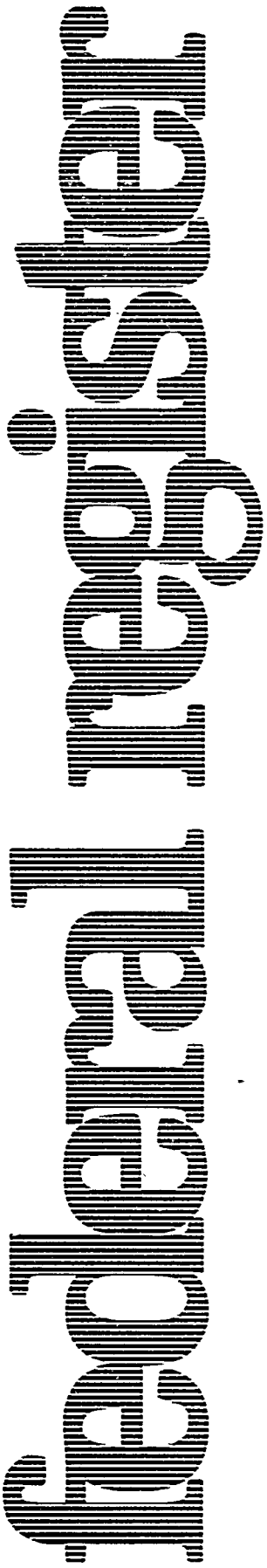
6-29-84
Vol. 49 No. 127
Pages 26697-27118



Friday
June 29, 1984

Selected Subjects

Agricultural Commodities
Agricultural Marketing Service
Air Pollution Control
Environmental Protection Agency
Animal Diseases
Animal and Plant Health Inspection Service
Animal Drugs
Food and Drug Administration
Aviation Safety
Federal Aviation Administration
Biologics
Food and Drug Administration
Cable Television
Copyright Office, Library of Congress
Food Ingredients
Food and Drug Administration
Government Employees
Merit Systems Protection Board
Government Procurement
Defense Department
Energy Department
General Services Administration
National Aeronautics and Space Administration
Marketing Agreements
Agricultural Marketing Service

CONTINUED INSIDE

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The Federal Register will be furnished by mail to subscribers for $300.00 per year, or $150.00 for six months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington D.C. 20402.

There are no restrictions on the republication of material appearing in the Federal Register.

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

Selected Subjects

Minimum Wages
Wage and Hour Division

Oil and Gas Exploration
Land Management Bureau

Organization and Functions (Government Agencies)
Environmental Protection Agency

Railroad Safety
Federal Railroad Administration

Railroads
Interstate Commerce Commission

Reporting and Recordkeeping Requirements
Federal Energy Regulatory Commission

Satellites
Federal Communications Commission

Securities
Securities and Exchange Commission

Surface Mining
Surface Mining Reclamation and Enforcement Office

Contents

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

Agricultural Marketing Service
RULES
26706 Carrots; grade standards
26708 Lemons grown in Ariz. and Calif.
26708 Raisins produced from grapes grown in Calif.

Agriculture Department
See Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food and Nutrition Service.

Animal and Plant Health Inspection Service
RULES
Livestock and poultry disease control:
26711 Lethal avian influenza; interim rule affirmed

Antitrust Division
NOTICES
26823 Merger guidelines

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
26789 Procurement list, 1984; additions and deletions

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
26770 Colorado
26770 District of Columbia
26770 Utah

Coast Guard
RULES
26721 Drawbridge operations, navigable waterways of U.S., reorganization; correction
Inland waterways navigation regulations:
26722 Lake Huron to Lake Erie, connecting waters; correction
PROPOSED RULES
Pollution:
26761 Waste reception facilities requirements

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration; National Technical Information Service; Patent and Trademark Office.

Copyright Office, Library of Congress
RULES
26722 Cable systems; compulsory license

Defense Department
See also Defense Logistics Agency.
RULES
26924- Defense Acquisition Regulations; amendments
27033 (DAC 76-48, 76-49, 76-50) (3 documents)
26740 Federal Acquisition Regulation (FAR)

Defense Logistics Agency
RULES
26721 Procurement; CFR parts removed

Education Department
NOTICES
Grants; availability, etc.:
26790 Strengthening research library resources program
Meetings:
26791 Bilingual Education National Advisory Council

Employment Standards Administration
NOTICES
26872 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Calif., Del., Ill., Iowa, Kans., La., Nev., N. Mex., Okla., and Tex.)

Energy Department
See also Federal Energy Regulatory Commission; Southeastern Power Administration; Western Area Power Administration.
RULES
26743 Acquisition regulations; compensation for personal services

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
26884 Flexible vinyl and urethane coating and printing
26738 Petroleum refining industry; VOC emissions; correction
Air quality implementation plans; approval and promulgation; various States:
26736 Nevada
Noise abatement programs:
26738 Portable air compressors, trucks, and motorcycles, etc.; product verification testing, etc.; correction
26727 Organization and functions
Water pollution; effluent guidelines for point sources categories:
26738 Nonferous metals manufacturing; correction
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
26764 California
26761 Ohio
26762 Wisconsin
NOTICES
Environmental statements; availability, etc.:
26809 Agency statements; weekly receipts
Meetings:
26807 Air Pollution Control Techniques National Advisory Committee
26808 Science Advisory Board (3 documents)
Pesticides; emergency exemption applications:
26806 Sodium fluoroacetate (Compound 1080)
Pesticides; experimental use permit applications:
26804 American Cyanamid Co. et al.

26805 Elanco Products Co. et al.
Pesticides; temporary tolerances:
26802, 26803 E. I. Du Pont de Nemours & Co. (2 documents)
26803 EM Industries, Inc.
Toxic and hazardous substances control:
26799 Premanufacture exemption approvals
26800 Premanufacture notices receipts

Federal Aviation Administration
RULES
26712 VOR Federal airways
PROPOSED RULES
Airworthiness directives:
26747 Boeing
26748 British Aerospace
26750 Jet routes
26749 VOR Federal airways and restricted areas
NOTICES
Meetings:
26855 Aeronautics Radio Technical Commission

Federal Communications Commission
RULES
Common carrier services:
26739 Domestic fixed-satellite service; space stations licensing; effective date deferred

Federal Deposit Insurance Corporation
NOTICES
26809 Banks and thrifts, use of financial and information by depositors and creditors; proposed policy statement; availability and inquiry

Federal Election Commission
NOTICES
26858 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Oil pipelines:
27117 Transfer of regulations from ICC; effective date change; and reporting and recordkeeping requirements
NOTICES
Hearings, etc..
26792 Montana-Dakota Utilities Co.
26858 Meetings; Sunshine Act

Federal Home Loan Bank Board
NOTICES
26858 Meetings; Sunshine Act

Federal Maritime Commission
NOTICES
26811 Agreements filed, etc.

Federal Railroad Administration
RULES
Safety appliance standards:
26744 Roof running boards, removal from box and house cars; elimination of requirement

Federal Reserve System
NOTICES
Bank holding company applications, etc..
26812 Henderson Financial Corp., et al.
26812 Maryland National Corp.
26813 National Bankshares of LaJolla

Fish and Wildlife Service
NOTICES
Comprehensive conservation plan/environmental statements; availability, etc..
26820 Koyukuk National Wildlife Refuge, Alaska; correction

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
26715 Fenprostalene solution
26715 Furosemide injection
26716 Monensin, bacitracin zinc, and roxarsone
26714 Trimethoprim and sulfadiazine oral paste
Biological products:
26717 Hepatitis requirements; shipment of blood products
GRAS or prior-sanctioned ingredients:
26713 Calcium hydroxide and oxide
NOTICES
GRAS or prior-sanctioned ingredients:
26814 American Feed Manufacturers Association, Inc.
Human drugs:
26814 Caffeine and stimulant product labeling, etc., (OTC); advisory opinion; amendment

Food and Nutrition Service
NOTICES
Child nutrition programs:
26767 Cash in lieu of commodities; value of donated commodities for 1984 school year
Food stamp program:
26767 Demonstration project initiatives

Foreign-Trade Zones Board
NOTICES
Applications, etc..
26771 Georgia
26770 Maryland

General Services Administration
RULES
26740 Federal Acquisition Regulation (FAR)
NOTICES
26813 Agency information collection activities under OMB review

Health and Human Services Department
See also Food and Drug Administration; Public Health Service.
NOTICES
26813 Agency information collection activities under OMB review

Housing and Urban Development Department
RULES
Low income housing:
26718 Housing assistance payments (Section 8); definition of income, income limits, rent calculations, etc.; correction
Public and Indian housing:
26719 Definition of income, income limits, rent calculations, etc., correction
NOTICES
Grants; availability, etc..
26818 Housing development grant program; correction

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Surface Mining Reclamation and Enforcement Office.

International Trade Administration
PROPOSED RULES
Export licensing:
26751 Linear Alpha Olefins and other products; lifting short supply validated licensing requirement
NOTICES
Antidumping:
26771 Cadmium from Japan
26774 Carbon steel plate from Korea
26772 Clear sheet glass from Taiwan
26773 Sorbitol from France
26780 Tubes for tires, other than for bicycle tires, from Korea
Countervailing duties:
26776 Potassium chloride from Israel
26784 Potassium chloride from Spain
Meetings:
26786 Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee
26773, 26776 Computer Systems Technical Advisory Committee (2 documents)

Interstate Commerce Commission
RULES
Rail carriers:
26745 Agricultural commodities (poultry, meat, and dairy products); exemption
Tariffs and schedules:
27117 Oil pipelines; transfer of regulations to FERC; effective date change
NOTICES
26821 Agency information collection activities under OMB review
Motor carriers:
26823 Compensated intercorporate hauling operations; intent to engage in
Rail carriers:
26823 Union Pacific Railroad Co., passenger train operation
Railroad services abandonment:
26822 Burlington Northern Railroad Co. (2 documents)
26822 Oregon Short Line Railroad Co.
26822 Seaboard System Railroad, Inc.

Justice Department
See Antitrust Division.

Labor Department
See also Employment Standards Administration; Pension and Welfare Benefit Programs Office; Wage and Hour Division.
NOTICES
26837 Agency information collection activities under OMB review
Meetings:
26837 Trade Negotiations and Trade Policy Labor Advisory Committee

Land Management Bureau
RULES
Oil and gas leasing:
26918 Simultaneous leasing program
NOTICES
Committees; establishment, renewals, terminations, etc.:
26819 District Advisory Councils; call for nominations
Environmental statements; availability, etc.:
26819 Lahontan Resource Area, Nev.
Oil and gas leasing:
26921 Automated simultaneous oil and gas lease applications form, revised; availability

Library of Congress
See Copyright Office.

Maritime Administration
PROPOSED RULES
26766 National defense program; implementation; withdrawal

Merit Systems Protection Board
RULES
Practice and procedure:
26697 Appeals arbitration, etc.; interim

National Aeronautics and Space Administration
RULES
26740 Federal Acquisition Regulation (FAR)

National Oceanic and Atmospheric Administration
NOTICES
Marine mammal permit applications, etc.:
26787 Cascadia Research Collective
26787 Goodyear, Jeffrey D.
Meetings:
26787 Gulf of Mexico Fishery Management Council

National Park Service
NOTICES
26820 Archeology and historic preservation activities and methods; standards and guidelines; inquiry
Concession contract negotiations:
26821 Anacostia Marina, Inc.
Meetings:
26821 Gateway National Recreation Area Advisory Commission

National Technical Information Service
NOTICES
Patent licenses, exclusive:
26787 AgBioChem, Inc.

Nuclear Regulatory Commission
NOTICES
Applications, etc.:
26845 Carolina Power & Light Co. et al.
26846 South Carolina Electric & Gas Co. et al.
Meetings:
26848 Three Mile Island Unit 2 Decontamination Advisory Panel
Nuclear waste transportation:
26914 Notification to State designees; list

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings:
26845 Options Steering Committee

Patent and Trademark Office
NOTICES
Senior Executive Service:
26787 Performance Review Board; membership

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
26838 Kimball International, Inc, et al.
26841 Levine, Mark A., M.D., et al.

Personnel Management Office
PROPOSED RULES
Retirement:
26746 Civil Service benefits; guidelines

Public Health Service
NOTICES
26815 Privacy Act; systems of records

Securities and Exchange Commission
PROPOSED RULES
Securities:
26751 Two-tier tender offer pricing and non-tender offer purchase programs
NOTICES
Hearings, etc..
26848 American Electric Power Co., Inc.
26849 Mortgage Bankers Financial Corp. I
Self-regulatory organizations; proposed rule changes:
26850, 26852 New York Stock Exchange, Inc. (2 documents)
26848 Options Clearing Corp., correction
26850 Pacific Securities Depository Trust Co.
26851 Pacific Stock Exchange, Inc.

Southeastern Power Administration
NOTICES
Power rate adjustments:
26792 Cumberland Basin Project

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Federal surface coal mining programs:
26898 Tennessee

Textile Agreements Implementation Committee
NOTICES
Textile consultation; review of trade:
26788 China

Transportation Department
See Coast Guard; Federal Aviation Administration; Federal Railroad Administration; Maritime Administration.

United States Information Agency
NOTICES
Meetings:
26856 Cultural Property Advisory Committee

Veterans Administration
NOTICES
26856 Agency information collection activities under OMB review
Environmental statements; availability, etc..
26856 Sepulveda, Calif.

Wage and Hour Division
RULES
26719 Wage order industries in American Samoa; new minimum wage rates

Western Area Power Administration
NOTICES
Power rate adjustments:
26797 Pick-Sloan Missouri Basin Program

Separate Parts in This Issue

Part II
26872 Department of Labor, Employment Standards Administration, Wage and Hour Division

Part III
26884 Environmental Protection Agency

Part IV
26898 Department of the Interior, Office of Surface Mining Reclamation and Enforcement

Part V
26914 Nuclear Regulatory Commission

Part VI
26918 Department of the Interior, Bureau of Land Management

Part VII
26924 Department of Defense

Part VIII
27117 Department of Energy, Federal Energy Regulatory Commission; Interstate Commerce Commission

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
1201 26697
Proposed Rules:
831 26746

7 CFR
51 26706
910 26708
989 26708

9 CFR
53 26711

14 CFR
71 26712
Proposed Rules:
39 (2 documents) 26747, 26748
71 26749
73 26749
75 26750

15 CFR
Proposed Rules:
377 26751

17 CFR
Proposed Rules:
240 26751

18 CFR
341 27116
342 27116
343 27116
344 27116
345 27116
346 27116
347 27116
389 27116

21 CFR
182 26713
184 26713
520 26714
522 (2 documents) 26715
556 26715
558 26716
610 26717

24 CFR
800 26718
813 26718
880 26718
881 26718
882 26718
883 26718
884 26718
886 26718
889 26718
904 26719
905 26719
913 26719
960 26719
965 26719

29 CFR
697 26719

30 CFR
Proposed Rules:
942 26898

32 CFR
Ch. XII 26721
1-39 (3 documents) 26924-27033

33 CFR
117 26721
162 26722
Proposed Rules:
151 26761
158 26761

37 CFR
201 26722

40 CFR
1 26727
52 26736
60 (2 documents) 26738, 26884
204 26738
205 26738
421 26738
Proposed Rules:
52 (3 documents) 26761-26764

43 CFR
3100 26918
3110 26918

46 CFR
Proposed Rules:
251 26766

47 CFR
25 26739

48 CFR
4 26740
15 26740
17 26740
31 26740
52 26740
53 26740
970 26743

49 CFR
23 26744
1039 26745
1300 (2 documents) 27116

Rules and Regulations

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Appeals Arbitration/Voluntary Expedited Appeals Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Amendment of interim rules with request for comments.

SUMMARY: The Merit Systems Protection Board amends it interim rules governing its appeals arbitration procedures for resolving matters subject to the appellate jurisdiction of the Board. The amendments change the interim regulations published on March 18, 1983 at 48 FR 11399–11403 in several respects. The primary change amends 5 CFR 1201.220 to provide that the standards for filing petitions for review under the expedited process reflect the same standards as those that apply to the formal procedure. This change accommodates the Board's intent to ensure that both procedures reach the same result regardless of the forum. The second amendment changes the title of the procedure from Appeals Arbitration to Voluntary Expedited Appeals Procedure. This change is made to reflect the increased similarity to the Board's formal procedure brought on by the amendment to the petition for review criteria. Furthermore, the title change will eliminate possible confusion between the Board's expedited process and labor or grievance labor arbitration practices.

The third changes concerns the time allotted to the Board for the adjudication of timely filed petitions for review. 5 CFR 1201.221 is amended to provide the Board thirty-five days to adjudicate the appeal, from the date of the certification of the file to the date of issuance of the final Board order.

Technical changes necessary to conform the above amendments are also included in this notice.

DATES: Interim rule effective June 29, 1984 through September 18, 1984; comments must be received on or before July 30, 1984. Appeals postmarked June 29, 1984, or after will be subject to these amended regulations.

ADDRESS: Comments may be mailed or delivered to: Paul E. Trayers, Legislative Counsel, Office of the Legislative Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Paul E. Trayers, Legislative Counsel, (202) 653–7175.

SUPPLEMENTARY INFORMATION:

Background

Upon publication of this notice, the Merit Systems Protection Board modifies its interim rules published on March 18, 1983 at 48 FR 11399–11403. That notice inaugurated the Board's Appeals Arbitration Pilot Project which was designed to test the feasibility of providing for an expedited, cost-effective and efficient alternative dispute resolution system for the adjudication of routine, nonprecedential appeals. The pilot project was designed to run for a minimum of one year, and in a minimum of four regional offices: Chicago, Denver, Seattle and San Francisco.

Based on comments solicited through that notice, training seminars and the Board's own internal analysis of the pilot project, this notice amends the interim regulations and further provides that as of this date the Boston Regional Office is subject to these regulations. Dallas Regional Office came into the pilot program in October, 1983. The pilot project is also extended to September 18, 1984, at which time the Board will review the desirability of maintaining or modifying this procedure.

Voluntary Expedited Appeals Procedure

All appeals filed as of this date will be subject to these regulations upon mutual agreement of the parties.

The amendments include a fundamental legal change in the criteria used to satisfy the petition for review requirements contained at 5 CFR 1201.115 of Subpart B and a change in the title of the pilot project from Appeals Arbitration to Voluntary Expedited Appeals Procedure. These changes are made based on recurring comments solicited from the general public and from the Board's own internal review of the pilot program. The comments and evaluations showed that the different criteria for petitions for review raised concerns as to whether the appeals arbitration alternative would produce the same results had the appeal been processed under the formal procedure. The purpose of the original expedited review criteria was not to promote different results but rather to provide the Board with an expedited process for the issuance of a final decision. A review of the awards and final orders to date reflect the consistency of the deliberative process regardless of the procedure used. Nonetheless, the Board agrees with the commentators that separate standards of review could suggest different results. Further, the regulations are amended to extend the Board's decisional time on petitions for review of expedited initial decisions from 15 days to 35 days from the date the file is certified as complete to issuance of a final decision. This time period is extended to provide Headquarters attorneys and support staff additional time to prepare appropriate draft final orders for the Board members.

The third substantive change deals with the title of the pilot project. Most commentators, including the OPM, Defense, HHS as well as AFGE, NFFE and NAGE, noted that use of the term arbitration would be confused with the labor relations arbitration process. Although it is recognized that the concept of arbitration is not unique to labor management relations, nonetheless the weight of arbitration experience in the Federal government is primarily derived from the collective bargaining obligation.

In addition, the amended petition for review criteria lessens the perceptions of adjudication distinction between the Board's formal process and the expedited system. Combining this change with the elimination of the term "arbitration" permits the Board to describe the pilot project in a generic fashion. The term "voluntary" means that both parties to an appeal must volunteer to use the procedure; if either party chooses not to participate in the process, the formal procedure will

automatically be used. The term "expedited" means that the original design feature of a 60-day decisional deadline for the issuance of an initial decision remains as it had under the appeals arbitration procedure. These amended procedures still draw from several aspects of administrative practice as well as traditional arbitration concepts to provide a practical alternative in the resolution of routine appeals.

By offering the benefits of reduced costs and an expedited time, the voluntary expedited appeals procedure should continue to present an attractive alternative to both appellants and agency management. As a primary characteristic, its goal will be the issuance of an expedited initial decision within 60 days from the date of the acknowledgment order. The program is being conducted on a pilot basis in the Chicago, Dallas, Denver, San Francisco and Seattle regional offices. Upon publication of these regulations, the Pilot Project will be extended to the Boston Regional Office. The experience under the new procedure is being evaluated to determine whether it should be modified, terminated, or extended to other regions.

Filing requirements with respect to timeliness and content of the appeal are the same as those provided by § 1201.22(b) of the Board's appellate regulations. In addition, the filing may include a statement by the appellant or representative specifically requesting that the matter be processed under this voluntary expedited appeals procedure. The appeal and election will be filed with the appropriate regional office of the Merit Systems Protection Board. The appellant may, however, elect to use the expedited procedure anytime within ten days of the date of the Board's order of acknowledgment.

