to read:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; sec. 109(b)(1), 91 Stat. 847.

2. Paragraph (d)(3) is added to § 41.112 to read as follows:

§ 41.112 Validity of visa.

* * * * *

(d) *Automatic extension of volidity of visa at ports of entry.* * * *

(3) The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply to nationals of Iraq.

Dated: October 18, 1990.

Elizabeth M. Tamposi,

Assistant Secretary for Consular Affairs.

[FR Doc. 90–25925 Filed 10–30–90; 10:27 am]

BILLING CODE 4710–06–M

federal register

Wednesday
October 31, 1990

Part X

The President

Proclamation 6218—Italian-American Heritage and Culture Month, 1990

Federal Register
Vol. 55, No. 211
Wednesday, October 31, 1990

Presidential Documents

Title 3—

The President

Proclamation 6218 of October 26, 1990

Italian-American Heritage and Culture Month, 1990

By the President of the United States of America

A Proclamation

An estimated 12 million Americans proudly claim Italy as their ancestral homeland. Tracing their roots to the country that was once the center of the Roman Empire and, later, the birthplace of the Renaissance, these Americans have shared with their fellow citizens a rich and diverse heritage. During Italian-American Heritage and Culture Month we not only recognize the many contributions Italian-Americans have made to our country but also celebrate the enduring ties between the peoples of the United States and Italy.

Italian-Americans are heirs to a rich cultural and historic legacy, one marked by extraordinary achievements in virtually every field of endeavor. It is the acquired wisdom and unique experience of a country that has produced the literary brilliance of Dante, the inventive genius of Leonardo Da Vinci, the peerless compositions of Verdi, and the sublime artwork of Raphael and Michelangelo. The Italian peninsula—the birthplace of these great men and many other gifted artists, poets, and philosophers—also hosts the Holy See in Rome, the spiritual home of millions of people throughout the Nation and the world.

When the first Italians journeyed to this hemisphere nearly half a millennium ago, they not only brought with them a wealth of knowledge and experience but also helped to begin a long and fruitful series of exchanges between the Old World and the New. Indeed, all Americans owe a lasting debt of gratitude to the daring Italian navigators Amerigo Vespucci, Giovanni da Verrazano, and, of course, Christopher Columbus, the brave son of Genoa who landed on these shores in 1492.

Throughout our Nation's history, Italian immigrants and their descendants have been firmly devoted to the values and ideals on which the United States is founded. Since the days of the Revolutionary War, when they joined in the struggle for liberty and self-government, Americans of Italian descent have demonstrated a profound sense of patriotism and an unfailing love of freedom. They have also inspired their fellow Americans through their great faith in God, their devotion to family life, and their appreciation for the rewards of education and hard work.

Just as a mutual commitment to democratic ideals unites Italian-Americans with their fellow citizens, shared values and aspirations continue to form a strong link between the United States and Italy. For example, the United States and Italy are committed to maintaining a strong NATO, and we welcome the ongoing elimination of artificial barriers in Europe. This month, as we celebrate the deep cultural and familial ties between our two countries, we also reaffirm the importance of our partnership as members of the Atlantic Alliance.

The Congress, by Senate Joint Resolution 349, has designated the month of October 1990 as "Italian-American Heritage and Culture Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the month of October 1990 as Italian-American Heritage and Culture Month. I invite all Americans to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-25962
Filed 10-30-90; 11:42 am]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

In the List of Public Laws printed in the **Federal Register** on October 18, 1990, S 2806, Public Law 101–427, was incorrectly printed as S. 2886. It should read as follows:

S. 2806/Pub. L. 101–427

To redesignate The National System of Interstate and Defense Highways as The Dwight D. Eisenhower System of Interstate and Defense Highways. (Oct. 15, 1990; 104 Stat. 927; 1 page) Price: $1.00