The agency will have 15 days from the date of Board's order of acknowledgment to file its designation of representative and consent form, or to decline use to the voluntary expedited appeals procedure. Included in the consent form will be a summary of the facts and legal issues. Following receipt of the designation of representative form, the regional director will then decide whether to accede to the request to use the expedited procedure. While the parties' request will be given great weight, factors influencing the decision are whether it appears likely that formal discovery will be needed for a fair resolution of the appeal, whether the petition presents novel questions of law, whether the issues are overly complex or whether the region's caseload and staffing prohibit further processing of cases under the expedited procedure. The regional director or his designee may at any time prior to the issuance of the expedited initial decision convert the appeal to the formal MSPB appeal process.

If the agency consents to use the expedited procedure, the parties will jointly prepare the Joint Appeals Record (JAR) including, but not limited to, statements of issues, each party's statement of position with respect to those issues limited to three pages, requests for hearing, witness lists with a synopsis of proposed testimony, the agency file required by 5 CFR 1201.25 and two dates mutually agreed upon for the hearing. This Record will be filed with the regional office within 30 days from the date of the Board's order of acknowledgment.

If the case is accepted for processing through this new procedure, a specially trained presiding official from the regional office will adjudicate the appeal. The hearing, if requested by the appellant, may be held at the employment site and be scheduled within a 15-day period following expiration of the time limit for the filing of the Joint Appeals Record; otherwise the Record will close on a date specified by the presiding official. In any event, the Record will close within 15 days from expiration of the time limit for the filing of the Joint Appeals Record.

The Director of the Office of Personnel Management and the Special Counsel may intervene as a matter of right in those appeals that meet the criteria of 5 U.S.C. 7701(d) and 1206(i), respectively.

Rules of procedure are to be liberally construed to promote the ultimate goal of an expedited resolution of the appeal, with full disclosure of pertinent information by both parties in the presentation of their respective sides of the appealed action. Therefore, formal rules as to admissibility of evidence, motions, filings of briefs, etc., will not strictly apply to the voluntary expedited process. While the burdens of proof will not be altered in any way by the new procedure, determinations as to relevance, reliability, and fairness shall be the primary consideration for admission of evidence. While formal discovery is not available, the parties must include all known relevant materials with their submissions. Every Federal agency is obligated to make its employees available on official duty status to furnish sworn statements or to appear as witnesses when requested to do so. The presiding official may request the production of additional information or witnesses if he has a reasonable basis to believe it will aid in the resolution of the matter. In the event a party fails to cooperate, the presiding official may impose appropriate sanctions.

The voluntary expedited appeals procedure is intended to foster an environment conducive to the informal settlement of disputes prior to the issuance of an expedited initial decision. The presiding official is authorized to explore the possibility of a settlement agreement at any time up to the actual hearing. However, if either party does not wish to discuss settlement, the presiding official will terminate his involvement in these discussions and the appeal will be adjudicated. If a hearing is conducted, it will be informal in nature.

If a settlement agreement has been achieved, the parties may enter such agreement into the record which will stand as the resolution of the appeal. The Board will retain jurisdiction to ensure compliance. If the parties choose not to enter the settlement into the record, the Board does not have jurisdiction to enforce the settlement.

The presiding official will issue an order dismissing the appeal with prejudice when settlement occurs. If settlement is not achieved, the presiding official will adjudicate the appeal and issue an initial decision that summarizes the basic issues, findings of fact and conclusions of law, and upholds, sets aside, or modifies the appealed action. These decisions will be based on authoritative legal precedents, including Board decisions, but will not be precedential in and of themselves and, therefore, may not be cited as authority in subsequent cases.

This expedited decision is subject to full review by the Board. The standards of review are the same as those under the formal appeals process, namely, that new and material evidence, despite due diligence, was not available when the record closed, or the initial decision was based on an erroneous interpretation of statute or regulation. Any party to the proceeding may file a petition for review under these standards. The petition for review must be filed and received by the Board within 35 days of the expedited initial decision and a supporting brief limited to 15 pages must accompany the petition. Opposition briefs of no more than 10 pages may be filed within 15 days of the Board's forwarding of the petition for review. The Board will issue a final decision 35 days from the date the file is certified for review.

The appellant retains the right of filing an appeal from the Board's decision in

the U.S. Court of Appeals for the Federal Circuit.

The Board has found that good cause exists for publication of these regulations for interim effect in view of the public interest served by the immediate availability of a voluntary expedited appeals procedure. The Board invites public comments on these regulations through July 30, 1984.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare initial or final regulatory analysis of this proposed rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, Because of his determination that this rule would not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Government employees.

Accordingly, the Merit Systems Protection Board proposes to amend the interim regulations at 5 CFR 1201.21 through 1202.25, and Subpart G, § 1201.200 through 1201.221, as follows:

1. The authority for Part 1201 reads as follows:

Authority: 5 U.S.C. 1101 et seq., unless otherwise noted.

2. Section 1201.21 is amended by revising paragraphs (c) and (e) to read as follows:

§ 1201.21 Notice of appeal rights.

* * * * *

(c) A copy of the appeal form contained in:

(1) Appendix I of this part, if the appeal will be filed in a regional office where the voluntary expedited appeals procedure is not in effect, or

(2) Appendix I–A of this part, if the appeal will be filed in a regional office where the voluntary expedited appeals procedure is in effect.

* * * * *

(e) In regions offering the use of the voluntary expedited appeals procedure, notice of the opportunity to request such procedure set forth at § 1201.200 through § 1202.222, including a description of the procedure.

3. Section 1201.24 is amended by revising paragraphs (a)(10), (b) and (c) to read as follows:

§ 1201.24 Content of petition for appeal, right to hearing.

(a) * * *

(10) A request that the matter be processed under the voluntary expedited appeals procedure set forth at § 1201.200 through § 1201.222 if such procedure is available.

(b) *Use of the form.* Completion of the form in Appendix I of this part, or Appendix I–A of this part, if appropriate, shall constitute compliance with paragraph (a) of this section and § 1201.31 if a representative is designated in the form. In regions allowing the use of the voluntary expedited appeals procedure, the amended form in Appendix I–A of this part containing an entry for the election of expedited process and an explanation thereof will be used.

(c) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing. Alternatively, the appellant may choose to have the determination based on the record. If the parties choose to utilize the voluntary expedited appeals procedure, the procedures for a hearing shall be in accordance with § 1201.205.

4. In § 1201.25, paragraph (a)(6) is revised to read as follows:

§ 1201.25 Content of agency response, request for hearing.

(a) * * *

(6) A declination by the agency, if the voluntary expedited appeals procedure has been requested by the appellant and the agency declines to use the process;

* * * * *

5. 5 CFR Part 1201, Subpart G is revised to read as follows:

* * * * *

General

Sec.

1201.200 Scope and policy.

Election of and Filing for Voluntary Expedited Appeals Procedure

1201.201 Election of voluntary expedited appeals procedure.

1201.202 Filing of request for voluntary expedited appeals procedure; contents; time limits.

1201.203 Joint appeals record.

1201.204 Procedures for cases involving allegations of discrimination.

Presiding Official and Hearing

1201.205 Selection and authority of presiding official.

1201.206 Hearing.

Parties and Witnesses

1201.207 Witnesses.

1201.208 Intervenors.

Evidence

1201.209 Service of documents.

1201.210 Admissibility.

1201.211 Production of evidence or witnesses by request of presiding official.

1201.212 Stipulations.

1201.213 Official notice.

Sanctions

Sec.

1201.214 Sanctions.

Hearing Procedure; Settlement; Expedited Initial Decision

1201.215 Burden of proof.

1201.216 Closing the record.

1201.217 Settlement.

1201.218 Expedited Initial Decision.

Petitions for Review

1201.219 Petitions for Review.

1201.220 Standard of Review.

1201.221 Final Decision.

1201.222 Judicial Review.

Authority: 5 U.S.C. 7701(j).

Subpart G—Voluntary Expedited Appeals Procedure

General

§ 1201.200 Scope and policy.

(a) The rules in this subpart apply to the voluntary expedited appeals procedures of the Board. It is the objective of the Board to establish a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

(b) This pilot program will be conducted until September 18, 1984, and be available in six regional offices—Boston, Chicago, Dallas, Denver, San Francisco and Seattle. These amended regulations will apply to appeals postmarked on or after June 29, 1984.

Election of and Filing for Voluntary Expedited Appeals Procedure

§ 1201.201 Election of voluntary expedited appeals procedure.

(a) The appellant may request the voluntary expedited appeals procedure at the time of filing a petition for appeal. In the event the appellant has not elected the voluntary expedited appeals procedure at the time of filing, appellant will be allowed 10 days from the date of the Board's order of acknowledgment to elect this alternate procedure. Such election must be in writing. The date of filing shall be determined by the date of mailing indicated by the postmark date.

(b) Notice of election of the voluntary expedited appeals procedure will be served on the agency in the Board's order of acknowledgment. Within 15 days from the date of the Board's order, the agency will file either a consent to use the voluntary expedited process and a designation of representative form or a declination. Included in the consent will be a summary of facts and legal issues raised in the appeal. In the event the

agency declines to use the expedited process, it must timely file its response to the petition for appeal in accordance with § 1201.25 and note its declination of the process.

(c) The regional director or designee of the MSPB office having jurisdiction over the appeal retains final discretion to process the case under the voluntary expedited appeals procedure or the formal MSPB procedure. Such decision will be made after receipt of the agency's consent and summary of the case. The regional director or designee also retains the right to convert the case to adjudication under Subpart B procedures in the event circumstances warrant, such as whenever it appears that discovery is required, novel questions of law are raised at the hearing or in briefs, or issues arise that do not lend themselves to resolution in an expedited process.

§ 1201.202 Filing of request for the voluntary expedited appeals procedure; contents; time limits.

(a) The filing, time limits and content requirements of the petition for appeal processed under this subpart shall comply with the provisions of §§ 1201.22–1201.26 of Subpart B, unless these regulations expressly provide otherwise.

(b) Within 15 days from the date of the Board's order of acknowledgment, the agency will file a designation of representative and consent form, including a summary of facts and legal issues raised in the case or decline to use the process.

§ 1201.203 Joint appeals record.

(a) Within 30 days from the date of the Board's order of acknowledgment, the parties will file a Joint Appeals Record including, but not limited to:

(1) Each party's statement of issues;

(2) Each party's statement of position with respect to those issues limited to three pages;

(3) Requests for hearing;

(4) Witness lists, including a statement of the anticipated testimony of each witness;

(5) Any objections to the appearance of any witness requested by the opposing party;

(6) The agency file required by § 1201.25; and

(7) Two dates, mutually agreed upon by the parties for the hearing, no later than 15 days beyond the day the Joint Appeals Record is to be received by the Regional Office.

(b) The parties must submit all known relevant material in the Joint Appeals Record. Evidence may not be submitted at the hearing unless the presiding official determines that good cause is shown for the late submission.

§ 1201.204 Procedures for cases involving allegations of discrimination.

The provisions for the processing of cases involving discrimination are not abridged by the use of the voluntary expedited appeals procedure. Section 1201.152, however, does not apply to the adjudication of cases involving allegations of discrimination if they are processed under this alternate expedited process.

Presiding Official and Hearing

§ 1201.205 Selection and authority of presiding official.

(a) The regional director will appoint the presiding official taking due account of scheduling difficulties, workload requirements or conflicts of interest.

(b) The presiding official shall have the authority to rule on parties' procedural requests. However, the presiding official shall issue the expedited initial decision no later than 30 days from the date the Joint Appeals Record is received by the Board.

(c) The presiding official shall have the authority to take all necessary action to avoid delay in the disposition of the proceeding and to conduct a fair and impartial hearing including the authority to regulate the hearing, maintain decorum and exclude from the hearing any disruptive person.

(d) Unless these regulations expressly provide otherwise, the presiding official will follow the regulations under 5 CFR Part 1201, Subpart B.

§ 1201.206 Hearing.

(a) If the appellant requests a hearing, or if the presiding official approves any agency request for a hearing, the hearing will be scheduled within 15 days following the due date or receipt of the Joint Appeals Record, whichever is earlier.

(b) The hearing will be informal. Election of the voluntary expedited appeals procedure constitutes a waiver by the parties of a verbatim record.

(c) The hearing will be held at the employment site.

Parties and Witnesses

§ 1201.207 Witnesses.

Every Federal agency will make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. Witnesses are on official duty status when providing such statements or testimony.

§ 1201.208 Intervenors.

(a) The Director of the Office of Personnel Management may intervene as a matter of right pursuant to 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(b) The Special Counsel may intervene as a matter of right pursuant to 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

Evidence

§ 1201.209 Service of documents.

Any documents submitted to the presiding official shall be served upon all parties to the proceeding.

§ 1201.210 Admissibility.

Formal rules as to admissibility of evidence will not be applied although they will be used as guidance for the conduct of the proceeding. Rules of procedure shall be liberally construed to facilitate full and frank disclosure by both parties. Parties have the duty of including all known relevant materials in their submissions.

§ 1201.211 Production of evidence or witnesses by request of Presiding Official.

The presiding official may request the production of information or witnesses if he or she has a reasonable basis to believe that it will be germane to the case.

§ 1201.212 Stipulations.

The parties may stipulate to any matter of fact.

§ 1201.213 Official notice.

The presiding official, on his or her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Sanctions

§ 1201.214 Sanctions.

The presiding official may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with a request.* If a party fails to comply with a presiding official's request for information or witnesses within the party's control which the presiding official believes to be necessary to resolve the issues, or a party fails to cooperate or act in good faith, the presiding official may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such request from introducing evidence concerning or otherwise relying upon testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; or

(4) Strike any part of the submissions of the party failing to comply with such request dealing with the subject matter of the request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The presiding official may refuse to consider any information which is not filed in a timely fashion in compliance with this subpart or with his or her request.

Hearing Procedure; Settlement; Expedited Initial Decision

§ 1201.215 Burden of proof.

Section 1201.56 of Subpart B applies.

§ 1201.216 Closing the record.

(a) When a hearing is convened, the record will close at the conclusion of the hearing unless otherwise specified by the presiding official.

(b) When a hearing is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties.

(c) In any event, the record will be closed no later than 15 days from the due date of the Joint Appeals Record.

(d) Once the record is closed, no additional evidence or argument will be accepted unless, in the presiding official's discretion, he or she determines that the party seeking such admission has shown that new and material evidence has become available which was not readily available prior to the closing of the record.

§ 1201.217 Settlement.

(a) *Settlement discussion.* Informal settlement of the dispute will be raised by the presiding official with the parties prior to the hearing or, if no hearing is requested, within 15 days after the filing of the Joint Appeals Record. Prohibitions against ex parte communications during settlement discussions will be waived by the parties. If either party does not wish to discuss settlement or the matter cannot be settled informally, the presiding official will proceed with the hearing if one has been requested. At any time until the issuance of an expedited initial decision the parties may enter into a settlement agreement.

(b) *Agreement.* If the parties agree to resolve the dispute without a decision on the merits of the case, the settlement agreement will be the final and binding resolution of the appeal, and the presiding official will dismiss the appeal with prejudice.

(1) If the agreement is offered into the record by the parties and approved by the presiding official, it will be made a part of the record, and the Board will retain jurisdiction to ensure compliance with the agreement;

(2) If the agreement is not entered into the record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.218 Expedited initial decision.

(a) If settlement is not reached, the presiding official will adjudicate the appeal and issue a written decision within 15 days after the record is closed. The decision will include a summary of the basic issues, findings of fact and conclusions of law, a holding affirming, reversing or modifying the appealed action and order appropriate relief.

(b) Expedited initial decisions are not precedential.

(c) This expedited initial decision will become final after 35 days and is binding upon the parties if no petition for review is filed.

Petitions for Review

§ 1201.219 Petitions for review.

(a) Any party may file a petition for review with the Board of the expedited initial decision.

(b) Petitions for review must be filed within 35 days from the date of the decision. Supportive briefs must accompany the petitions for review and be limited to 15 pages. Opposition briefs must be received by the Board within 15 days from the date of the Board's forwarding of a copy of the petition for review to the opposing party and be limited to 10 pages. The record shall close at the time the brief in opposition is scheduled to be received by the Board.

§ 1201.220 Standard of review.

Section 1201.115 of Subpart B shall apply.

§ 1201.221 Final decision.

The Board will issue a final decision no later than 35 days from the date the file is certified as complete for review.

§ 1201.222 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

6. Appendix I–A is added to Part 1201 to read as follows:

BILLING CODE 7400-01-M

APPENDIX I-A

UNITED STATES MERIT SYSTEMS PROTECTION BOARD **APPEAL**	AGENCY USE ONLY

INSTRUCTIONS: The purpose of this form is to help you provide valuable information to the U.S. Merit Systems Protection Board ("The Board") when you file an appeal. You are *not* required to use this form, and you are not limited to answering the questions on the form if you feel there is other information you wish to provide. However, if you do not use the form, your appeal documents must comply with the Board's regulations. Your agency's personnel office will provide you with a copy of these regulations upon request and the Board advises you to review them.

All appellants who elect to use this form should complete Parts I through III. Only those who are appealing Reduction-in-Force (RIF) actions are required to complete Part IV. ALL APPELLANTS should also sign and date the form in the space provided at the end of Page 4 indicating approval of the contents of the entire form.

In filling out this form, wherever the space provided is insufficient you may add additional pages. If you do so, please put your name and Social Security Number at the top of the page, and indicate by number which question you are answering.

WHERE TO FILE—You or your representative are required to file one original and three copies of this form, together with its attachments with the Board's field office identified in the decision notice provided by the Agency. Filing must be made either by personal delivery during normal business hours to the appropriate Board field office or by mail addressed to that office. The Board recommends but does not require that you use certified mail.

PRIVACY ACT STATEMENT

This form requests personal information which is relevant and necessary to reach a decision in your appeal. The U.S. Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the U.S. Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

You should know that the decisions of the U.S. Merit Systems Protection Board on appeal are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

PART I. APPELLANT IDENTIFICATION

1. NAME *(Last, first, middle)*	2. SOCIAL SECURITY NUMBER
3. PRESENT ADDRESS *(Number and street, city, state, and ZIP code)*	4. HOME PHONE *(Include area code)*
	5. OFFICE PHONE *(Include area code)*

PART II. APPEALED ACTION

6. BRIEFLY DESCRIBE *AGENCY ACTION* YOU WISH TO APPEAL AND ATTACH ANY RELEVANT DOCUMENTS

6A. VOLUNTARY EXPEDITED APPEALS PROCEDURE. FOR A MATTER APPEALABLE TO THE BOARD, ANY APPELLANT MAY ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE AS AN ALTERNATIVE TO THE FORMAL MSPB APPEALS PROCESS. (A detailed explanation of the Voluntary Expedited Appeals Procedure is attached to this form.) PLEASE CHECK ONE OF THE BOXES BELOW.

☐ YES, I ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

☐ NO, I DO NOT ELECT THE VOLUNTARY EXPEDITED APPEALS PROCEDURE

7. NAME AND ADDRESS OF ACTING AGENCY *(Including Bureau, or other Division as well as street address, city, state, and ZIP code)*			8. APPELLANT'S POSITION TITLE AT TIME OF ACTION	
			9. GRADE AT TIME OF ACTION	10 SALARY AT TIME OF ACTION $ PER
11. ARE YOU A VETERAN OR ENTITLED TO THE EMPLOYMENT RIGHTS OF A VETERAN? ☐ NO ☐ YES	12. TYPE OF APPOINTMENT ☐ Temporary ☐ Applicant ☐ Permanent ☐ Term	13. TYPE OF SERVICE ☐ Competitive ☐ Excepted	14. LENGTH OF GOVERNMENT SERVICE	15 LENGTH OF SERVICE WITH ACTING AGENCY
16. ARE YOU RETIRED? ☐ NO ☐ YES	16A. IF YES, DATE OF RETIREMENT *(Month, day, year)*		17. WERE YOU SERVING A PROBATIONARY OR TRIAL PERIOD AT TIME ACTION WAS TAKEN BY THE AGENCY? ☐ NO ☐ YES	
18. DATE WRITTEN PROPOSED ACTION NOTICE RECEIVED *(Month, day, year) (Attach copy)*	19. DATE FINAL DECISION NOTICE RECEIVED *(Month, day, year)*		20. EFFECTIVE DATE OF ACTION *(Month, day, year)*	

21. WHY DO YOU THINK THE AGENCY WAS WRONG IN TAKING THIS ACTION? *(Explain briefly)*

22. WHAT ACTION WOULD YOU LIKE THE BOARD TO TAKE ON THIS CASE?

23. HAVE YOU, OR ANYONE ON YOUR BEHALF, FILED A FORMAL GRIEVANCE OR COMPLAINT, INCLUDING AN UNFAIR LABOR PRACTICE CHARGE WITH YOUR AGENCY OR ANY OTHER AGENCY CONCERNING THIS MATTER?

☐ NO ☐ YES *(Attach copy)*

23A. IF YES, DATE FILED *(Month, day, year)*	23B. PLACE FILED *(Agency and location)*	23C. HAS DECISION BEEN ISSUED? ☐ NO ☐ YES
23D. IF YES, DATE ISSUED *(Month, day, year)*	23E. NAME OF ISSUING OFFICIAL	23F. TITLE OF ISSUING OFFICIAL

24. IF YOU BELIEVE YOU WERE DISCRIMINATED AGAINST BY THE AGENCY BECAUSE OF EITHER YOUR RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, MARITAL STATUS, POLITICAL AFFILIATION, HANDICAPPING CONDITION, OR AGE, INDICATE SO AND EXPLAIN WHY YOU BELIEVE IT TO BE TRUE. YOU MUST INDICATE, BY EXAMPLES, HOW YOU WERE DISCRIMINATED AGAINST.

25. HAVE YOU FILED A DISCRIMINATION COMPLAINT WITH YOUR AGENCY OR ANY OTHER AGENCY? ☐ NO ☐ YES *(Attach copy)*

25A. IF YES, DATE FILED *(Month, day, year)*	25B. PLACE FILED *(Agency and location)*	25C. HAS THERE BEEN A DECISION? ☐ NO ☐ YES

PART III. HEARING

26. YOU HAVE A RIGHT TO A HEARING ON THIS APPEAL. IF YOU DO NOT WANT A HEARING, THE BOARD WILL MAKE ITS DECISION ON THE BASIS OF THE DOCUMENTS YOU AND THE AGENCY SUBMIT. DO YOU WANT A HEARING?
☐ NO ☐ YES

IF YOU CHOOSE TO HAVE A HEARING, THE BOARD WILL NOTIFY YOU WHEN AND WHERE IT IS TO BE HELD.

27. YOU HAVE THE RIGHT TO DESIGNATE SOMEONE TO REPRESENT YOU ON THIS APPEAL IF HE/SHE AGREES TO DO SO. THIS PERSON DOES NOT HAVE TO BE AN ATTORNEY. THE AGENCY HAS A RIGHT TO CHALLENGE YOUR CHOICE OF A REPRESENTATIVE IF THERE IS A CONFLICT OF INTEREST OR POSITION. YOU MAY CHANGE YOUR DESIGNATION OF A REPRESENTATIVE AT A LATER DATE, IF YOU SO DESIRE, BUT MUST NOTIFY THE BOARD PROMPTLY OF ANY CHANGE.

27A "I HEREBY DESIGNATE _____ TO SERVE AS MY REPRESENTATIVE DURING THE COURSE OF THIS APPEAL. I UNDERSTAND THAT MY REPRESENTATIVE IS AUTHORIZED TO ACT ON MY BEHALF."

27B. YOUR SIGNATURE	27C. DATE	27D. REPRESENTATIVE'S SIGNATURE *(if any)*	27E. DATE

27F. REPRESENTATIVE'S ADDRESS	27G. REPRESENTATIVE'S EMPLOYER

28. YOU MAY BE PERMITTED TO CALL WITNESSES AT A HEARING UPON THE APPROVAL OF THE PRESIDING OFFICIAL. IF YOU INTEND TO DO SO, PROVIDE THEIR NAMES AND A BRIEF STATEMENT OF THEIR RELATIONSHIP TO THE CASE. YOU WILL BE PERMITTED TO REQUEST OTHER WITNESSES LATER IF YOU DO NOT LIST THEM NOW.

A. NAME	B. RELATIONSHIP TO CASE

PART IV. REDUCTION-IN-FORCE (RIF)

INSTRUCTIONS: FILL OUT THIS PART ONLY IF YOU ARE APPEALING FROM A REDUCTION-IN-FORCE (RIF). YOUR AGENCY'S PERSONNEL OFFICE CAN FURNISH YOU MOST OF THE INFORMATION REQUESTED BELOW.

29. TENURE OF SUB-GROUP	30. SERVICE COMPUTATION DATE	31. HAS YOUR AGENCY OFFERED YOU ANOTHER POSITION RATHER THAN SEPARATING YOU? ☐ NO ☐ YES
32. TITLE OF OFFERED POSITION	33. GRADE OF POSITION OFFERED	34. SALARY OF POSITION OFFERED $ PER

35. LOCATION OF OFFERED POSITION	36. DID YOU ACCEPT THIS POSITION? ☐NO ☐YES

37. EXPLAIN WHY YOU BELIEVE YOU SHOULD NOT HAVE BEEN AFFECTED BY THE REDUCTION-IN-FORCE. *(Explanations could include: You were placed in the wrong tenure subgroup; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; full 30-day notice was not given; you believe you can "bump" a person in a lower tenure subgroup; or any other reasons. Please provide as much information as possible regarding each reason.)*

(Continue on the next page)

37. *(Continued from Page 3.)*

ATTENTION—THIS APPEAL MUST BE SIGNED		
I CERTIFY that all of the statements made in this Appeal are true, complete, and correct to the best of my knowledge and belief.	SIGNATURE OF APPELLANT	DATE SIGNED

* U.S. GOVERNMENT PRINTING OFFICE : 1983 O - 361-526 (6462)

BILLING CODE 7400-01-C

Attachment to Appendix I—A: Voluntary Expedited Appeals Procedure

Employees or applicants for employment who are entitled to file an appeal before the Board may elect the voluntary expedited procedure as an alternative to the formal Board procedures. The goal of this expedited process is the issuance of a nonprecedential award in routine cases within 60 days of the election of the voluntary expedited appeals procedure.

If an employee or an applicant for employment elects to use this alternative procedure, the employing agency will be allowed to elect or decline the procedure as well. In the event the employing agency does not wish to use the expedited procedure, the appeal will be processed in accordance with the existing Board procedures.

If the agency also elects the voluntary expedited appeals procedure, the regional director will review the summary of the case filed by the agency and determine whether the case is appropriate for the alternative procedure. The standards used in making this determination will be the routine, non-precedential nature of the appeal as well as workload requirements and availability of resources in the regional office.

If the case is processed under this expedited process, the parties will be notified by an Order of Acknowledgment of their obligation to file a Joint Appeals Record containing statements of issues and positions with respect to those issues, requests for hearing, witness lists, the agency's file and two dates agreed upon by the parties for the hearing. A presiding official specially trained in informal dispute resolution will contact the parties during this time to ensure that the parties understand their obligations and help promote an environment conducive to informal settlement.

In the event settlement is not achieved, a hearing, if requested will be held at *the employment site* within 15 days from the date the Joint Appeal Record is due. The presiding official will then issue an expedited initial decision no later than 15 days from the close of the hearing. If no hearing is requested, a decision on the record will be issued within 30 days from the date of the Joint Appeals Record.

Any party may file a petition for Board review of the expedited initial decision 35 days from the date of the decision. The criteria for review are the same under both the voluntary expedited appeals procedure and the formal appeals procedure.

Dated June 22, 1984.
For the Board.

Herbert E. Ellingwood,
Chairman.

[FR Doc. 84-17025 Filed 6-28-84; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Carrots for Processing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the voluntary U.S. Standards for Grades of Carrots for Processing. Industry requested a revision to bring them in line with current cultural and processing practices by taking into account new technology used to harvest and prepare raw carrots for processing. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain the currency of its standards.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Michael V Morrelli, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2011.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as "nonmajor." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers, individual industries, Federal, State and local government agencies or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

This revision makes the following changes:

(1) Provides for the grading of carrots delivered in both topped and crowned form. The original standards applied to topped carrots only.

(2) Brings the U.S. No. 2 grade in line with current contractural arrangements by reducing from 25 to 15 percent the amount of unusable material allowed on carrots that are badly misshapen, excessively rough, or seriously damaged by any cause.

(3) Provides specific definitions for scoring watercore, oil spray, growth cracks, air cracks, freezing and soft rot.

(4) Specifies that carrots under 2 inches in length shall be considered unusable material.

(5) Updates the format of the standards.

A proposal to revise these standards was published in the Federal Register on January 5, 1984 (49 FR 603-605). Copies were widely distributed to interested growers, processors, and industry organizations for review and comment.

The period for comments ended on March 16, 1984 and written comments were received from two processing companies and a growers' cooperative. Respondents were in agreement with the proposal except on the scoring of uncrowned carrots, and the definitions of growth cracks and air cracks.

The growers' cooperative indicated that crowns or portions of crowns remaining attached to crowned carrots should not be removed and scored as unusable material, but that such carrots should be segregated from the crowned carrots and the percentage reported. Grower payments are based on the overall percentage of crowned carrots delivered.

A processing company pointed out that growth cracks more than one-eighth inch in width would not materially detract from the processing quality of the carrots. They also suggested that a specific definition for damage by air cracks be included in the standards. The foregoing minor changes from the proposal are incorporated in this final rule.

After careful review of comments presented by interested persons, the U.S. Department of Agriculture has determined that the issuance of these revised standards will benefit users in that they will be more in line with current cultural and processing practices.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

Accordingly, in Subpart—United States Standards for Grades of Carrots for Processing, §§ 51.4146 through 51.4157 are removed and §§ 51.4140 through 51.4145 and the table of contents for this Subpart are revised to read as follows:

Subpart—United States Standards for Grades of Carrots for Processing

Sec.
51.4140 General.
51.4141 Grades.
51.4142 Crowning or topping requirements.
51.4143 Size.
51.4144 Tolerances.
51.4145 Definitions.

Subpart—United States Standards for Grades of Carrots for Processing

§ 51.4140 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(b) The accompanying grades for carrots are intended to facilitate transactions between growers and processors who may wish to use a purchasing system based upon the quality of carrots delivered.

(c) In the application of these standards it is assumed that in most instances sellers will not sort their carrots into lots of U.S. No. 1 and U.S. No. 2 grades before delivery to the buyer. Upon delivery, the inspector will select representative samples and determine the percentage of each grade. Under such a procedure, there is no need for tolerances.

§ 51.4141 Grades.

(a) "U.S. No. 1" consists of carrots which meet the following requirements:
(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Firm;
(iii) Fairly well colored;
(iv) Fairly well formed;
(v) Fairly smooth; and,
(vi) Not woody.
(2) Free from: Unusable material.
(3) Free from damage by:
(i) Soft rot;
(ii) Growth cracks;
(iii) Sunburn;
(iv) Green core;
(v) Pithy core;
(vi) Watercore;
(vii) Internal discoloration;
(viii) Oil spray;
(ix) Freezing;
(x) Dry rot;
(xi) Other disease;
(xii) Insects; and,.
(xiii) Mechanical or other means.
(4) Free from serious damage by: Soft rot.

(b) "U.S. No. 2" consists of carrots which meet the following requirements:
(1) Basic requirements:
(i) Similar varietal characteristics;
(ii) Firm;
(iii) Fairly well colored;
(iv) Not badly misshapen;
(v) Not excessively rough; and,
(vi) Not woody.
(2) Free from: Unusable material.
(3) Free from damage by: Soft rot.
(4) Free from serious damage by:
(i) Soft rot; and,
(ii) Any other cause.
(c) For crowning and topping requirements see § 51.4142.
(d) For size requirements see § 51.4143.
(e) For tolerances see § 51.4144.

§ 51.4142 Crowning or topping requirements.

(a) Carrots shall be specified as crowned or topped.

(1) Crowned carrots shall have the crowns cut off the root reasonably perpendicular to the longitudinal axis. All uncrowned carrots shall be separated from crowned carrots and the percentage of such carrots determined.

(2) Topped carrots shall have the tops or sprouts cut, snapped, or twisted off to within three-fourths inch of the crown of the root, or to any other specified length. All portions of leaf stems or sprouts over three-fourths inch long, or any other specified length, shall be considered as unusable material (section 51.4145).

§ 51.4143 Size

(a) Unless otherwise specified, the minimum length shall be not less than 3 inches, provided that roots under 2 inches in length shall be considered unsable material.

(b) The minimum and maximum diameters for U.S. No. 1 and U.S. No. 2 grades may be specified by agreement between the buyer and the seller.

§ 51.4144 Tolerances.

In the application of these standards to determine the percentages of carrots in the lot which meet the requirements of the respective grades, no tolerances apply. However, for the purpose of determining compliance with one of the foregoing grades the following tolerances, by weight, are provided in order to allow for variations incident to proper grading and handling:

(a) For defects. Ten percent for carrots in any lot which fail to meet the requirements of the specified grade, including therein not more than 3 percent for carrots which are damaged by soft rot and included in this latter amount not more than 1 percent for carrots which are seriously damaged by soft rot.

(b) For unusable material. Two percent in any lot.

(c) For size. Ten percent for carrots in any lot which fail to meet the specified size requirements, included therein not more than 5 percent for carrots which fail to meet the specified minimum diameter or length.

§ 51.4145 Definitions.

(a) "Similar varietal characteristics" means that the carrots are of the same general type.

(b) "Firm" means that the carrot is not soft, flabby or shriveled.

(c) "Fairly well colored" means that the outside and inside color of the carrot is orange, orange red, or orange scarlet but not a pale orange or distinct yellow color.

(d) "Fairly well formed" means that the carrot is not forked, or materially crooked, or otherwise misshapen to the extent that, in the process of trimming, a loss of over 5 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(e) "Fairly smooth" means the carrot is not rough, ridged, or covered with secondary rootlets to the extent that, in the process of trimming, a loss of over 5 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(f) "Woody" means that the flesh of the carrot is tough and fibrous.

(g) "Unusable material" means pieces of carrots under 2 inches in length, loose tops, loose dirt, adhering caked dirt, weeds or other foreign matter, portions of attached tops or sprouts in excess of the specified length or, loose crowns or portions of crowns. Carrots with adhering caked dirt, and tops or sprouts longer than the required or specified length shall not be scored against U.S. No. 1 or U.S. No. 2 grades, but such material shall be removed from the carrot and scored as unusable material.

(h) "Diameter" means the greatest dimension of the root taken at right angles to the longitudinal axis.

(i) "Badly misshapen" means that the carrot is forked or misshapen to the extent that, in the process of trimming, a loss of over 15 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(j) "Excessively rough" means that the carrot is rough or ridged to the extent that in the process of trimming, a loss of over 15 percent, by weight, of the root is incurred in excess of that which would occur if the root were perfect.

(k) "Damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the processing quality of the carrot, or which cannot be removed in the process of trimming without a loss of more than 5 percent, by weight, in excess of that which would

occur if the root were perfect. The following specific defects shall be considered as damage:

(1) Watercore when moderately discolored.

(2) Oil spray when materially detracting from the processing quality of the carrot, or causing an oily flavor.

(3) Growth cracks when not smooth or not shallow, or when materially detracting from the processing quality of the carrot.

(4) Air cracks when excessively deep or wide, or when materially detracting from the processing quality of the carrot.

(5) Freezing when any amount affects the root.

(6) Soft rot when any amount affects the root.

(l) "Serious damage" means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the processing quality of the carrot, or which cannot be removed in the process of trimming without a loss of more than 15 percent, by weight, in excess of that which would occur if the root were perfect. The following specific defects shall be considered as serious damage:

(1) Watercore when severely discolored.

(2) Oil spray when seriously detracting from the processing quality of the carrot, or causing an oily flavor.

(3) Freezing when any amount affects the root.

(4) Soft rot when affecting more than 15 percent of the total weight of the root.

(Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended [7 U.S.C. 1622, 1624])

Done in Washington, D.C. on June 26, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-17428 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 470]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 300,000 cartons during the period July 1–7, 1984. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 1, 1984.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on June 26, 1984, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports that lemon demand is good.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

Section 910.770 is added as follows:

§ 910.770 Lemon Regulation 470.

The quantity of lemons grown in California and Arizona which may be handled during the period July 1, 1984, through July 7, 1984, is established at 300,000 cartons.

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

Dated: June 27, 1984.

Thomas R. Clark,

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

[FR Doc. 84-17515 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Suspension of Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends a sentence in § 989.67(j) of the Federal marketing order for California raisins dealing with the pricing of reserve raisins offered to handlers for free use. The suspension permits the value of handlers' 1983 crop free tonnage inventory to be adjusted downward closer to current world price levels. The California raisin industry is faced with a large supply of free raisins valued above the level warranted by current marketing conditions. A downward adjustment in the value of this supply will permit more aggressive marketing and increased product movement and help the industry become price competitive with foreign-produced raisins. To accomplish the adjustment, the Raisin Administrative Committee will offer handlers one ton of 1983–84 crop reserve at $100 per ton for each ton of free raisins held by them on July 31, 1984. The suspended sentence required reserve raisins to be offered for free use at a price well above the $100 level and thus would not have allowed accomplishment of the necessary price adjustments. This action is part of an overall proposal recommended by the Raisin Administrative Committee, which works with the USDA in administering the order.

EFFECTIVE DATE: July 30, 1984. This suspension action will continue until July 31, 1986, the end of the 1985–86 crop year, at which time it will terminate and

the suspended sentence will be operational again.

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

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

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will have an impact on a substantial number of small entities. The net proceeds to equity holders resulting from the sale of reserve raisins under the Raisin Administrative Committee's proposal will be reduced to a point well below the cost of producing raisins. To the extent that such entities are equity holders in the reserve pool, this impact will be proportional to the size of their equities therein. However, it is recognized that the effects of this action on individual entities will vary depending on their financial conditions, but the impact is not expected to be significant. In the long-term, the benefits of becoming more competitive under current marketing conditions should outweigh any adverse short-term impact and result in benefits to both small and large entities. The domestic inventory adjustment accomplished through this action will permit an overall price reduction for raisins enabling the industry to compete more effectively with lower-priced foreign-produced raisins, and to more aggressively market raisins generally so as to maintain and expand existing domestic markets and develop new markets. With respect to small businesses that are not raisin producers or handlers, the impact of this action is difficult to quantify but is not expected to be significant. To the extent there is an effect on such individuals, it is likely to be positive as a result of increased raisin marketings at reduced prices.

Notice of this action was published in the June 5, 1984, issue of the Federal Register (49 FR 23193), and interested persons were afforded opportunity to submit written comments. Numerous comments were submitted, both for and against the proposal, in response to the notice. In addition, some comments in opposition to the Raisin Administrative Committee's (RAC) proposal were received before the notice was issued. These, too, were considered in this rulemaking action.

This action suspends the penultimate sentence in § 989.67(j) of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The sentence follows: "However, such raisins shall not be sold at a price below that which the committee concludes reflects the average price received by producers for free tonnage of the same varietal type purchased by handlers during the current crop year up to the time of any offer for sale of reserve tonnage by the committee on account of receiving, inspecting, storing, fumigating, insuring, and holding of said raisins, and including costs of taxes and interest; *Provided*, That, where the outlook for the next crop year or other factors have caused a downward trend in the prices received by producers for free tonnage raisins or in the prices received by handlers for free tonnage packed raisins, reserve tonnage may be sold to handlers at the currently prevailing or the approximate computed field price for free tonnage raisins, as determined by the committee."

The California raisin industry currently is facing a serious supply and marketing problem. The 1983 production of Natural (sun-dried) Seedless (NS) raisins totalled about 345,000 tons, 46 percent over the 4 year average (1979-1982) of 236,982 tons. At the same time, carrying of 1982 crops NS raisins on August 1, 1983 (the beginning of the 1983-84 crop year), was 84,503 tons or 49,503 tons more than considered desirable under the formula prescribed in § 989.54(a) for the computation of the trade demand for the 1983-84 crop year. Thus, the available supply of NS raisins totalled about 429,500 tons, 97 percent above the 4-year (1979-80 through 1982-83) average of shipments to all outlets of 217,500 tons. A major contributor to the excessive 1983 supply of raisins was the decision last year by several major wineries not to crush Thompson Seedless grapes. The raisin industry estimated that this resulted in the production of about 140,000 tons of raisins above what would otherwise have been expected. A number of commenters stated that during 1976-82, approximately 55 percent of the raisin variety grape production was dried into raisins, 29 percent was crushed for winemaking, and 16 percent was canned or shipped as fresh table grapes. However, in 1983, 74 percent of the raisin variety grape crop was dried into raisins, 14 percent was crushed for winemaking, and 12 percent canned or shipped fresh.

Another major factor affecting the marketing of raisins in domestic outlets thus far in the 1983-84 season has been a price level above that warranted by supply conditions. This price level was reached on the basis of prices paid to growers in 1982 when rain damage to the crop was originally estimated to be much greater than the actual outturn, coupled with the decision by the RAC not to invoke volume regulation that season because of the potential damage. The heavy holdings of high priced raisins from 1982 production contributed to the establishment of 1983 prices at a similar level. The 1983 free tonnage field price was $1,300 per ton.

Excessive supplies of raisins are not confined to the United States. One commentator estimated that world production of currants and raisins this year could exceed one million tons, whereas world consumption is slightly more than 600,000 tons. Some foreign raisins currently are available at prices of $550-650 per ton, f.o.b.