Last List October 30, 1990

Public Laws

are now available for the 101st Congress, 2nd Session, 1990

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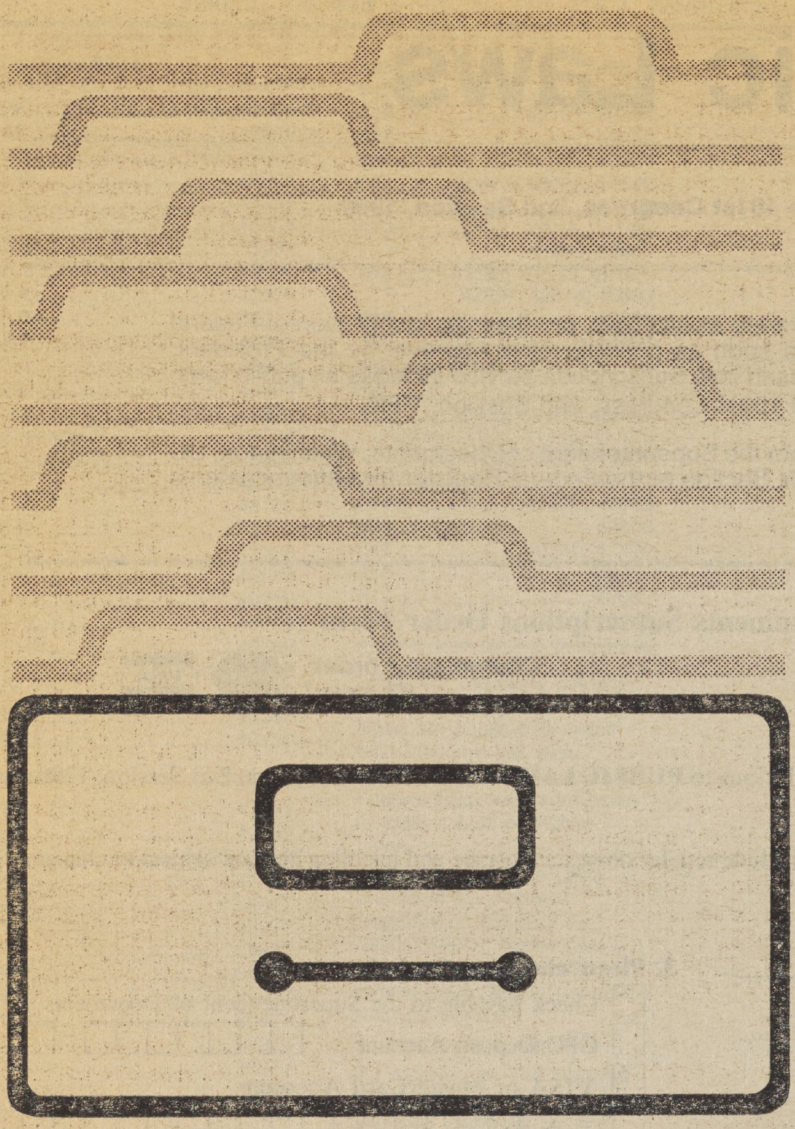
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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The GUIDE is formatted and numbered to parallel the CODE OF FEDERAL REGULATIONS (CFR) for uniformity of citation and easy reference to the source document.