This differential between the price for California raisins and foreign raisins has existed for several years, and California raisins therefore have had difficulty competing in world markets. To counter this, RAC instituted an export incentive program during the 1982-83 crop year to make California raisins more competitive in world markets. Under this program, RAC sold 1983 crop reserve raisins to packers for $100 per ton to replace part of the raisins they exported. As a result, the value of exported raisins was averaged down and improved California's competitive position in most world markets. This program was continued into the 1983-84 season. However, competing in world markets is only one facet of the problem.

The high domestic price for California raisins is inducing imports of lower-priced foreign produced raisins. U.S. Bureau of Census data indicate that about 5,400 tons of raisins and currants were imported into the United States during the 1982-83 crop year (beginning August 1, 1982). This compares with 510 tons imported during the 1981-82 crop year and about 6 tons during 1980-81. Through April 1984, a little more than 2,700 tons were imported during the current 1983-84 crop year. The burdensome supply and the availability of cheap imported raisins caused a break in the domestic market during the 1983-84 crop year, and some handlers have been selling raisins in this year at a loss.

Commenters favoring suspension of the provision in § 989.67(j) admitted that the industry is in the worst economic position ever due to the large production domestically, as well as world-wide. The points most frequently raised by commenters were that the suspension was necessary (1) to compete with foreign price competition and protect the domestic market from foreign competition, (2) to cut back to reasonable levels on tonnage held in crop reserve pool and free tonnage inventory, (3) to encourage buyers to begin to make forward purchases which have ceased under the current uncertain conditions, and (4) to allow for the development of workable marketing plans for the September through December period which must be done as soon as possible. Other points raised included (1) no alternative plan has been offered, (2) without this plan, packers would begin purchasing raisins on a consignment basis with prices falling to world market levels, (3) high raisin prices have encouraged large plantings of Thompson Seedless grapes which produced more raisins than markets could use, (4) alternative disposal of raisins is limited to cattle feed providing growers with no return, (5) this action will help keep the distribution system intact, and (6) this action will prevent a substantial number of packers from going out of business.

The most frequent points raised by commenters opposed to the suspension of the sentence in question (and the remainder of RAC's proposal pertaining to the adjustment) were that it (1) will bring financial disaster and ruin to many growers, (2) will reward processors who have been poorest at marketing their raisins, since their inventories will be greatest on July 31, 1984, while punishing those who have been most efficient and therefore have a low inventory on July 31st, (3) is needed for survival of the packers, but will prompt the demise of a great number of growers, (4) will result in an overall price for raisins well below the cost of production, and (5) is not in the best interests of the producers and, therefore, the sentence should not be suspended without producers being given a formal hearing and the opportunity of voicing their opinions. One commenter made the statement that this single action would do more damage to growers than any other action under the marketing order since its beginning.

Other points raised by those in opposition included the following: (1) The July 31 inventory is to include unprocessed, as well as packaged raisins, making it possible to continue processing while holding packed raisins off the market, (2) if the suspension provision is approved, these packed raisins will flood the market even though they could have been sold over a longer period of time, many before July 31, 1984, (3) the industry should have a chance to develop an alternative just as the proponents had time in which they were able to prepare this proposal, (4) the prices being offered will not provide an opportunity to repay funds borrowed from lenders, (5) the matter is not an emergency because excess inventory has existed since October 1983, (6) the existing regulations provides some insurance for the grower if the new crop is destroyed, whereas the proposal gives title of reserve raisins to processors on August 1 with the possibility of a windfall profit for them in the event of rain damage this fall, (7) an equivalent reduction in prices could be accomplished without the proposed change, and (8) the farmer could sell the raisins himself at a price higher than what is being offered, and (9) the inventory adjustment program is contrary to § 989.67(d)(1) which provides for the sale of reserve to handlers in a manner so as to maximize producer returns.

Currently, uncommitted tonnage in the 1983–84 NS reserve pool approximates 95,000 natural condition tons. Projections by the industry are that carryout of free tonnage NS raisins on July 31, 1984, could approximate 80,000 tons. A sale of 80,000 tons of NS raisins from the 1983 reserve at $100 certainly will have a serious economic impact on the equity holders in that pool. Since all equity holders share pro rata in the distribution of the net proceeds, the impact would be in proportion to the size of their equity. Furthermore, it is recognized that the net return from the pool on this quantity will be well below the cost of production. Most recent data indicate that the cost of producing one ton of NS raisins is about $630.

However, the proposal would not be the first sale of 1983–84 NS reserve at below-production costs. About 100,000 tons of NS raisins have been released or are committed for release. Of that quantity, 30,000 tons is for livestock feed at $71.55 per ton, and about 70,000 tons for the export incentive program at $100 per ton. Consequently, season average grower returns for California raisins may average below $600 per ton for the 1983–84 season, and may be about one-third of the season average parity price.

Several alternatives to RAC's proposal were offered in the comments including delaying the decision to sell reserve raisins as proposed by RAC until October 1984. This would give the industry an opportunity to assess the crop and determine whether or not it had sustained any rain damage during harvest. However, any delay now would create uncertainty as to the disposition of the raisins in question and defeat the objective of the proposal. That is, packers and the trade must know with certainty soon whether or not the RAC proposal will be adopted in order to enable them to plan their sales operations accordingly. As indicated in the comments, the market is weak and few sales are being made now.

Another alternative proposal would allocate low-priced reserve raisins to packers who have aggressively sold their 1983 free tonnage raisins. This, too, would defeat the objective of the proposal; namely, to average down the value of packers' free tonnage inventory to the grower price established through negotiations between independent packers and the Raisin Bargaining Association for 1984 crop NS raisins. The field price has been established at $700 per ton.

A third proposed alternative would be to sell reserve raisins at $500 per ton rather than $100 per ton to equalize the loss between packers and growers. The problem inherent in the second proposal also applies to this proposal.

A fourth alternative proposed that RAC seek other outlets for reserve raisins, such as wineries. It was contended that wineries typically have paid $250 to $350 per ton for raisins. However, such prices were achieved under different circumstances and a sale of raisins this late in the season could impact negatively on sales of grapes to wineries this fall, with the result that any such unwanted grapes would be made into raisins.

A fifth alternative proposed was that §§ 989.65, 989.66, and 989.67 of the order be suspended. These provisions deal with the holding and disposition of reserve raisins. However, the commenter made no recommendation with respect to the disposition of the remainder of the 1983–84 reserve. An immediate release of the reserve could prove disastrous from the standpoint of the orderly marketing of California's 1984 raisin production. Furthermore, there is no assurance that handlers would be willing to pay more for that tonnage than the amount ($100 per ton) in the RAC's proposal.

Pursuant to § 989.67 (a) and (d)(1) the RAC is charged with responsibility of disposing of all reserve tonnage in such manner as to achieve, as nearly as may be practical, maximum disposal of such raisins by the time reserve tonnage raisins from the subsequent crop year are available. Paragraph (d)(1) also charges the RAC with selling reserve to handlers at prices and in a manner intended to maximize producer returns. Some opponents contended that, under this provision, RAC should have offered the reserve raisins to wineries, which have traditionally paid more than $100 per ton for raisins. However, RAC must look to the long-term, as well as short-term, consequences of its proposals. In this case, RAC had to balance the short-term objective of maximizing producer returns from disposition of the 1983–84 against the long-term objective of orderly marketing of raisins. As indicated previously, a sale of reserve to wineries this late in the season could impact negatively on the orderly marketing of the 1984 crop.

Therefore, after consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by RAC, the comments, and other information, it is determined that (1) there has been a change of economic or marketing conditions so as to warrant sale of reserve raisins to handlers to provide them with raisins to sell as free tonnage, pursuant to § 989.67(j), and (2) under the conditions presently existing in the raisin industry, the penultimate sentence in § 989.67(j) does not now tend to effectuate the declared policy of the act and is hereby suspended pursuant to § 989.91(b). However, such suspension shall continue only through July 31, 1986, at which time it shall terminate and the suspended sentence will become operative again beginning August 1, 1986.

§ 989.67 [Amended]

Therefore, the penultimate sentence in § 989.67(j) is hereby suspended through July 31, 1986.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

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

Dated: June 27, 1984.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-17461 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 84-044]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations in 9 CFR Part 53 by authorizing the Department to cooperate with States in the control and eradication of lethal avian influenza (a disease of poultry caused by any form of H5 influenza virus that has been determined by the Deputy Administrator, Veterinary Services, to have spread from the 1983 outbreak in poultry in Pennsylvania) and to pay up to 100 percent of the expenses of "purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to" lethal avian influenza. The rule is necessary in order to help prevent the spread of lethal avian influenza.

DATE: Effective date is June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dr. William W. Busch, Chief, National Emergency Field Operations Staff, VS, APHIS, USDA, Room 747, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8073.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 53 (referred to below as the regulations), among other things, provide for a Federal-State cooperative program for the "purchase, destruction, and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to" communicable diseases of livestock or poultry under certain emergency situations. On January 27, 1984, an interim rule was published in the Federal Register (49 FR 3446–3448) which amended § 53.1 of the regulations to provide that the regulations would apply to lethal avian influenza and to allow the Department to pay up to 100 percent of the expenses of purchase, destruction, and disposition of poultry and materials required to be destroyed because of lethal avian influenza. Also, for purposes of clarification, the document of January 27, 1984, amended the regulations to define the term "bird" as "any member of the class of aves other than poultry" and to define the term "poultry" as "chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl."

The interim rule was made effective on the date it was signed, January 25, 1984. Comments were solicited for 60 days following publication of the interim rule. No comments were received. The factual situation which was set forth in the document of January 27, 1934, still provides a basis for the amendments.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this action will not have a significant annual effect on the economy, will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of Part 53, indemnity has been authorized for the expenses of purchase, destruction, and disposition of poultry and materials required to be destroyed because of being contaminated by or exposed to lethal avian influenza. Approximately $5,820,000 in indemnity has been paid in Maryland and Virginia pursuant to these provisions. This indemnity was paid for the destruction of poultry and materials from one flock in Maryland and 62 flocks in Virginia. It is anticipated that the total amount paid in indemnity pursuant to these provisions will be less than $10,000,000 and that the total number of poultry flocks for which indemnity will be paid pursuant to these provisions will be significantly less than 0.5 percent of the poultry flocks in the United States.

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

Under these circumstances, Mr. Bert W. Hawkins, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock and livestock products, Poultry and poultry products, Exotic newcastle disease, Foot-and-mouth disease, Highly pathogenic avian influenza, Pleuropneumonia.

Accordingly, the interim rule concerning lethal avian influenza which was published at 49 FR 3446–3448 on January 27, 1984, is adopted without change as a final rule.

Authority: Sec. 3, 23 Stat. 32, as amended, sec. 2, 32 Stat. 792, as amended, sec. 11, 58 Stat. 734, as amended; 21 U.S.C. 111, 114, 114a, unless otherwise noted; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 26th day of June 1984.

W. E. Ketter,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 84-17427 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-ACE-5]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Realignment of VOR Federal Airways V-73 and V-256

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This rule realigns VOR Federal Airway V-73 from the Tulsa VORTAC direct to the Wichita VORTAC. It also realigns VOR Federal Airway V-256 from Tulsa direct to the FRAKS Intersection direct to the Pioneer VORTAC. This action is taken to reestablish a lower minimum en route altitude (MEA) and more effectively utilize available airspace.

DATES: Effective date—August 30, 1984. Comments must be received on or before August 13, 1984.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 84-ACE-5, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

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

The Rule

The purpose of this amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to realign two VOR Federal Airways to achieve more efficient use of available airspace. The Wichita, KS, VORTAC was relocated and commissioned on November 4, 1983. When the associated airways were realigned, it was decided to change only that portion of V-73 between FRAKS Intersection and the Wichita VORTAC. V-73 from FRAKS to the Tulsa VORTAC remained in the original position. As a result, the airway now has a one degree dogleg in it at FRAKS and it was necessary to increase the MEA from 3,400 feet to 6,500 feet. The increase was required because the navigational changeover point was established at FRAKS Intersection rather than the midpoint location. The realignment affecting V-73 and FRAKS Intersection also creates a need to realign V-256. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6 dated January 3, 1984.

This action reduces a burden on airspace users and is so minor in nature that the FAA does not anticipate significant public interest. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and that good cause exists for making this amendment effective coincident with the next charting date.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, August 30, 1984, as follows:

§ 71.123 [Amended]

V-73 [Amended]

By deleting the words "via INT Tulsa 319° and Wichita, KS, 136° radials;" and substituting the words "Wichita, KS;"

V-256 [Amended]

By deleting the word "319°" and substituting the word "318°"

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

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

Issued in Washington, D.C., on June 22, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-17331 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 77N-0132]

GRAS Status of Calcium Hydroxide and Calcium Oxide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that calcium hydroxide and calcium oxide are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Effective July 30, 1984. The Director of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1205 and 184.1210 effective on July 30, 1984.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487

SUPPLEMENTARY INFORMATION: In the Federal Register of August 16, 1977 (42 FR 41299), FDA published a proposal to affirm that calcium hydroxide and calcium oxide are GRAS for use as direct human food ingredients, and that calcium hydroxide is GRAS for use as an indirect human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients. However, the proposal failed to propose to delete calcium hydroxide from Part 182 (21 CFR Part 182). Consequently, in the Federal Register of June 25, 1982 (47 FR 27818), FDA published a tentative final rule in which the agency announced its intention to delete calcium hydroxide as well as calcium oxide from Part 182. The tentative final rule explained that the statement of intent to remove calcium hydroxide from Part 182 had inadvertently been omitted from the August 16, 1977 proposal. In addition, the tentative final rule proposed not to include a separate listing of the indirect uses of calcium hydroxide and calcium oxide in 21 CFR Part 186 because the indirect uses of these substances are authorized under §§ 184.1205, 184.1210, and 184.1(a) (21 CFR 184.1205, 184.1210, and 184.1(a)). However, the tentative final rule made no changes in the conditions of use in the proposed GRAS affirmation regulations for these substances. Both proposed § 184.1205 and proposed § 184.1210 contained food categories, maximum use levels, and technical effects. FDA provided an opportunity for public comment on the contents of the tentative final rule.

Two comments were submitted in response to the tentative final rule.

1. Both comments requested that FDA delete the description of the current good manufacturing practice conditions of use for calcium hydroxide and calcium oxide from the GRAS affirmation regulations. One of the comments asserted that in similar cases, the agency had adopted GRAS affirmation regulations that stated only that the ingredients were to be used in food in accordance with current good manufacturing practice. The comments further pointed out that the Select Committee on GRAS Substances (the Select Committee) of the Federation of American Societies for Experimental Biology (FASEB) had concluded that calcium oxide and calcium hydroxide are safe, and that FDA had concurred with that conclusion. One comment asserted that listing specific conditions of use in the regulation restricts innovative uses of these ingredients. The comment requested that if FDA did decide to deny the request for no use limitation other than current good manufacturing practice, it should increase the maximum use levels for calcium hydroxide in dairy product analogs from 0.45 percent to 1.5 percent.

FDA has reviewed these comments. In the Federal Register of October 19, 1983 (48 FR 48457, 48458), FDA published a final rule that amended the GRAS procedural regulations to clarify the circumstances in which the agency would describe the current good manufacturing practice conditions of use for a substance in a GRAS affirmation regulation. Based on the considerations discussed in that document, the agency has determined that it is appropriate to delete the food categories, maximum use levels, and technical effects from the GRAS affirmation regulations for calcium hydroxide and calcium oxide. Both the Select Committee and the agency have concluded that a large margin of safety exists for the use of these ingredients, and that a reasonably foreseeable increase in the level of consumption of these ingredients will not adversely affect human health. Further, both of these ingredients have multiple purposes in food and are used in a large number of food categories. Accordingly, the agency has concluded that listing conditions of use for these ingredients is not necessary to ensure their safe use. Therefore, the agency has modified §§ 184.1205 and 184.1210 by deleting the conditions of use other than current good manufacturing practice from these regulations in accordance with § 184.1(b)(1).

With regard to innovative or increased uses of these ingredients, the agency concludes that the listing of these ingredients in Part 184 with no conditions of use other than current good manufacturing practice gives ample latitude for innovative or increased uses of these ingredients.

2. One comment requested that calcium hydroxide not be deleted from Part 182.

FDA has reviewed this request. FDA finds that the comment has not provided any basis for continuing to list this substance as GRAS in Part 182 instead of affirming it as GRAS in Part 184. Accordingly, the agency is denying this request.

The agency has previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 182 and 184 are amended as follow:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.90 [Amended]

a. In § 182.90 *Substances migrating to food from paper and paperboard products* by removing "Calcium hydroxide (lime)" from the list of substances.

§§ 182.1205, 182.1210, 182.8210 [Removed]

b. By removing § 182.1205 *Calcium hydroxide,* § 182.1210 *Calcium oxide,* and § 182.8210 *Calcium oxide.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1205, to read as follows:

§ 184.1205 Calcium hydroxide.

(a) Calcium hydroxide ($Ca(OH)_2$, CAS Reg. No. 1305–62–0) is also known as slaked lime or calcium hydrate. It is produced by the hydration of lime.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 52, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

b. By adding new § 184.1210, to read as follows:

§ 184.1210 Calcium oxide.

(a) Calcium oxide (CaO, CAS Reg. No. 1305–78–8) is also known as lime, quick lime, burnt lime, or calx. It is produced from calcium carbonate, limestone, or oyster shells by calcination at temperatures of 1,700–2,450 °F

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 55, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective July 30, 1984.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a)))

Dated: June 18, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-17318 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Trimethoprim and Sulfadiazine Oral Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for safe and effective oral use in horses of a combination antibacterial drug containing trimethoprim and sulfadiazine.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (formerly Bureau of Veterinary Medicine) (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed NADA 136–342 providing for oral use of Di-Trim® 400 Oral Paste (67 milligrams of trimethoprim and 333 milligrams of sulfadiazine per gram of paste) for treating certain bacterial infections in horses. The firm also holds approval for use of Di-Trim® Tablets and Di-Trim® 24% injection in dogs, and Di-Trim® 48% injection in horses. Use of the drug in horses is indicated where control of bacterial infections is required during treatment of acute strangles, respiratory infections, acute urogenital infections, wound infections, and abscesses. The NADA is approved, and the regulations are amended to reflect the approval. The basis of approval of the NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 520.2611 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 520.2611 *Trimethoprim and sulfadiazine oral paste* is amended in paragraph (b) by adding before the number "017220" the phrase "000033 and."

Effective date. June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 19, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17320 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Furosemide Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Med-Tech, Inc., providing for a safe and effective use of furosemide injection for treating horses for acute noninflammatory tissue edema.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Med-Tech, Inc., P.O. Box 338, Elwood, KS 66024 filed NADA 127-034 providing for use of furosemide injection for treating horses for acute noninflammatory tissue edema. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval of this NADA is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs, Injectable.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 522.1010 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), § 522.1010 *Furosemide injection* is amended in paragraph (b) by inserting after "000864" the phrase "and 013983."

Effective date. June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 25, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17317 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Parts 522 and 556

Animal Drugs, Feeds, and Related Products; Fenprostalene Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Syntex Agribusiness, Inc., providing for use of fenprostalene solution as an estrus synchronizer for beef and nonlactating dairy cattle in addition to use as an abortifacient in pregnant feedlot heifers. FDA is also establishing safe concentrations for fenprostalene residues in edible cattle tissues.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Syntex Agribusiness, Inc., 3401 Hillview Ave., Palo Alto, CA 94304, filed supplemental NADA 128-549 providing for subcutaneous use of Bovilene™ (fenprostalene) solution for estrus synchronization in beef and nonlactating dairy cattle. The product is currently approved for use as an abortifacient in pregnant feedlot heifers. The supplement is approved, and the regulations are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Additionally, the regulations are amended to establish the safe concentrations for fenprostalene residues in edible tissues of cattle. The safe concentrations refer to the concentrations of total residues considered safe in edible tissues. The agency has determined that a tolerance for a marker residue in a target tissue is not necessary because the level of residues in the edible tissues would not exceed the safe concentrations even with any foreseeable misuse of the drug.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Center's finding of no significant impact and the evidence supporting this finding, contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the Dockets Management Branch (address above).

List of Subjects

21 CFR Part 522

Animal drugs, Injectable.

21 CFR Part 556

Animal drugs, Foods, Residues.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. Part 522 is amended in § 522.914 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), by adding new paragraph (c), and by revising redesignated paragraph (e), to read as follows:

§ 522.914 Fenprostalene solution.

* * * * *

(c) *Related tolerances.* See § 556.277 of this chapter.

* * * * *

(e) *Conditions of use.* (1) *Amount.* 1 milligram (2 milliliters) subcutaneously per animal.

(2) *Indication for use.* For feedlot heifers to induce abortion when pregnant 150 days or less. For beef or nonlactating dairy cattle for estrus synchronization.

(3) *Limitations.* Subcutaneous use in cattle only. Feedlot heifers to induce abortion, single dose. Beef or nonlactating dairy cattle for estrus synchronization, a single dose or two doses 11 to 13 days apart. Do not use in pregnant animals unless abortion is desired. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

2. Part 556 is amended by adding new § 556.277, to read as follows:

§ 556.277 Fenprostalene.

A tolerance for marker residue of fenprostalene in cattle is not needed. The safe concentrations for the total residues of fenprostalene in the uncooked edible tissues of cattle are 10 parts per billion in muscle, 20 parts per billion in liver, 30 parts per billion in kidney, 40 parts per billion in fat, and 100 parts per billion in the injection site. As used in this section "tolerance" refers to a concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animal, and "safe concentrations" refer to the concentrations of total residues considered safe in edible tissues.

Effective date. June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 19, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17319 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

---

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin, Bacitracin Zinc, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by International Minerals & Chemical Corp., providing for increasing the ranges of bacitracin zinc and roxarsone which may be combined with monensin in manufacturing finished broiler feeds. The feeds are used for improved pigmentation and feed efficiency and for prevention of coccidiosis.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317

SUPPLEMENTARY INFORMATION: International Minerals & Chemical Corp., P.O. Box 207, Terre Haute, IN 47808, filed supplemental NADA 123-154 which provides for increasing the ranges of bacitracin zinc and roxarsone which may be combined with monensin in manufacturing finished broiler feeds. In the two currently approved three-drug combinations, the range of bacitracin zinc permitted by paragraph (f)((1) (xvi) and (xvii) of 21 CFR 558.355 is 30 to 50 grams per ton (g/ton) of feed. There are two ranges for roxarsone: 15 to 35 g/ton and 35 to 45 g/ton, respectively. This supplemental NADA increases the bacitracin zinc range to 4 to 50 g/ton and the roxarsone ranges to 15 to 45.4 g/ton. The supplemental NADA is approved. Amending paragraph (f)(1)(xvi) and (xvii) to reflect the increased ranges of bacitracin and roxarsone would result in repetition of drug concentrations. Therefore, paragraph (f)(1)(xvii) is being removed to avoid this situation. Paragraph (f)(1)(xvi) is amended appropriately. In addition, 21 CFR 558.78 and 558.530 are being amended by adding entries to reflect this approval. The entries should have been codified upon publication of the original approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEED

1. In § 558.78 by adding new paragraph (e)(3)(ix) to read as follows:

§ 558.78 Bacitracin zinc.

* * * * *

(e) * * *

(3) * * *

(ix) Monensin and roxarsone as in § 558.355.

2. In § 558.355 by revising the introductory text of paragraph (f)(1)(xvi), and by removing paragraph (f)(1)(xvii) and marking it reserved, as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(xvi) *Amount per ton.* Monensin, 90 to 110 grams, plus bacitracin zinc, 4 to 50 grams, and roxarsone, 15 to 45.4 grams (0.0017) percent to 0.005 percent).

* * * * *

(xvii) [Reserved]

* * * * *

3. In § 558.530 by adding new paragraph (f)(3)(xxii) to read as follows:

558.530 Roxarsone.

* * * * *

(f) * * *

(3) * * *

(xxii) Monensin and Bacitracin zinc as in § 558.355.

* * * * *

Effective date June 29, 1984.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: June 22, 1984.

Joseph A. Settepani,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 84-17315 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 610

[Docket No. 82N-0029]

Hepatitis Requirements; Amendment to Permit Shipment of Certain Blood Products Before Test for Hepatitis B Surface Antigen Is Completed

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations to permit, where written approval is obtained from the agency, shipment of certain blood products for further manufacturing, such as source leukocytes for manufacturing interferon, before the test for hepatitis B surface antigen (HB_sAg) is completed and the test results are received by the collection facility. This action is expected to ensure the continued availability of new and valuable blood products that are important to the medical community.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Drugs and Biologics (formerly National Center for Drugs and Biologics) (HFN-368), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 14, 1983 (48 FR 46815), FDA proposed to amend § 610.40 (21 CFR 610.40) of the biologics regulations to allow the shipment of certain blood products for further manufacturing before the test for HB_sAg is completed and the test results are received by the collection facility. FDA expects that promulgation of this rule will ensure the continued availability of new and valuable blood products, such as interferon, that are important to the medical community.

According to current information, the optimum production of interferon from source leukacytes is achieved within 24 hours after the collection of the source leukocytes. Consequently, there is a need to use the source leukocytes for manufacturing interferon as soon after collection as possible.

FDA proposed to amend § 610.40(b)(3) by deleting the last sentence which currently provides that, "Except for emergencies, blood, plasma or serum shall not be used as a biological product or issued for use in manufacturing a biological product, until the hepatitis B surface antigen testing is completed and the written results are in the possession of the collection facility." In place of the last sentence, FDA proposed to add new § 610.40(b)(4) to make clear that shipments of blood, plasma, serum or other blood products are permitted under certain conditions with written approval of FDA.

To obtain such an approval from FDA, the agency proposed that both the collection facility and manufacturing facility be required to establish specific procedures for collection, shipment, and quarantine of a product before testing is completed. These procedures are similar to the procedures described in the source leukocytes guideline that FDA made available in January 1981. The procedures include:

1. A system for communicating the test results to the manufacturing facility;

2. Procedures for quarantine at the collection facility of the untested or incompletely tested blood product and for quarantine of the blood product at the manufacturing facility until test results have been received;

3. Procedures at the manufacturing facility for identification and disposal of any blood product that is found HB_sAg reactive; and

4. Specific labeling warnings for the possibly infectious blood product while it is being shipped to ensure that persons handling such a blood product know that it may be infectious.

Use of control procedures such as those described above, where approved by FDA, will permit the shipment of blood, plasma, serum or other blood products for further manufacturing before test results for HB_sAg are received, while ensuring that such a product will be quarantined and will not be used in manufacturing until the test results are received by the manufacturing facility.

Interested persons were given 60 days to submit written comments regarding the proposed rule. FDA received one comment on the proposal and the comment fully supported the proposed rule.

As stated in the proposal, the amendment of § 610.40(b) is consistent with past agency practice regarding shipment of biological products. The agency currently interprets § 610.40(b)(3) as permitting the issuance of certain blood products, such as source leukocytes, from a collection facility to a manufacturing facility provided that the manufacturing facility does not use the product for further manufacturing until receipt of the hepatitis test results. However, by requiring the written approval of the Director, Office of Biologics Research and Review, and for such shipments, and by establishing specific procedures for the collection, shipment, and quarantine of the product before testing is completed, the amendment will better ensure the safety of all such shipments.

Accordingly, FDA is adopting the proposed regulation with a minor clarifying change. The agency is replacing the phrase "Director, Office of Biologics" with the phrase "Director, Office of Biologics Research and Review, Center for Drugs and Biologics," consistent with a recent reorganization within FDA (March 19, 1984; 49 FR 10163).

The agency has determined pursuant to 21 CFR 25.24(d)(10) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Section 610.40 of this rule contains collection of information requirements that were submitted for review and approval to the Director, Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned control number 0910-0163.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). In emergency situations or with written approval of the Director, Office of Biologics Research and Review, Center for Drugs and Biologics, the final rule would permit the shipment of any blood product for further manufacturing before the test for HB_sAg is completed and written test results are received by the collection facility. Thus, the final rule will relieve an apparent restriction on a specific segment of the biologics industry, which is expected to result in the increased production of a new and valuable resource (interferon) that is important to the medical community. Therefore, the agency concludes that the final rule is not a major rule as defined in Executive Order 12291. Further, the agency certifies that the final rule, if implemented, will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 610

Biologics, Labeling.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner

of Food and Drugs (21 CFR 5.10), Part 610 is amended in § 610.40 by removing the last sentence in paragraph (b)(3) and adding new paragraph (b)(4) to read as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

§ 610.40 Test for hepatitis B surface antigen.

* * * * *

(b) * * *

(4) Except as provided in this paragraph (b)(4), a collection facility shall not ship any blood product as a biological product or ship such a blood product where it is intended for use in manufacturing a biological product until the test for hepatitis B surface antigen is completed and the written test results are received by the collection facility. Notwithstanding the provisions of § 610.1 of this chapter, in the case of an emergency, or as otherwise approved in writing by the Director, Office of Biologics Research and Review, a collection facility may ship a blood product before the test for hepatitis B surface antigen is completed. To obtain approval for such shipments, the collection facility shall submit a description of the control procedures to be used by both the collection facility and the manufacturing facility to the Director, Office of Biologics Research and Review (HFN-800), Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205. The control procedures to be used by the collection facility and the manufacturing facility shall include, but may not be limited to, a system of communicating the test results to the manufacturing facility, use of specific labeling warnings for the product to ensure that persons handling the shipment know that it may be infectious, procedures for quarantine of the untested or incompletely tested product both at the collection facility and at the manufacturing facility, and a procedure at the manufacturing facility to identify, preclude use of, and dispose of any blood product that is received and later found to be reactive for hepatitis B surface antigen.

* * * * *

(Collection of information requirements approved by the Office of Management and Budget (OMB) under control number 0910-0168)

Effective date. July 30, 1984.

Dated: June 15, 1984.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-17316 Filed 6-28-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 800, 813, 880, 881, 882, 883, 884, 886, and 889

[Docket No. R-84-981; FR-1599]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Section 8 Housing Assistance Payments Programs; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the Federal Register on Thursday, May 10, 1984 (49 FR 19925), which implements a definition of income, establishes income limits for admission, sets rental payment levels and provides for reexamination of income for certain housing assistance programs. The action is necessary to correct typographical errors and other inadvertent minor errors.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, Washington, D.C. 20410, (202) 755-7084. (This is not a toll-free telephone number.)

Accordingly, the Department is correcting 24 CFR Part 813 and the accompanying preamble published on May 10, 1984 as follows:

1. On page 19927, column two, second paragraph, § 813.107(b)(3)" is corrected to read "§ 813.104(b)(3)", and in column three, the first full paragraph, "producting" is corrected to read "producing"

2. On page 19931, column two, first paragraph, the words "date of conversion" are corrected to read "day before conversion"

3. On page 19933, column three, the first full paragraph, "throughout the PHA's assisted housing projects" is corrected to read "throughout an owner or a State Agency's assisted housing projects"

4. On page 19934, column one, first paragraph, the words "or applying for the Program" are inserted between the words "Program" and "that".

5. On page 19936, column one, the second full paragraph, "final rule published today" is corrected to read "final rule to be published soon"

6. On page 19937, in § 813.102, in the definition of Elderly Family, "living with another person" is corrected to read "living with one or more persons"

7 On pages 19938 and 19939, in §§ 813.104 and 813.105, "June 1, 1984" is corrected in all six places where it appears to "July 1, 1984"

8. On page 19938, in § 813.105(c)(1), "882," is corrected to read "882, Existing Housing," and "§ 882.209(e)" is corrected to read "882.209(m)".

9. On page 19940, in §§ 813.107(c)(3) and (4), "September 30, 1984" in the two places where it appears, is corrected to read "June 30, 1984"

10. On page 19941, in § 813.107(c)(10), "July 1, 1984" is corrected to read "June 30, 1984", and "September 30, 1984" is corrected to read "July 1, 1984"

11. In § 813.107(c)(7), "paragraphs (b)(2)—(6)" is corrected to read "paragraphs (c)(1)—(6)"

12. In § 813.107(c)(8), (9), (10), and (11), "paragraphs (b)(2)" is corrected to read "paragraphs (c)(2)" in all five places where it appears.

13. On page 19941, in the second column, the section heading for § 813.109 appeared as part of the text of § 813.108. It should have been displayed as follows:

§ 813.109 Initial determination, verification, and reexamination of family income and composition.

14. On page 19942, in § 813.110(d), "Tenant Total Payments" is corrected to read "Total Tenant Payment"

15. In § 813.110(f), the heading is corrected to read *"Calculation of Retroactive Adjustment"*

16. In § 813.110(g), the heading is corrected to read *"Actual Adjustments"*.

17 In §§ 880.603(c)(2), 881.603(c)(2), 883.704(c)(2), 884.218(b), and 886.124(b), "the Owner must make" is corrected to read "the Owner must consult with the Family and make"

Dated: June 26, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations, Department of Housing and Urban Development.

[FR Doc. 84-17351 Filed 6-28-84; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Parts 904, 905, 913, 960, and 965

[Docket No. R-84-1144; FR-1882]

Definition of Income, Income Limits, Rent and Reexamination of Family Income for the Public and Indian Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule that appeared in the Federal Register on Monday, May 21, 1984 (49 FR 21475), which implements a definition of income, establishes income limits for admission, sets rental payment levels, and provides for reexamination of income for certain housing assistance programs. The action is necessary to correct typographical errors and other inadvertent minor errors.

FOR FURTHER INFORMATION CONTACT: Sally Warner Watts, Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, Washington, D.C. 20410, (202) 755-7084. (This is not a toll-free telephone number.)

Accordingly, the Department is correcting 24 CFR Part 913 and the accompanying preamble published on May 21, 1984 as follows:

1. On page 21476, column three, last paragraph, "Title 24 of the regulations" is corrected to read "Title 24 for the regulations"

2. On page 21480, column two, line seven, "case" is corrected to read "cases"

3. On page 21482, column one, the first full paragraph, "annual and interim reexaminations" is corrected to read "annual reexaminations"

PART 913—[AMENDED]

4. On page 21483, column one, the first full paragraph, "§ 913.107(c)(ii)" is corrected to read "§ 913.107(c)(1)(ii)"

5. On page 21485, column one, the first full paragraph, "file rule published today" is corrected to read "final rule published on May 10, 1984"

6. On page 21485, in § 913.102, in the definition of Elderly Family, "another person" is corrected to read "one or more persons"

7 On page 21486, in § 913.105(b), "request for a PHA" is corrected to read "request by a PHA"

8. On page 21488, in §§ 913.107 (c)(3) and (c)(6), "occupancy on July 1, 1984" is corrected to read "occupancy on June 30, 1984"

9. In § 913.107(c)(6), "Annual Income and Annual Income After Allowances" is corrected to read "Total Family Income and Family Income"

10. In § 913.109(a), "Tenant Rent" is corrected to read "Total Tenant Payment"

11. On page 21489, in § 913.110(b), "for who" is corrected to read "for whom"

12. In § 913.110(c), "Annual Income" is corrected to read "income for eligibility"

13. In § 913.110(d), "Tenant Total Payment" is corrected to read "Total Tenant Payment"

14. In § 913.110(f)(1), "Annual Income" is corrected to read "Total Family Income"

PART 904—[AMENDED]

15. On page 21490, in § 904.107(j)(2), the last sentence is removed and the following two sentences are inserted in its place to read as follows: "If the LHA receives information concerning a change in the Family's income or other circumstances between regularly scheduled reexaminations, the LHA must consult with the Family and make any adjustments determined to be appropriate. Any change in the Family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified."

Dated: June 26, 1984.

Grady J. Norris,

Assistant General Counsel for Regulations, Department of Housing and Urban Development.

[FR Doc. 84-17359 Filed 6-28-84; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. After such a committee has investigated conditions in American Samoa, it recommends minimum wage rates which must be published in the Federal Register and which become the new wage rates. Industry Committee No. 16 for American Samoa has completed its review and established new minimum wage rates, which are published herewith.

EFFECTIVE DATES: The wage rates specified in § 697.1 shall be effective as follows:

Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (n) are effective on July 1, 1984.

Paragraph (m) is effective on October 1, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Valin, Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S3502, Washington, DC 20210, Telephone: 202-523-8353.

SUPPLEMENTARY INFORMATION: Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and by means of Administrative Order No. 657 (49 FR 8313), the Secretary of Labor appointed and convened Industry Committee No. 16 for Industries in American Samoa, referred to the Committee the question of the minimum rate or rates of wages to be paid under section 8 of the act of such employees, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted pursuant to the notice, the Committee has filed with the Administrator of the Wage and Hour Division of the Department of Labor a report containing its findings of fact and recommendations with respect to the matters referred to it.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, the recommendations of Industry Committee No. 16 are hereby published, revising §§ 697.1 and 697.3 of Part 697, Title 29, Code of Federal Regulations.

Because, under sections 5, 6, and 8 of the Fair Labor Standards Act and 29 CFR 511.18, the Department has no authority to disapprove the recommended rates set by the industry committee, the Department finds, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public procedure thereon under the Administrative Procedure Act are not necessary.

The wage rates for government employees apply only to employees of the Government of American Samoa and its political subdivisions who are engaged in nontraditional activities. In *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), the Supreme Court held that the minimum wage and overtime provisions of the Fair Labor Standards

Act are not constitutionally applicable to the integral operations of the States and their political subdivisions in areas of traditional governmental functions. According to the Court, such functions include among others, schools and hospitals, fire prevention, police protection, sanitation, public health, and parks and recreation. Nontraditional functions, however, continue to be covered by the Fair Labor Standards Act. While this decision dealt with the 50 States and their political subdivisions, it is apparent, as a matter of statutory interpretation, that the restrictions imposed as a result of *National League of Cities* should be the same in American Samoa.

Determinations of whether particular functions are traditional will be made by the Courts or by the U.S. Department of Labor on a case-by-case basis. Determinations that particular functions are nontraditional will be published in the Federal Register in the form of amendments to Title 29 CFR 775.3. A determination was issued by the Wage and Hour Division of the Department of Labor on August 14, 1979, that American Samoa Government's communication system, electric utility, marine railway and liquor store should be considered nontraditional activities since these operations appear to be essentially no different from regular commercial operations in the United States. The amendment to Regulations Part 775.3 incorporating these earlier decisions was published in the Federal Register on December 21, 1979.

The rates set forth herein for government workers apply only to such activities as are determined to be nontraditional. This document was prepared under the direction and control of Deputy Administrator Herbert J. Cohen, Wage and Hour Division.

Classification

This rule is not classified as a "rule" under Executive Order 12291 on Federal Regulations because the Department is simply complying with the statutory requirement of publishing the recommendations of an industry committee in accordance with sections 5, 6, and 8 of the Fair Labor Standards Act. Pursuant to such sections, the Department is required to approve the recommendations of such industry committee and to publish such recommendations in the Federal Register. The performance of such a ministerial act by the Department does not constitute the promulgation of a "rule" under E.O. 12291.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See: 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 697

Minimum wages, American Samoa.

Accordingly, Part 697 of Chapter V of Title 29, Code of Federal Regulations, is amended as set forth below.

PART 697—INDUSTRY IN AMERICAN SAMOA

Part 697 of Title 29 CFR is amended as follows:

1. The authority citation for Part 697 reads as follows:

Authority: Secs. 5, 6, 8, 52 Stat., 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 (a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1), is revised to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is $2.67 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.82 an hour thereafter.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedore, lighterage and maritime shipping agency activity, is $2.65 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.80 an hour thereafter. The minimum wage for classification B, all other activities, is $2.53 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.67 an hour thereafter.

* * * * *

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is $2.23 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.35 an hour thereafter.

* * * * *

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $2.65 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.80 an hour thereafter.

* * * * *

(e) *Construction industry.* (1) The minimum wage for this industry is $2.25 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.38 an hour thereafter.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $1.68 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.77 thereafter.

* * * * *

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $1.94 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.05 and hour thereafter.

* * * * *

(h) *Laundry and dry cleaning industry.* (1) The minimum wage for this industry is $1.38 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.46 an hour thereafter.

* * * * *

(i) *Bottling and dairy products industry.* (1) The minimum wage for this industry is $1.93 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.04 an hour thereafter.

* * * * *

(j) *Printing and publishing industry.* (1) The minimum wage rate for this industry is $2.19 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.31 an hour thereafter.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage rate for this industry is $2.42 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $2.56 an hour thereafter.

* * * * *

(l) *Private hospital and education institutions industry.* (1) The minimum wage rate for this industry is $1.74 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.84 an hour thereafter.

* * * * *

(m) *Government employees industry (nontraditional activities).* (1) The minimum wage rate for this industry is $1.87 an hour for a period of 1 year following the October 1, 1984 effective date specified in § 697.3 and $1.97 an hour thereafter.

* * * * *

(n) *Miscellaneous activities industry.* (1) The minimum wage rate for this industry is $1.75 an hour for a period of 1 year following the July 1, 1984 effective date specified in § 697.3 and $1.85 an hour thereafter.

* * * * *

3. Section § 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective as follows:

(a) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (n) of § 697.1 are effective on July 1, 1984.

(b) Paragraph (m) of § 697.1 is effective on October 1, 1984.

Signed at Washington, D.C. this 25th day of June 1984.

William M. Otter,

Administrator, Wage and Hour Division, U.S. Department of Labor.

[FR Doc. 84-17328 Filed 6-28-84; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Ch. XII

[DLA Reg. 4105.1]

Removal of the Defense Logistics Procurement Regulation

AGENCY: Defense Logistics Agency, DOT.

ACTION: Final rule.