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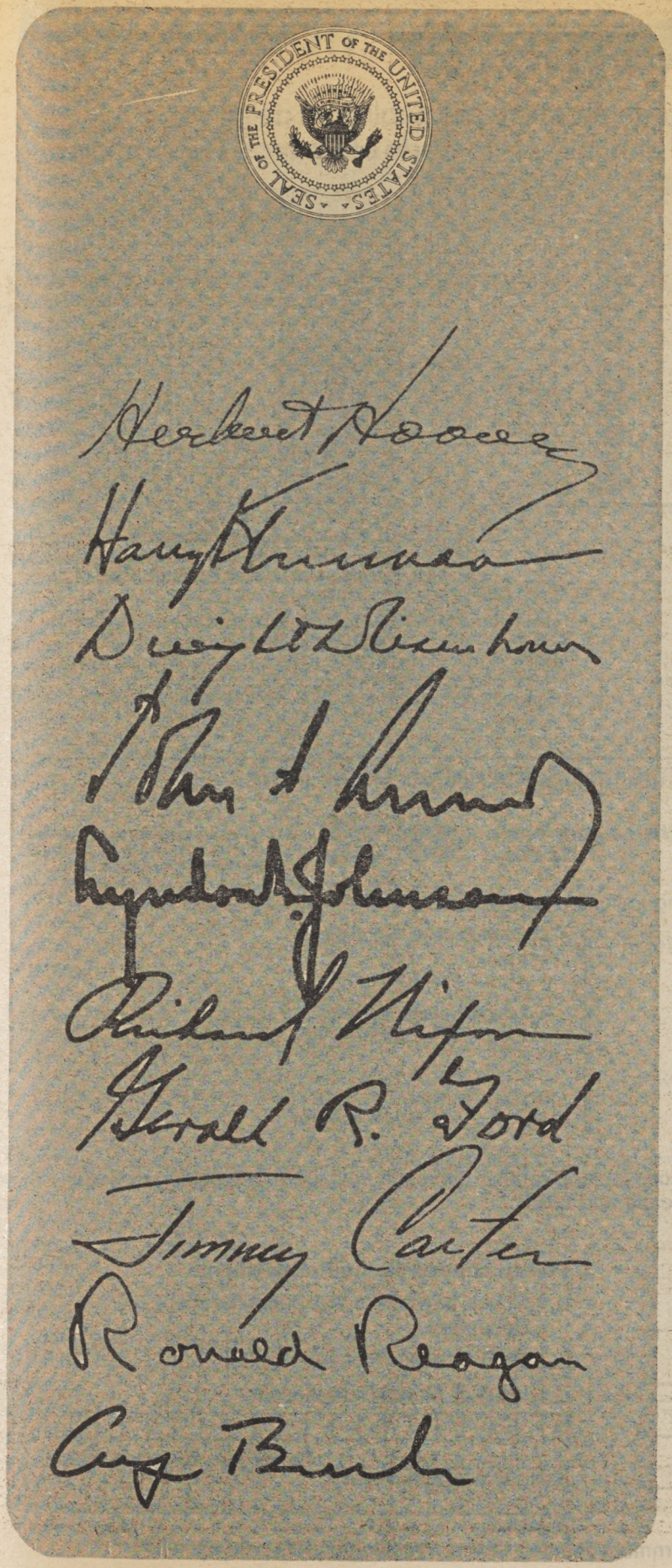
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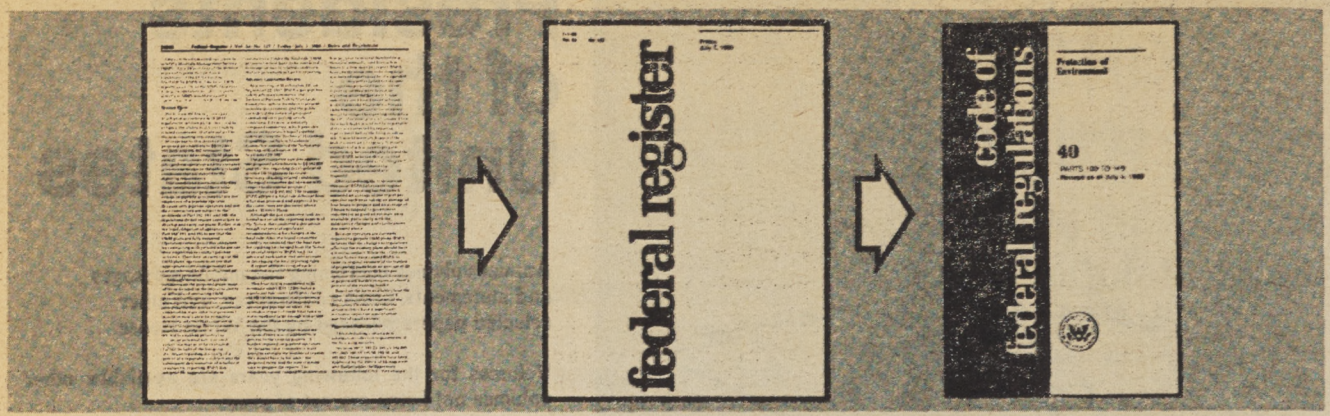