SUMMARY: The Defense Logistics Procurement Regulation (DLPR) published in Title 32, Subtitle B, Chapter XII of the Code of Federal Regulations is being removed from the Code of Federal Regulations. The DLPR in the CFR has been superseded both by a later March 1983 edition and an April 1984 edition under the Federal Acquisition Regulations System (see 48 CFR Ch. 1). The April 1984 edition retitles the DLPR to the Defense Logistics Acquisition Regulation. The removal of the outdated edition of the DLPR from the CFR will preclude use of the regulation for DLA contracting purposes.

EFFECTIVE DATE: February 28, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret J. Janes, 202-274-6431.

SUPPLEMENTARY INFORMATION: The April 1984 edition of the Defense Logistics Acquisition Regulation has not yet been printed. It has been distributed within the Defense Logistics Agency only with an effective date for use in the Agency's contracting actions of 1 April 1984. It is anticipated that copies of the Defense Logistics Acquisition Regulation will be available from the Superintendent of Documents, Government Printing Office, Washington D.C. 20402 in the September 1984 time frame.

Removed. For reasons set out in the preamble, Subtitle B, Chapter XII, consisting of Parts 1200 through 1250 and Appendix E, are removed.

Authority: 10 U.S.C. Ch. 137.

Raymond F. Chicca,

Executive Director, Contracting, Defense Logistics Agency.

[FR Doc. 84-17330 Filed 6-28-84; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 82-025]

Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: On April 24, 1984, the entire part containing Coast Guard regulations on drawbridge operations was revised and the sections renumbered. Since that time, three rules were published which amend the old regulations rather than those in the April 24, 1984 version. This action corrects these discrepancies and republishes the rules in the new format without substantive change.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Alfred T. Meschter, 202-426-0942.

SUPPLEMENTARY INFORMATION: On April 24, 1984 the Coast Guard published a final rule in the Federal Register (49 FR 17450) completely revising its drawbridge operation regulations in 33 CFR Part 117 Three rules were published after April 24 which amend certain sections as they existed before April 24. The three rules are being corrected to fit the new numbering system and format without substantive change.

Coast Guard Docket No. 13-84-01 (49 FR 17940; April 26, 1984) amended old § 117.795 by changing the Lake Washington Ship Canal bridges opening times from "12 midnight to 8 a.m." to "11 p.m. to 7 a.m." This provision now appears in § 117.1051(d)(1) in the revision.

Also, this docket added a paragraph (3) to old § 117.795(b) concerning posting of bridge operating rules. This provision is already contained in § 117.55 of the revision and is, therefore, deleted as redundant.

Coast Guard Docket No. 7-83-04 (49 FR 17939; April 26, 1984) amended old § 117.245 adding rules for the Mathers Bridge across the Banana River in Indian Harbor Beach, Florida. This bridge would now be placed in § 117.263(a) of the revision and NASA Causeway bridge moved to paragraph (b).

Coast Guard Docket No. 7-83-21 (49 FR 19318; May 10, 1984) amended old § 117.245(h)(12-b) to require advance notice of openings during certain periods for the Houlihan (US17) Bridge across the Savannah River in Savannah, Georgia. This provision would now appear in § 117.371(a) of the revision.

This rulemaking also corrects the citation for 33 CFR Part 117 by deleting 49 U.S.C. 1655(g)(2) which has been repealed.

This rulemaking action is purely administrative in nature and merely corrects section numbering and format without substantive change in order to facilitate the July 1, 1984 codification of Title 33, Code of Federal Regulations. Therefore, the Coast Guard finds that notice and public procedure thereon are unnecessary and contrary to the public interest and that the rule may be made effective in less than 30 days under 5 U.S.C. 553(d).

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE REQUIREMENTS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended to read as follows:

1. The authority citation for Part 117 is revised to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5).

§ 117.245 [Amended]

2. Amend § 117.245 by removing the section heading and paragraph (h)(12-b) (see 49 FR 19318, May 10, 1984) and paragraph (h)(27a) (see 49 FR 17940, April 26, 1984).

3. By revising § 117.263 to read as follows (see 49 FR 17465, April 24, 1984):

§ 117.263 Banana River.

(a) The draw of the Mathers (SR A-1-A) Bridge, mile 0.5 at Indian Harbor Beach, shall open on signal; except that, from 10 p.m. to 6 a.m. Monday through Friday except Federal holidays, the draw shall open on signal if at least two hours notice is given.

(b) The draw of the NASA Causeway bridge, mile 27.6 at Cape Canaveral, shall open on signal if at least four hours notice is given to the NASA Security Office by telephone or in person.

4. By revising § 117.371 to read as follows (see 49 FR 17468, April 24, 1984):

§ 117.371 Savannah River.

(a) The draw of the Houlihan (US17) Bridge, mile 21.6 at Savannah, shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times, the draw shall open on signal if at least three hours notice is given. Contact may be made by VHF radiotelephone maintained at the bridge tender's house during the hours of operation and at the Thunderbolt Bridge 24 hours daily.

(b) The draw of the Seaboard System Railroad bridge, mile 60.9, shall open on signal from 6 a.m. to 11 a.m. and from 12 noon to 3 p.m. At all other times, the draw shall open on signal if at least three hours notice is given. Contact may be made by VHF radiotelephone maintained at the bridge tender's house and the dispatcher's office in Savannah.

(c) The draw of the Seaboard System Railroad bridge, mile 135.4 near Augusta, shall open on signal if at least three hours notice is given.

117.795 [Amended]

5. By removing the section heading and paragraphs (b)(2) and (b)(3) of § 117.795 (see 49 FR 17940, April 26, 1984).

6. By revising paragraph (d)(1) of § 117.1051 to read as follows (see 49 FR 17492, April 24, 1984):

117.1051 Lake Washington ship canal.

* * * * * *

(d) * * *

(1) The draws shall open on signal; except that, the draws need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. monday through Friday except Federal holidays for vessels of less than 1,000 tons, unless the vessel has a vessel in tow of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified. The draws shall open on signal from 11 p.m. to 7 a.m. if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue bridge at mile 2.6.

* * * * *

Dated: June 26, 1984.

T. J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 84-17389 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 162

[CGD 78-151]

Inland Waterways Navigation Regulations; Connecting Waters From Lake Huron to Lake Erie; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published at 49 FR 18297 on April 30, 1984 which established navigation regulations for the connecting waters from Lake Huron to Lake Erie. Certain of the names which describe geographic points and features in the regulations are technically incorrect. This correction will insure that the descriptions of physical points within the navigation regulations are wholly consistent with descriptions contained in the Coast Guard Light Lists, the U.S. Coast Pilot and navigational charts of the area.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Larue, U.S. Coast Guard, Office of Marine Environment and Systems, (202) 426-4958.

SUPPLEMENTARY INFORMATION: In response to the Notice of Proposed Rulemaking (NPRM) which preceded the final rule (48 FR 25231, June 6, 1983), the Coast Guard received comments from the National Ocean Service which pointed out certain misnomers in the proposed rule. The final rule incorporated the suggested revisions. Subsequently however, the National Ocean Service has notified the Coast Guard that the final rule contains technical errors in the description of certain geographic points which were overlooked in the NPRM.

The Coast Guard is correcting the final rule to provide the technically proper names for geographic points within the rule. This will insure that the names given for specific points in the navigation regulations remain consistent with those in charts, the U.S. Coast Pilot and other publications relied on by mariners.

PART 162—[AMENDED]

Accordingly, the Coast Guard is correcting FR Doc. 84-11615 appearing in the Federal Register on Monday, April 30, 1984 at page 18297, as follows:

(1) On page 18301:

In § 162.130(a), "Rouge River" is corrected to read "River Rouge"

In § 162.130(c), "Rouge River" is corrected to read "River Rouge" in each place it appears (2 places).

In the table within § 162.132(e) "port Huron Traffic Buoy" is corrected to read "Port Huron Traffic Lighted Buoy"

In § 162.132(f)(3)(i) through (f)(3)(iii), "Rouge River" is corrected to read "River Rouge" at each place (three places) it appears.

(2) On Page 18302:

In § 162.134(a)(3) "Fighting Island South Light" is corrected to read "Fighting Island Channel South Light"

In § 162.134(a)(4) "Peach Island" is corrected to read "Peche Island"

In § 162.134(b) "Rouge River" is corrected to read "River Rouge" at each place it appears (two places).

In § 162.134(c)(2) "Lake Huron Cut Light Buoy" is corrected to read "Lake Huron Cut Lighted Buoy"

In § 162.134(c)(2) "Port Huron Traffic Buoy" is corrected to read "Port Huron Traffic Lighted Buoy"

In § 162.134(c)(2)(iv) "Port Huron Traffic Buoy" is corrected to read "Port Huron Traffic Lighted Buoy" at each place it appears (two places).

In § 162.138(a)(2) "Peach Island" is corrected to read "Peche Island".

In § 162.138(a)(3) "Rouge River" is corrected to read "River Rouge"

In the note following § 162.138(a) "Peach Island" is corrected to read "Peche Island"

Dated: June 26, 1984.

R. L. Brown,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc. 84-17383 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket RM 83-3A]

Compulsory License for Cable Systems

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is issuing final regulations, amending 37 CFR 201.17 These regulations implement portions of section 111 of the Copyright Act of 1976, title 17 of the United States Code. That section prescribes conditions under which cable systems may obtain a compulsory license to retransmit copyrighted works by filing periodic Statements of Account and by paying copyright royalties, based on rates originally established by the Copyright Act and subsequently adjusted by the Copyright Royalty Tribunal. The purpose of these final regulations is to

implement the Tribunal's October 20, 1982 cable rate adjustment (47 FR 52146; November 19, 1982) by notifying cable systems of revised forms and procedures and by providing guidance to cable systems regarding payment of royalties. Interim rules published April 16, 1984 at 49 FR 14944 are hereby made final with minor changes.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, D.C. 20559, (202) 287-8380.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Copyright Act of 1976, title 17 of the United States Code, establishes a compulsory licensing system under which cable systems may make secondary transmissions of copyrighted works. The compulsory license is subject to various conditions, including the requirement that cable systems deposit statutory royalties with the Copyright Office. Cable systems whose semiannual gross receipts for secondary transmissions total $214,000 or more determine their royalty obligations by applying specified percentages of such gross receipts (royalty rates) to their number of distant signal equivalents. In Docket No. CRT 81-2, the Copyright Royalty Tribunal considered adjustments in the royalty rates for cable systems in light of the repeal by the Federal Communications Commission (FCC) of certain distant signal and syndicated exclusivity restrictions *(Report and Order in Docket Nos. 20988 and 21284, 79 FCC 2d 663 (1980))*. The FCC's Order was upheld by the U.S. Court of Appeals for the Second Circuit, *Malrite T.V of New York* v. *Federal Communications Commission*, 652 F.2d 1140 (2d Cir. 1981), *cert. denied*, 102 S. Ct. 1002 (1982), and entered into force on June 25, 1981, when a stay pending appeal was vacated.

After consideration of the issues raised by the interested parties, at a public meeting on October 20, 1982, the Tribunal adopted its final rule in CRT Docket No. 81-2, Cable Television Royalty Fee Adjustment Proceeding. The text of the Tribunal's amendments to 37 CFR Part 308 were published in the Federal Register of Friday, November 19, 1982 (47 FR 52146-52159).

The Tribunal made two types of royalty rate adjustments and set January 1, 1983, as the effective date for both. One adjustment may be identified as a "surcharge" on certain distant signals to compensate copyright owners for the carriage of syndicated programming formerly prohibited by the FCC's syndicated exclusivity rules in effect on June 24, 1981 (former 47 CFR 76.151 et seq.) (hereafter, "syndicated exclusivity surcharge" or "surcharge"). The second adjustment raises the royalty rate to 3.75% of gross receipts per additional distant signal equivalent resulting from carriage of distant signals not generally permitted to be carried under the FCC's distant signal rules prior to June 25, 1981 (hereafter, the "3.75% rate"). [1]

Both rate adjustments were appealed in the U.S. Court of Appeals for the District of Columbia Circuit. The Court affirmed the Tribunal's rate adjustment in all respects on December 30, 1983. *NCTA* v. *Copyright Royalty Tribunal*, No. 82-2389 (D.C. Court of Appeals).

In late 1982 and early 1983, the Copyright Office received numerous requests from representatives of cable systems for advice or interpretive rulings regarding the application of the 3.75% rate in specific instances. The Office's urgent guidance was requested before March 15, 1983, the date the legislative stay would expire. In response, the Office initiated this proceeding (Docket RM 83-3) by publishing a Notice of Inquiry (48 FR 6372; February 11, 1983), in which we summarized the issues presented to us for guidance, and requested public comment on four general issues: substitution of nonspecialty independent stations for specialty stations; carriage of the same signals carried on a part-time or substitute basis under the former FCC rules before June 25, 1981; and signals for which waivers were pending with the FCC on June 23, 1981, and later dismissed as mooted by the FCC deregulation ("ungranted waiver requests").

The Office also consulted with the Tribunal in March 1983, pursuant to 17 U.S.C. 111(d). Pending the appeal of the rate adjustment, however, the Tribunal took the position it could not comment on the issues covered by the Notice of Inquiry.

The Office concluded that only a tentative, limited response could be made to the questions posed in the Notice of Inquiry. These comments were expressed initially in a letter of opinion, dated March 11, 1983, which was mailed to all who had contacted the Office directly. Subsequently, on March 30, 1983, the Office published a Statement of Views (48 FR 13168) regarding interpretation of the Tribunal's 1982 cable rate adjustment. The Office observed that, to give the guidance requested by the cable systems, it would be necessary to interpret the rules of another governmental body at time when those rules were under appeal, and before the Office itself would take affirmative steps to collect royalties due under the 1982 rate adjustment.[2] The Office stated that the tentative views published in the Statement of Views would be reexamined following the final decision by the Court of Appeals, based upon an analysis of the opinion and a reconsideration of the comments submitted in response to our Notice of Inquiry RM 83-3.

In order to implement the 1982 cable rate adjustment following the decision in *NCTA* v. *CRT*, *supra*, the Office consulted with the Tribunal regarding interpretation and implementation of the rate adjustment pursuant to 17 U.S.C. 111(d). The Tribunal's response by letter of March 30, 1984 [3] was published as an Appendix to interim regulations issued April 16, 1984 by the Office [49 FR 14944]. Although these regulations are interpretive [4] of the Copyright Act and the Tribunal's rules and were put into effect immediately upon publication, the Office invited comment before issuing the regulations in final form.

The Office received comments from five different representatives of cable system operators. No comments were received from representatives of copyright owners. These commentators objected principally to the Office's

---

[1] The Tribunal determined that the 3.75% royalty rate would be applicable in all instances of distant signal carriage except for:

"(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

"(2) A signal of the same type (that is, independent, network, or noncommercial educational) substituted for such permitted signal, or

"(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981." (37 CFR 308.2(c); 47 FR 52159).

In section 143 of House Joint Resolution 631, Pub. L. 97-377 (December 1982) Congress stayed the effective date of the 3.75% rate until March 15, 1983.

[2] In accordance with the usual practice, the Office stated in the Notice of Inquiry that no affirmative steps would be taken to implement the 1982 rate adjustment pending a final decision by the Court of Appeals. The Office accepted royalty payments based on the 1982 rate adjustment when proffered by cable systems during the pendency of the appeal, deferring examination of the Statements of Account until an appropriate time.

[3] Before responding to the Office, the Tribunal invited written comment from all parties who had participated in the Tribunal's 1982 rate adjustment proceeding.

[4] The functions of the Copyright Office under the compulsory licence for cable are limited. The Office has no power to fix or establish substantive rights and liabilities under the compulsory license; its regulations are primarily interpretive. The Copyright Office issues such regulations on points necessary for the Office to discharge its function of collecting the royalties and preparing forms for that purpose, and in response to requests for guidance from the public.

decision to follow the Tribunal's stated intention not to allow substitution of "grandfathered" signals (those authorized by the FCC and carried by a cable system before March 31, 1972) beyond the market quota for nonspecialty independent stations. Three comments objected to the similar decision of the Office regarding substitution for specialty stations. One new issue was presented for consideration: expanded geographic carriage of a signal on a distant basis that was formerly carried only as a local signal.

For a full discussion of the issues concerning the 1982 cable rate adjustment, see the explanation accompanying the interim regulations of April 16, 1984 (49 FR 14944). As explained below, the Office has concluded that it should adhere to the interpretations of the Copyright Act and the Tribunal's regulations announced in the interim regulations for the reasons given in that announcement, subject to an adjustment regarding administrative implementation of the rate applied to substitutions for grandfathered signals and to clarification of two points. The Office also addresses the single new issue raised by the comments: expanded geographic carriage of a previously local-only signal into distant communities.

1. *Substitution for "grandfathered" signals.* The basic arguments of the commentators are that the application of the 3.75% rate to signals substituted for "grandfathered" signals is contrary to the plain meaning of section 801(b)(2)(B) of the Copyright Act, that it undercuts Congressional intent, and that "retroactive application" of the Office's interpretation violates principles of equity and fairness.

Section 801(b)(2)(B))(i) provides that the Tribunal may not adjust the cable royalty rates for any DSE's represented by carriage of a signal of the same type substituted for any signal permitted by the FCC rules in effect on April 15, 1976. The commentators argue that "grandfathered" signals were among the "FCC-permitted signals" referred to in that clause, and therefore any signal of the same type as the "grandfathered" signal can be substitued for it without triggering the 3.75% rate. The comments also contended that, in any event, cable systems were misled by the Office's remarks in the March 1983 Statement of Views, and that the Office should not adopt an interpretation of the Act based on the "conclusory views" of the Tribunal. Finally, one commentator contended that the Office should have taken account, pursuant to section 801(b)(2)(B), of the economic impact of its interpretation on copyright users.

Addressing the latter point first, the Office clearly does not have the authority to assess the economic impact of a rate adjustment duly established by the Tribunal. It is the Tribunal, not the Copyright Office, that is directed to consider "among other factors, the economic impact on copyright owners and users" when adjusting the rates. That consideration occurred during the Tribunal's proceeding that resulted in the 1982 cable rate adjustment.

With respect to the Office's reliance on the clear statement by the Tribunal of its intention in fixing the new cable rates, the Office continues to believe that, given the complexity of the cable compulsory license and of the FCC cable carriage rules over a period of 10 years, and given the enormous difficulty of the cable rate-making process, it cannot decline to accept the Tribunal's interpretation of its own rules unless the Office were certain that the Tribunal lacked authority to fix the rate in a given case. While the Office had doubts about substitution for "grandfathered" signals, we are not persuaded that the Tribunal lacked authority to establish the 3.75% rate in this case.

Our decision is based upon the fundamental principle that an administrative agency's stated interpretation of its rules is the best indicator of their meaning. *United Steelworkers of America* v. *Weber,* 443 U.S. 193 (1979); *United States* v. *American Trucking Association, Inc.* 310 U.S. 534, 543 (1940); *Rucker* v. *Wabash Railroad Company,* 418 F.2d 146 (7th Cir. 1969). Moreover, that Office does not find in Section 801(b)(2)(B) any "plain meaning" contrary to the Tribunal's position. The very complexity of this section and the FCC's rules referenced therein allow few "plain meanings." Finally, on this point, if the Office had declined to accept and follow the Tribunal's interpretation, only confusion would have resulted; and litigation would be necessary to resolve the issue.[5]

One point about substitution for "grandfathered" signals needs clarification. The Office understands the Tribunal's position to be the same on substitution for "grandfathered" signals as on substitution for specialty stations. Substitution *may be made* within the limits of the FCC's former distant signal market quotas for nonspecialty independent stations (that is, three distant independents in the top fifty markets except if there are one or more local independents in the market the limit is two distant independents; two distant independents in the second fifty markets; and one distant independent in smaller markets, unless there is a local independent). In the final regulations, the Office has revised § 201.17(h)(9) to refer explicitly to the FCC's market quotas.

Finally, with respect to the comments about retroactive application of the interpretation concerning substitution for "grandfathered" signals, the Office has decided to modify its policy concerning implementation of the rate adjustment in this single case. The Office attempted in the Statement of Views in March 1983 both to give cable systems "some guidance" and to make clear that *any* views expressed were tentative and subject to revision after conclusion of the then pending judicial appeal. Based upon the comments, however, the Office is concerned that we may not have succeeded in expressing the very tentative nature of its views. The Office does not believe that a position was stated regarding substitution for "grandfathered" signals, but the commentators asserted that the Office's views were misunderstood by a number of cable systems.

In the Statement of Views, in the interim regulations, and in these final regulations, the Office has attempted to give guidance regarding interpretation of the Copyright Act. The Office cannot alter the copyright liabilities of cable systems by any interpretation of the Act. It is the Act, complemented by the Tribunal's rate adjustment, that controls whatever royalties are owing under the compulsory license. Nevertheless, since cable systems may have been misled by the Office's expression of tenative views on substitution of "grandfathered" signals, the Office has decided not to take affirmative steps to collect royalties based on the Tribunal's interpretation on this point before the accounting period beginning July 1, 1984, unless it is ordered to do so by a court of competent jurisdiction. The CS/SA-3 Statement of Account forms reflect this modification of the implementation of the rate adjustment. The Office has not changed its position regarding interpretation of the Act and the Tribunal's regulations. We have taken cognizance of the arguments regarding fairness and equity, and will not retroactively seek to collect at the 3.75% rate for substitution of grandfathered signals in excess of the quota for nonspecialty independents until ordered to do so by a court. Cable system

[5] As entities of the United States, both the Copyright Office and the Tribunal would be represented in any litigation by the same counsel: the Department of Justice.

operators must take full responsibility for any decision not to pay royalties in accordance with the stated intention of the Tribunal.

2. *Substitution for specialty stations.* Three commentators objected to the conclusion in the interim regulations that cable systems may not substitute a nonspecialty independent station for a specialty station in excess of the FCC's former market quotas for nonspecialty independents. The comments contend that specialty stations have the same DSE value as nonspecialty independents and should be freely substitutable if actually carried before June 25, 1981. Again, the interim regulations are criticized for following the Tribunal's position, which the commentators argue violates the plain meaning of the Act. Cable systems, however, were apparently not misled by our tentative Statement of Views and understood that the Office did not say that substitution of a nonspecialty independent for a specialty station would be permitted on any basis without incurring the 3.75% rate.

For reasons given in the interim regulations and in point one above, the Office continues to believe that it should follow the Tribunal's clear statement of its intention in setting the 3.75% rate and issuing its regulations. Under that position, substitution of a nonspecialty independent station for a specialty station is permitted but only within the limits of the FCC's former market quotas for distant nonspecialty independents. This limited substitution gives meaning to the critical language of the Copyright Act regarding substitution of a signal of the "same type" and avoids untrammelled substitutions that would or could nullify the 3.75% adjustment.

3. *Application of the surcharge rate to "grandfathered" signals.* The interim regulations provide that the surcharge rate does not apply to "carriage of a particular signal first carried prior to March 31, 1972." See, for example, § 201.17(h)(3)(ii)(A). One comment suggested that the language of the interim regulations should parallel the language of the FCC's grandfather clause in its exclusivity rules, 47 CFR 76.159 (1980). That provision exempts from the exclusivity rules signals carried in a community prior to March 31, 1972 by a particular cable system or any cable system in that community. The commentator was concerned that the Office's regulation might be read to exempt a system from the surcharge rate only if the signal was carried by *that* system before March 31, 1972.

The Office interprets the Copyright Act and the Tribunal's rules to mean that the surcharge rate would not apply to "grandfathered" signals whether carried by a particular cable system or by any cable system in the community. The Office confirms that interpretation of the interim regulations and sees no need to revise the language since the phrase "carriage of a particular signal first carried prior to March 31, 1972" covers carriage by a particular cable system and the possibility of carriage by any other cable system within community.

4. *Expanded distant carriage of formerly local-only stations.* The comments presented one new issue, not considered in the interim regulations: Carriage after June 24, 1981 on a distant signal basis of a signal carried before June 25, 1981 *only* as a local signal. The expanded carriage after June 24, 1981 would mean that the signal is partly within and partly without the local service area of the retransmitted station. Clearly, allocation of the gross receipts would be permitted by section 111(d)(2)(B). The larger question, however, is whether the 3.75% rate applies to the first-time carriage on a distant signal basis.

In considering this issue, the Office notes that in a very few cases we had expressed the view in correspondence that where the only carriage was as a local signal within part of a cable system, the "partly within-partly without" allocation of gross receipts was nevertheless required as though *some* carriage on a distant basis had occurred in fact. The Office rejects this interpretation of the Act since it is clear from the definition of "distant signal equivalent value" in section 111(f) that no DSE value can be assigned for secondary transmission of local signals. [6]

The Office will upon request refund any overpayments of copyright royalties that may have resulted from a request to apply the "partly within-partly without" allocation in cases of local-only carriage, where more than the minimum royalty is due. The Office, as stated, believes this occurred in only two or three cases. One has been brought to our attention; and similar cases should be presented to the Office promptly.

The question remains: which rate applies to expanded carriage after June 24, 1981 that constitutes distant signal carriage of the signal for the first time. This is a new issue, and the Statement of Account form does not specifically make provision for application of the 3.75% rate in cases of "partly within-partly without" carriage. At this point the Office assumes that the case will seldom arise, and we decline to provide any specific guidance. Cable system operators should consider the Tribunal's letter to this Office of March 30, 1984, published as an Appendix to the interim regulations on April 16, 1984, and the general comments of the Office in the interim regulations concerning application of the 3.75% rate. The Office will not question application of the non-3.75% rate on this narrow point until review of the Statement of Account forms for the second half of 1984.

For the foregoing reasons, the Copyright Office is issuing in final form the interim regulations amending 37 CFR 201.17 as published on April 16, 1984 [49 FR 14944], with one minor change in the last paragraph (h)(9).

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress in the legislative branch. Neither the Library of Congress nor the Copyright Office is an agency within the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5 of the U.S. Code, Subchapter II and Chapter 7). The Regulatory Flexibility Act consequently does not apply to the Copyright Office since that Act affects only those entities of the federal government that are agencies as defined in the Administrative Procedure Act.[7] In addition, since these final regulations are interpretive, moreover, they are not subject to the Regulatory Flexibility Act, in any event.

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an agency subject to the Regulatory Flexibility Act, and that the final rules are not solely interpretive, the Register of Copyrights has determined that the regulations will have no significant impact on small businesses. The Tribunal's rate adjustment and these final regulations affect only large cable systems whose gross receipts total $214,000 or more semiannually.

---

[6] The fact that section 111(d)(2)(B)(i) establishes a minimum royalty for large systems even if there is no distant signal carriage should not confuse the point that beyond this minimum royalty, only distant signal carriage triggers a DSE value.

[7] The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (*i.e.*, "all actions taken by the Register of Copyrights under this title [17]," except with respect to the making of copies of copyright deposits). [17 U.S.C. 708(b)]. The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

List of Subjects in 37 CFR Part 201

Cable television, Copyright.

Final Regulations

PART 201—[AMENDED]

In consideration of the foregoing, Part 201 of 37 CFR Chapter II is amended in the manner set forth below.

Section 201.17 is amended as follows:

§ 201.17 Statements of account covering compulsory licenses for secondary transmissions by cable systems.

* * * * *

1. Paragraphs "(h)" and "(i)" are redesignated paragraphs "(i)" and "(j)," respectively, and any references to paragraph "(i)" in the text of the redesignated paragraph (j) are redesignated paragraph "(j)."

2. A new paragraph (h) is added to read as follows:

* * * * *

(h) *Computation of the copyright royalty fee pursuant to the 1982 cable rate adjustment.* (1) For the purposes of this paragraph, in addition to the definitions of paragraph (b) of this section, the following definitions shall also apply:

(i) "Current base rate" means the applicable royalty rates in effect on December 31, 1982, as reflected in 37 CFR 308.2(a).

(ii) "Surcharge" means the applicable syndicated exclusivity surcharge established by 37 CFR 308.2(d), in effect on January 1, 1983.

(iii) The "3.75% rate" means the rate established by 37 CFR 308.2(c), in effect on March 15, 1983.

(iv) "Top 100 television market" means a television market defined or interpreted as being within either the "top 50 television markets" or "second 50 television markets" in accordance with 47 CFR 76.51, in effect on June 24, 1981.

(v) The "1982 cable rate adjustment" means the rate adjustment adopted by the Copyright Royalty Tribunal on October 20, 1982 [CRT Docket No. 81–2, 47 FR 52146, November 19, 1982].

(vi) The terms "DSE" or "DSE's" mean "distant signal equivalent(s)" as defined in 17 U.S.C. 111(f) and any fraction thereof.

(2) A cable system whose semiannual gross receipts for secondary transmissions total $214,000 or more shall compute its royalty fee for carriage after June 30, 1983, in the following manner:

(i) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 308.2(c) applies.

(ii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(iii) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(3) A cable system whose semiannual gross receipts for secondary transmissions total $214,000 or more shall compute its royalty fee for carriage during the period January 1, 1983, through June 30, 1983, in the following manner:

(i) Copyright royalty fees must be paid on the basis of carriage for the entire accounting period except where proration of the DSE is permitted as described in paragraph (f)(3) of this section.

(ii) Where a distant signal was carried at any time only between January 1, 1983, and March 14, 1983;

(A) In the case of a cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(B) In case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(iii) Where a distant signal was carried at any time after March 14, 1983;

(A) The cable system shall first determine those DSE's to which the 3.75% rate established by 37 CFR 308.2(c) applies.

(B) If the 3.75% rate is applicable to a particular DSE, it shall be applied against the per centum .5967 (representing the number of days from March 15, 1983, through June 30, 1983, inclusive, in relation to the entire accounting period); and either

(*1*) In the case of cable system located wholly or in part within a top 100 television market, the current base rate, together with the surcharge, applied against the per centum .4033 (representing the number of days from January 1, 1983, through March 14, 1983, inclusive, in relation to the entire accounting period); however, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972; or

(*2*) In the case of a cable system located wholly outside a top 100 television market, the current base rate applied against the per centum .4033.

(C) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly or in part within a top 100 television market, the current base rate together with the surcharge shall apply. However, the surcharge shall not apply for carriage of a particular signal first carried prior to March 31, 1972.

(D) If the 3.75% rate does not apply to certain DSE's, in the case of a cable system located wholly outside a top 100 television market, the current base rate shall apply.

(4)(i) Separate Supplemental DSE Schedules as prescribed by the Copyright Office shall be completed and filed by a cable system affected by the 1982 cable rate adjustment for the accounting periods January 1, 1983, through June 30, 1983 (83–1), and July 1, 1983, through December 31, 1983 (83–2). Each Supplemental DSE schedule shall contain the information required by that form and its accompanying instructions.

(ii) The Supplemental DSE Schedule will be mailed to all cable systems whose gross receipts for secondary transmissions total $214,000 or more either for accounting period 83–1 or for 83–2, and shall be completed and returned to the Copyright Office with the supplemental royalty fee due, if any, within sixty-five (65) days from the date of mailing by the Copyright Office.

(iii) Cable systems located wholly outside all major and smaller television markets as defined by the FCC are not affected by the 1982 cable rate adjustment. Such systems shall complete a certifying statement provided in the Supplemental DSE Schedule and return in within sixty-five days from the date of mailing by the Copyright Office.

(iv) Revised Statement of Account form CS/SA–3 shall be completed and filed for the accounting periods January 1, 1984, through June 30, 1984, *et seq.*, by a cable system whose semiannual gross receipts for secondary transmissions total $214,000 or more in accordance with paragraph (c) of this section. The Statement shall contain the information required by that form and its accompanying instructions.

(5)(i) It shall be presumed that the 3.75% rate of 37 CFR 308.2(c) applies to DSE's accruing from newly added distant signals, carried for the first time by a cable system after June 24, 1981.

(ii) The presumption of paragraph (h)(5)(i) of this section can be rebutted in whole or in part:

(A) By actual carriage of a particular distant signal prior to June 25, 1981, as

reported in Statements of Account duly filed with the Copyright Office ("actual carriage"), unless the prior carriage was not permitted by the FCC; or

(B) By carriage of no more than the number of distant signals which was or would have been allotted to the cable system under the FCC's quota for importation of network and nonspecialty independent stations [47 CFR 76.59(b), 76.61 (b) and (c) and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981].

(6) To qualify as an FCC-permitted signal on the ground of individual waiver of the FCC rules [47 CFR 76.7 in effect on June 24, 1981], the waiver must have actually been granted by the FCC, and the signal must have been first carried by the cable system after April 15, 1976.

(7) Expanded geographic carriage after June 24, 1981, of a signal previously carried within only certain parts of a cable system is governed by the current base rate and the surcharge, if applicable.

(8) In cases of expended temporal carriage of the same signal, previously carried pursuant to the FCC's former part-time or subsitute carriage rules [47 CFR 76.61(b)(2), 76.61 (e)(1) and (e)(3), and 76.63, referring to 76.61 (e)(1) and (e)(3), in effect on June 24, 1981], the 3.75% rate shall be applied to any additional fraction of a DSE accruing from the expanded temporal carriage of that signal. To identify such additional DSE's, a comparison shall be made of DSE's reported for that signal in any single accounting period prior to the July 1, 1981, to December 31, 1981, period (81–2), as designated by the cable system, with the DSE's for that same signal reported in the current relevant accounting period.

(9) Substitution of like signals pursuant to 37 CFR 308(c)(2) is possible at the relevant non-3.75% rate (the surcharge together with the current base rate, or the current base rate alone) only if the substitution does not exceed the number of distant signals which was or would have been allotted to the cable system under the FCC's television market quota for importation of network and nonspecialty independent stations (47 CFR 76.59(b), 76.61 (b) and (c), and 76.63, referring to 76.61 (b) and (c), in effect on June 24, 1981.

* * * * *

(17 U.S.C. 111, 702)

Dated: June 26, 1984.

David Ladd,

Register of Copyrights.

[FR Doc. 84-17455 Filed 6-28-84; 8:45 am]

BILLING CODE 1410-03-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 1

[OA-FRL 2619-3]

Statement of Organization and General Information

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This document updates the statement of organization and general information to reflect the current organization of the U.S. Environmental Protection Agency.

EFFECTIVE DATE: June 28, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Gary M. Katz, Director, Management and Organization Division, Office of Administration, 202-382-5000.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 1

Organization and functions (Government agencies).

Dated: June 26, 1984.

Howard M. Messner,

Assistant Administrator for Administration and Resources Management.

Part 1 of Title 40 of the Code of Federal Regulations is revised as follows:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

Subpart A—Introduction

Sec.

1.1 Creation and authority.
1.3 Purpose and functions.
1.5 Organization and general information.
1.7 Location of principal offices.

Subpart B—Headquarters

1.21 General.
1.23 Office of the Administrator
1.25 Staff Offices.
1.27 Offices of the Associate Administrators.
1.29 Office of Inspector General.
1.31 Office of General Counsel.
1.33 Office of Administration and Resources Management.
1.35 Office of Enforcement and Compliance Monitoring.
1.37 Office of External Affairs.
1.39 Office of Policy, Planning and Evaluation.
1.41 Office of Air and Radiation.
1.43 Office of Pesticides and Toxic Substances.
1.45 Office of Research and Development.
1.47 Office of Solid Waste and Emergency Response.
1.49 Office of Water.

Subpart C—Field Installations

Sec.

1.61 Regional Offices.

Authority: 5 U.S.C. 552.

Subpart A—Introduction

§ 1.1 Creation and authority.

Reorganization Plan 3 of 1970, established the U.S. Environmental Protection Agency (EPA) in the Executive branch as an independent Agency, effective December 2, 1970.

§ 1.3 Purpose and functions.

The U.S. Environmental Protection Agency permits coordinated and effective governmental action to assure the protection of the environment by abating and controlling pollution on a systematic basis. Reorganization Plan 3 of 1970 transferred to EPA a variety of research, monitoring, standard setting, and enforcement activities related to pollution abatement and control to provide for the treatment of the environment as a single interrelated system. Complementary to these activities are the Agency's coordination and support of research and antipollution activities carried out by State and local governments, private and public groups, individuals, and educational institutions. EPA reinforces efforts among other Federal agencies with respect to the impact of their operations on the environment.

§ 1.5 Organization and general information.

(a) The U.S. Environmental Protection Agency's basic organization consists of Headquarters and 10 Regional Offices. EPA Headquarters in Washington, D.C. maintains overall planning, coordination and control of EPA programs. Regional Administrators head the Regional Offices and are responsible directly to the Administrator for the execution of the Agency's programs within the boundaries of their Regions.

(b) EPA's Directives System contains definitive statements of EPA's organization, policies, procedures, assignments of responsibility, and delegations of authority. Copies are available for public inspection and copying at the Management and Organization Division, 401 M Street SW., Washington, D.C. 20460. Information can be obtained from the Office of Public Affairs at all Regional Offices.

(c) EPA conducts procurement pursuant to the Federal Property and Administrative Services Act, the Federal Procurement Regulations, and implementing EPA regulations.

§ 1.7 Location of principal offices.

(a) The EPA Headquarters is in Washington, D.C. The mailing address is 401 M Street SW., Washington, D.C. 20460.

(b) The addresses of (and States served by) the EPA Regional Offices (see § 1.61) are:

(1) Region I, U.S. Environmental Protection Agency, Room 2203, John F. Kennedy Federal Building, Boston, MA 02203. (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.)

(2) Region II, U.S. Environmental Protection Agency, Room 1009, 26 Federal Plaza, New York, NY 10278. (New Jersey, New York, Puerto Rico, and the Virgin Islands.)

(3) Region III, U.S. Environmental Protection Agency, Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106. (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia.)

(4) Region IV, U.S. Environmental Protection Agency, 345 Courtland Street NE., Atlanta, GA 30365. (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.)

(5) Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604. (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.)

(6) Region VI, U.S. Environmental Protection Agency, First International Building, 1201 Elm Street, Dallas, TX 75270. (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.)

(7) Region VII, U.S. Environmental Protection Agency, 324 East Eleventh Street, Kansas City, MO 64106. (Iowa, Kansas, Missouri, and Nebraska.)

(8) Region VIII, U.S. Environmental Protection Agency, Lincoln Tower, 1860 Lincoln Street, Denver, CO 80295. (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.)

(9) Region IX, U.S. Environmental Protection Agency, 215 Freemont Street, San Francisco, CA 94105. (Arizona, California, Hawaii, Nevada, American Samoa, Trust Territories of the Pacific Islands, Guam, Wake Island, and the Northern Marianas.)

(10) Region X, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 93101. (Alaska, Idaho, Oregon, and Washington.)

Subpart B—Headquarters

§ 1.21 General.

EPA Headquarters is comprised of (a) the Office of the Administrator; (b) two Associate Administrators and four staff offices which advise the Administrator on cross-cutting Agency headquarters and regional issues and conduct programs with respect to EPA's interface with other national and international governmental organizations; (c) the Office of Inspector General; (d) the Office of General Counsel; (e) and nine operational offices, each headed by an Assistant Administator, responsible for carrying-out EPA's major environmental and administrative programs.

§ 1.23 Office of the Administrator.

The Environmental Protection Agency is headed by an Administrator who is appointed by the President, by and with the consent of the Senate. The Administrator is responsible to the President for providing overall supervision to the Agency, and is assisted by a Deputy Administrator also appointed by the President, by and with the consent of the Senate. The Deputy Administrator assists the Administrator in the discharge of Agency duties and responsibilities and serves as Acting Administrator in the absence of the Administrator.

§ 1.25 Staff Offices.

(a) *Office of Administrative Law Judges.* The Office of Administrative Law Judges, under the supervision of the Chief Administrative Law Judge, is responsible for presiding over and conducting formal hearings, other hearings, and issuance of initial decisions, if appropriate, in such proceedings. The Office provides supervision of the Administrative Law Judges, who operate as a component of the Office of Administrative Law Judges, in certain Agency Regional Offices. The Office provides the Agency Hearing Clerk.

(b) *Office of Civil Rights.* The Office of Civil Rights, under the supervision of a Director, serves as the principal adviser to the Administrator with respect to EPA's civil rights programs. The Office develops policies, procedures, and regulations to implement the Agency's civil rights responsibilities, and provides direction to Regional and field activities in the Office's area of responsibilities. The Office implements and monitors the Agency's equal employment opportunity program; provides advice and guidance to EPA program officials and Regional Administrators on EEO matters; serves as advocate for furthering career opportunities for minorities and women; and processes complaints of discrimination for Agency disposition. The Office assures: (1) Maximum participation of minority business enterprises under EPA contracts and grants; (2) equal employment opportunity under Agency service contracts, construction contracts, and grants; (3) compliance with the Davis-Bacon Act and related acts; (4) compliance with the provisions of laws affecting Agency programs requiring nondiscrimination on account of age and physical handicap and; (5) services or benefits are dispensed under any program or activity receiving Agency financial assistance on a nondiscrimination basis.

(c) *Science Advisory Board.* The Science Advisory Board, under the direction of a Director, provides expert and independent advice to the Administrator on the Scentific and technical issues facing the Agency. The Office advises on broad, scientific, technical and policy matters; assesses the results of specific research efforts; assists in identifying emerging environmental problems; and advises the Administrator on the cohesiveness and currency of the Agency's scientific programs.

(d) *Office of Small and Disadvantaged Business Utilization.* The Office of Small and Disadvantaged Business Utilization, under the supervision of a Director, is responsible for developing policy and procedures implementing the Agency's business utilization responsibilities. The Office provides information and assistance to components of the Agency's field offices responsible for carrying out related activities. The Office develops and implements a program to provide the maximum utilization of women-owned business enterprises in all aspects of EPA contract work; in collaboration with the Procurement and Contracts Management Division, develops programs to stimulate and improve involvement of small and minority business enterprises; and provides technical advisers to assist designated Procurement Center Representatives of the Small Business Administration in their duties. The Office represents EPA at hearings, interagency meetings, conferences and other appropriate forums on matters related to the advancement of these cited business enterprises in EPA's Federal Contracting Program.