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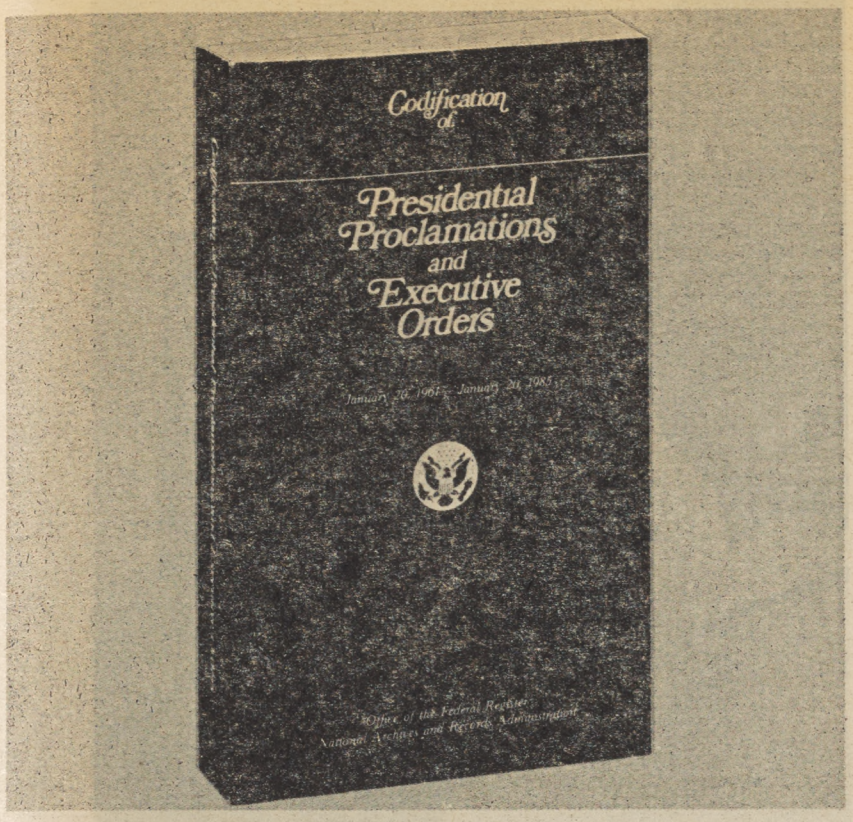
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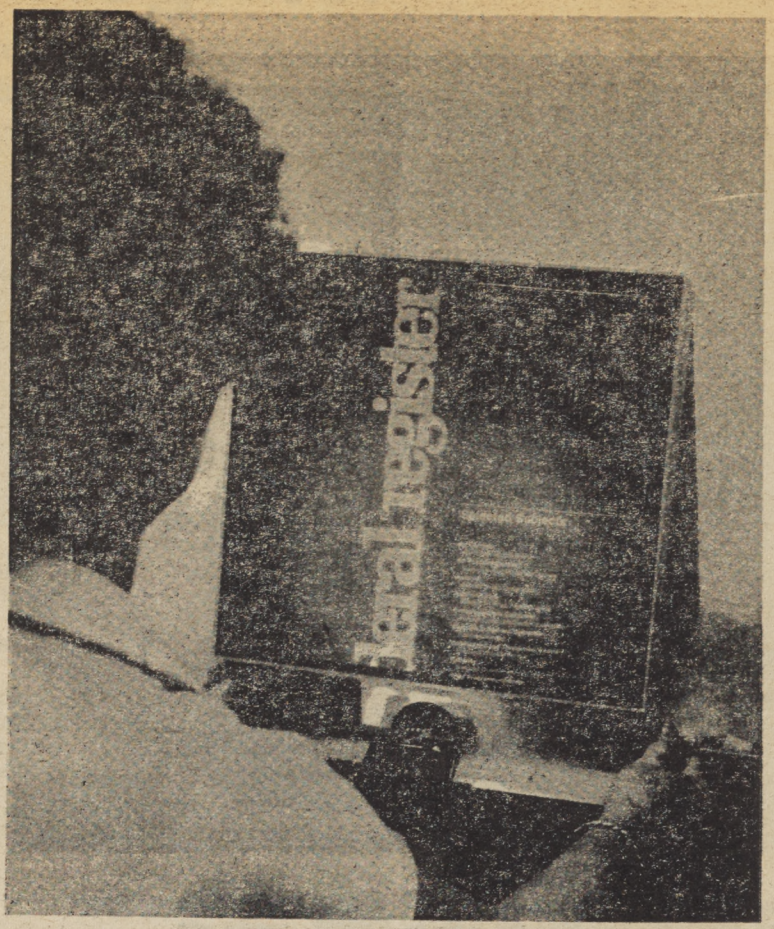
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