§ 1.27 Offices of the Associate Administrators.

(a) *Office of International Activities.* The Office of the International Activities, under the supervision of an Associate Administrator, provides direction to and supervision of the activities, programs, and staff assigned to the Office of International Activities.

All of the functions and responsibilities of the Associate Administrator are Agencywide, and apply to all international activities of the Agency. The Office develops policies and procedures for the direction of the Agency's international programs and activities, subject to U.S. foreign policy, and assures that adequate program, scientific, and legal inputs are provided. It conducts continuing evaluations of the Agency's international activities and makes appropriate recommendations to the Administrator. The Office advises the Administrator and principal Agency officials on the progress and effect of foreign and international programs and issues. It serves as the Administrator's representative in contacts with the Department of State and other Federal agencies concerned with international affairs. It negotiates arrangements or understandings relating to international cooperation with foreign organizations. Coordinates Agency international contacts and commitments; serves as the focal point for responding to requests for information relating to EPA international activities; and provides an initial point of contact for all foreign visitors. The Office maintains liaison with all relevant international organizations and provides representation where appropriate. It establishes Agency policy, and approves annual plans and modifications for travel abroad and attendance at international conferences and events. It provides administrative support for the general activities of the Executive Secretary of the U.S. side of the US–USSR/PRC agreements on environmental protection and of the U.S. Coordinator for the NATO Committee on the Challenges of Modern Society. The Office supervises these programs with respect to activities which are completely within the purview of EPA.

(b) *Office of Regional Operations.* The Office of Regional Operations, under the supervision of an Associate Administrator, reports directly to the Administrator and Deputy Administrator. The Office serves as the primary communications link between the Administrator/Deputy Administrator and the Regional Administrators. It provides a Headquarters focus for ensuring the involvement of Regions, or consideration of Regional views and needs, in all aspects of the Agency's work. The Office is responsible for assuring Regional participation in Agency decision-making processes, assessing the impact of Headquarters actions on Regional operations, and acting as ombudsman to resolve Regional problems on behalf of the Administrator. The Associate Administrator coordinates Regional issues, organizes Regional Administrator meetings and work groups; and coordinates Regional responses to specific issues. In addition, the Office is responsible for working with the Regional Offices to further the consistent application of national program policies by reinforcing existing administrative, procedural, and program policy mechanisms as well as through initiation of reviews of significant Regional issues of interest to the Administrator. It continually monitors responsiveness and compliance with established policies and technical needs through formal and informal contact and free dialogue. The Office initiates and conducts on-site field visits to study, analyze, and resolve problems of Regional, sectional, and national scale.

§ 1.29 Office of Inspector General.

The Office of Inspector General assumes overall responsibility for audits and investigations relating to EPA programs and operations. The Office provides leadership and coordination and recommends policies for other Agency activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in such programs and operations. The Office of the Inspector General informs the Administrator, Deputy Administrator, and Congress of serious problems, abuses and deficiencies relating to EPA programs and operations, and of the necessity for and progress of corrective action; and reviews existing and proposed legislation and regulations to assess the impact on the administration of EPA's programs and operations. The Office recommends policies for, and conducts or coordinates relationships between, the Agency and other Federal, State and local government agencies, and nongovernmental entities on all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered by the Agency.

§ 1.31 Office of General Counsel.

The General Counsel serves as the primary legal adviser to the Administrator; provides legal service to all organizational elements of the Agency with respect to all Agency programs and activities; provides legal opinions, legal counsel, and litigation support; and assists in the formulation and administration of the Agency's policies and programs as legal adviser.

§ 1.33 Office of Administration and Resources Management.

The Office of Administration and Resources Management is under the supervision of the Assistant Administrator for Administration and Resources Management who provides services to all of the programs and activities of the Agency, except as may be specifically noted. In addition, the assistant administrator has primary responsibility Agencywide for policy and procedures governing the functional areas outlined below. The major functions of the Office include resources management and systems (including budget and financial management), personnel services, occupational health and safety, administrative services, organization and management analysis and systems development, information management and services, automated data processing systems and procurement through contracts and grants. This Office is the primary point of contact and manages Agencywide internal controls, audit resolution and follow-up, and government-wide management improvement initiatives. In the performance of the above functions and responsibilities, the Assistant Administrator for Administration and Resources Management represents the Administrator in communications with the Office of Management and Budget, Office of Personnel Management, General Accounting Office, General Services Administration, Department of the Treasury, and other Federal agencies prescribing requirements for the conduct of Government budget, fiscal management and administrative activities.

(a) *Office of Administration and Resources Management, Research Triangle Park, NC (RTP).* The Office of Administration and Resources Management (OARM) RTP, under the supervision of a Director, provides services to all of the programs and activities at RTP and certain financial and automated data processing services Agencywide. The major functions of the Office include personnel services, financial management, procurement through contracts, library and other information services, general services (including safety and security, property and supply printing, distribution, facilities and other administrative services) and providing both local RTP and Agencywide automated data processing systems services. The Director, OARM, RTP, supervises the Offices of Administration, Financial Management and Data Processing, RTP.

(b) *Office of Administration, Cincinnati, Ohio.* The Office of

Administration at Cincinnati, Ohio, under the supervision of a Director, provides and administers personnel, procurement, safety and security, property and supply, printing, distribution, facilities, and other administrative service programs at Cincinnati and other specified geographic locations.

(c) *Office of the Comptroller.* The Office of the Comptroller, under the supervision of the Comptroller, is responsible for Agencywide budget, resources management and financial management functions, including program analysis and planning; budget formulation, preparation and execution; funding allotments and allocations; and developing and maintaining accounting systems, fiscal controls, and systems for payroll and disbursements. The Assistant Administrator's resource systems responsibilities are administered by this Office.

(d) *Office of Administration.* The Office of Administration, under the supervision of a Director, is responsible for the development and conduct of programs for personnel policies, procedures and operations; organization and management systems, control, and services; facilities, property and space management; personnel and property security; policies, procedures, and operations related to procurement through grants, contracts, and interagency agreements; and occupational health and safety.

(e) *Office of Information Resources Management.* The Office of Information Resources Management (OIRM), under the supervision of a Director, provides for an information resource management program (IRM) consistent with the provisions of Pub. L. 96–511. The Office establishes policy, goals and objectives for implementation of IRM; develops annual and long-range plans and budgets for IRM functions and activities; and promotes IRM concepts throughout the Agency. The Office coordinates IRM activities; plans, develops and operates information systems and services in support of the Agency's management and administrative functions, and other Agency programs and functions as required. The Office oversees the performance of these activities when carried out by other Agency components. The Office performs liaison for interagency sharing of information and coordinates IRM activities with OMB and GSA. The Office ensures compliance with requirements of Pub. L. 96–511 and other Federal laws, regulations, and guidelines relative to IRM; and chairs the Agency's IRM Steering Committee. The Office develops Agency policies and standards; and administers or oversees Agency programs for library systems and services, internal records management, and the automated collection, processing, storage, retrieval and transmission of data by or for Agency components and programs. The Office provides national program policy and technical guidance for: the acquisition of all information technology, systems and services by or for Agency components and programs, including those systems and services acquired by grantees and contractors using Agency funds; the operation of all Agency computers and telecommunications hardware and facilities; and establishment and/or application of telecommunications and Federal information processing standards. The Office reviews and evaluates information systems and services, including office automation, which are operated by other Agency components; and sets standards for and approves the selection of Agency personnel who are responsible for the technical management of these activities. The Office coordinates its performance of these functions and activities with the Agency's information collection policies and budgets managed by the Office of Policy, Planning and Evaluation.

(f) *The Office of Human Resources Management.* The Office of Human Resources Management, under the supervision of a Director, designs strategies, plans, and policies aimed at developing and training all employees, revitalizing EPA organizations, and matching the right people with the right jobs. The Office is responsible for developing and assuring implementation of policies and practices necessary for EPA to meet its present and future workforce needs. This includes consideration of the interrelationships between the environmental protection workforce needs of EPA and State governments. For Senior Executive Service (SES) personnel, SES candidates, Presidential Executive Interchange Participants, and Management Interns, OHRM establishes policies; assesses and projects Agency executive needs and workforce capabilities; creates, establishes, and implements training and development strategies and programs; provides the full range of personnel functions; supports the Performance Review Board (PRB) and the Executive Resources Board (ERB); and reassigns SES personnel with the concurrence of the ERB. For the areas of workforce management and employee and organizational development, OHRM develops strategies, plans, and policies; coordinates Agencywide implementation of those strategies, plans, and policies; and provides technical assistance to operating personnel offices and States. OHRM, in cooperation with the Office of the Comptroller, evaluates problems with previous workyear use, monitors current workyear utilization, and projects future workyear needs in coordination with the Agency's budget process. The Office is the lead office for coordination of human resources management with the Agency's Strategic Planning and Management System. The Office develops methodologies and procedures for evaluations of Agency human resources management activities; conducts evaluations of human resources management activities Agencywide; and carries out human resources management projects of special interest to Agency management. The Office coordinates its efforts with the Office of Administration (specifically the Personnel Management Division and the Management and Organization Division), the Office of the Comptroller, the Office of Information Resources Management, and the Office of Policy, Planning and Evaluation.

§ 1.35 Office of Enforcement and Compliance Monitoring.

The Office of Enforcement and Compliance Monitoring, under the supervision of the Assistant Administrator for Enforcement and Compliance Monitoring, serves as the principal adviser to the Administrator in matters concerning enforcement and compliance; and provides the principal direction and review of civil enforcement activities for air, water, waste, pesticides, toxics, and radiation. The Assistant Administrator reviews the efforts of each Assistant and Regional Administrator to assure that EPA develops and conducts a strong and consistent enforcement and compliance monitoring program. The Office manages the national criminal enforcement program and provides technical expertise for enforcement activities.

§ 1.37 Office of External Affairs.

The Office of External Affairs, under the supervision of the Assistant Administrator for External Affairs, serves as the senior adviser to the Administrator for the functional areas within this Office. The functions and responsibilities assigned to the Assistant Administrator are Agencywide, and except as specifically

noted, apply to the provision of advice and direct support to the Administrator as well as policy direction and assistance to all of the programs and activities of the Agency. The major functions of the Office include public information, press services and audiovisual support; congressional liaison; communication and coordination with State and local governmental groups; preparation, review, and clearance of proposed legislation and reports on legislation; and serving as the EPA focal point for Environmental Impact Statement (EIS) functions and activities involving interaction with other Federal agencies. The Office staff consults on and provides assistance to senior policy and program officials and other offices in the Agency. In addition to the performance at Headquarters of the functions assigned to them, each of the offices within the Office of External Affairs is responsible for the policy and operational guidance for the performance of those functions at Agency field establishments.

(a) *Office of Federal Activities.* The Office of Federal Activities is headed by a Director who reports to the Assistant Administrator for External Affairs and supervises all the functions of the Office. The Director acts as national program manager for five major programs that include: (1) The review of other agency environmental impact statements and other major actions under the authority of section 309 of the Clean Air Act, (2) implementation of EPA's responsibilities under section 404 (dredge and fill permits) of the Clean Water Act, (3) EPA compliance with the National Environmental Policy Act (NEPA) and related laws, directives, and Executive policies concerning special environmental areas and cultural resources, (4) compliance with Executive policy on American Indian affairs and the development of programs for environmental protection on Indian lands, and (5) the development and oversight of national programs and internal policies, strategies, and procedures for implementing Executive Order 12088 and other administrative or statutory provisions concerning compliance with environmental requirements by Federal facilities. The Director chairs the Standing Committee on Implementation of Executive Order 12088. The Office serves as EPA's principal point of contact and liaison with other federal agencies and provides consultation and technical assistance to those agencies relating to EPA's areas of expertise and responsibility. The Office administers the filing and information system for all federal Environmental Impact Statements under agreement with the Council on Environmental Quality (CEQ) and provides liaison with CEQ on this function and related matters of NEPA program administration. The Office provides a central point of information for EPA and the public on environmental impact assessment techniques and methodologies.

(b) *Office of Public Affairs.* The Office of Public Affairs is under the supervision of a Director who serves as chief spokesperson for the Agency and as a principal adviser, along with the Assistant Administrator for External Affairs, to the Administrator, Deputy Administrator, and Senior Management Officials, on public affairs aspects of the Agency's activities and programs. The Office of Public Affairs provides to the media adequate and timely information as well as responses to queries from the media on all EPA program activities. It assures that the policy of openness in all information matters, as enunciated by the Administrator, is honored in all respects. Develops publications to inform the general public of major EPA programs and activities; it also develops informational materials for internal EPA use in Headquarters and at the Regions, Labs and Field Offices. It maintains clearance systems and procedures for periodicals and nontechnical information developed by EPA for public distribution, and reviews all publications for public affairs interests. The Office of Public Affairs provides policy direction for, and coordination and oversight of EPA's community relations program. It provides a system for ensuring that EPA educates citizens and responds to their concerns about all environmental issues and assures that there are opportunities for public involvement in the resolution of problems. The Office supervises the production of audio-visual materials, including graphics, radio and video materials, for the general public and for internal audiences, in support of EPA policies and programs. The Office provides program direction and professional review of the performance of public affairs functions in the Regional Offices of EPA, as well as at laboratories and other field offices. The Office of Public Affairs is responsible for reviewing interagency agreements and Headquarters purchase request requisitions expected to result in contracts in the areas of public information and community relations. It develops proposals and reviews Headquarters grant applications under consideration when public affairs goals are involved.

(c) *Office of Legislative Analysis.* The Office of Legislative Analysis, under the supervision of a Director who serves in the capacity of Legislative Counsel, is responsible for legislative drafting and liaison activities relating to the Agency's programs. It exercises responsibility for legislative drafting; reports to the Office of Management and Budget and congressional committees on proposed legislation and pending and enrolled bills, as required by OMB Circular No. A-19 and Bulletin No. 72-6; provides testimony on legislation and other matters before congressional committees; and reviews transcripts of legislative hearings. It maintains liaison with Office of Congressional Liaison on all Agency activities of interest to the Congress. The Office works closely with the staffs of various Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors in accordance with established Agency procedures, in the development of the Agency's legislative program. The Office assists the Assistant Administrator for External Affairs and the Agency's senior policy officials in guiding legislative initiatives through the legislative process. It advises the Assistant Administrator for Administration and Resources Management in matters pertaining to appropriations legislation. It works closely with the Office of Federal Activities to assure compliance with Agency procedures for the preparation of environmental impact statements, in relation to proposed legislation and reports on legislation. The Office coordinates with the Office of Management and Budget, other agencies, and congressional staff members on matters within its area of responsibility; and develops suggested State and local environmental legislative proposals, using inputs provided by other Agency components. The Legislative Reference Library provides legislative research services for the Agency. The Library secures and furnishes Congressional materials to all EPA employees and, if available, to other government agencies and private organizations; and it also provides the service of securing, upon request, EPA reports and materials for the Congress.

(d) *Office of Congressional Liaison.* The Office of Congressional Liaison is under the supervision of a Director who serves as the principal adviser to the Administrator with respect to congressional activities. All of the functions and responsibilities of the

Director are Agencywide and apply to the provision of services with respect to all of the programs and activities of the Agency. The Office serves as the principal point of congressional contact with the Agency and maintains an effective liaison with the Congress on Agency activities of interest to the Congress, and, as necessary, maintains liaison with Agency Regional and field officials, other Government agencies, and public and private groups having an interest in legislative matters affecting the Agency. It assures the provision of prompt response to the Congress on all inquiries relating to activities of the Agency; and monitors and coordinates the continuing operating contacts between the staff of the Office of the Comptroller and staff of the Appropriations Subcommittees of Congress.

(e) *Office of Intergovernmental Liaison.* The Office of Intergovernmental Liaison is under the supervision of a Director who serves as the principal point of contact with public interest groups representing general purpose State and local governments, and is the principal source of advice and information for the Administrator and the Assistant Administrator for External Affairs on intergovernmental relations. The Office maintains liaison on intergovernmental issues with the White House and OMB; identifies and seeks solutions to emerging intergovernmental issues; recommends and coordinates personal involvement by the Administrator and Deputy Administrator in relations with State, county and local government officials; coordinates and assists Headquarters components in their handling of broad-gauged and issue-oriented intergovernmental problems. It works with Regional Administrators and the Office of Regional Operations to encourage the adoption of improved methods for dealing effectively with State and local governments on specific EPA program initiatives; works with the Immediate Office of the Administrator, Office of Congressional Liaison, Office of Public Affairs, and the Regional Offices to Develop and carry out a comprehensive liaison program; and tracks legislative initiatives which affect the Agency's intergovernmental relations.

§ 1.39 Office of Policy, Planning and Evaluation.

The Assistant Administrator for Policy, Planning and Evaluation serves as principal adviser to the Administrator on Agency policy and planning issues and as such is responsible for supervision and management of the following: Policy analysis; standards and regulations; and management strategy and evaluation. The Assistant Administrator represents the Administrator with Congress and the Office of Management and Budget, and other Federal agencies prescribing requirements for conduct for government management activities.

(a) *Office of Policy Analysis.* The Office of Policy Analysis is under the supervision of a Director who performs the following functions on an Agencywide basis: economic analysis of Agency programs, policies, standards, and regulations, including the estimation of abatement costs; research into developing new benefits models; benefit-cost analyses; impact assessments; intermediate and long-range strategic studies; consultation and analytical assistance in the areas described above to senior policy and program officials and other offices in the Agency; development and coordination proposals for major new Agency initiatives; liaison with other agencies; universities, and interest groups on major policy issues and developement of a coordinated Agency position; and development of integrated pollution control strategies for selected industrial and geographical areas.

(b) *Office of Standards and Regulations.* The Office of Standards and Regulations is under the supervision of a Director who is responsible for: involving the Office of Policy, Planning and Evaluation (OPPE) in regulatory review; conducting technical and statistical analysis of proposed standards, regulations and guidelines; serving as the Agency focal point for identifying, developing and implementing alternatives to conventional "command and control" regulations; conducting analyses of Agency activities related to chemical substances and providing mechanisms for establishing regulatory priorities and resolving scientific issues affecting rulemaking; ensuring Agency compliance with the Paperwork Reduction Act; evaluating and reviewing all Agency information collection requests and activities, and, in cooperation with the Office of Administration and Resources Management and the Office of Management Systems and Evaluation, evaluating Agency management and uses of data for decision-making.

(c) Office of Management Systems and Evaluation. The Office of Management Systems and Evaluation is under the supervision of a Director who directs and coordinates the development, implementation and administration of Agencywide systems for plannings, tracking, and evaluating the accomplishments of Agency programs. In consultation with other offices, the Office develops a long-range policy framework for Agency goals, and objectives, identifies strategies for achieving goals, establishes timetables for objectives, and ensures that programs are evaluated against their accomplishments of goals.

§ 1.41 The Office of Air and Radiation.

The Office of Air and Radiation is under the supervision of the Assistant Administrator for Air and Radiation who serves as principal adviser to the Administrator in matters pertaining to air and radiation programs, and is responsible for the management of these EPA programs: program policy development and evaluation; environmental and pollution sources' standards development; enforcement of standards; program policy guidance and overview, technical support or conduct of compliance activities and evaluation of Regional air and radiation program activities; development of programs for technical assistance and technology transfer; and selected demonstration programs.

(a) *Office of Mobile Sources.* The Office of Mobile Sources, under the supervision of a Director, is responsible for the mobile source air pollution control functions of the Office of Air and Radiation. The Office is responsible for: characterizing emissions from mobile sources and related fuels; developing programs for their control, including assessment of the status of control technology and in-use vehicle emissions; for carrying out, in coordination with the Office of Enforcement and Compliance Monitoring as appropriate, a regulatory compliance program to ensure adherence of mobile sources to standards; and for fostering the development of State motor vehicles emission inspection and maintenance programs.

(b) *Office of Air Quality Planning and Standards.* The Office of Air Quality Planning and Standards, under the supervision of a Director, is responsible for the air quality planning and standards functions of the Office of Air and Radiation. The Director for Air Quality Planning and Standards is responsible for emission standards for new stationary sources, and emission standards for hazardous pollutants; for developing national programs, technical policies, regulations, guidelines, and criteria for air pollution control; for assessing the national air pollution control program and the success in

achieving air quality goals; for providing assistance to the States, industry and other organizations through personnel training activities and technical information; for providing technical direction and support to Regional Offices and other organizations; for evaluating Regional programs with respect to State implementation plans and strategies, technical assistance, and resource requirements and allocations for air related programs; for developing and maintaining a national air programs data system, including air quality, emissions and other technical data; and for providing effective technology transfer through the translation of technological developments into improved control program procedures.

(c) *Office of Radiation Programs.* The Office of Radiation Programs, under the supervision of a Director, is responsible to the Assistant Administrator for Air and Radiation for the radiation activities of the Agency, including development of radiation protection criteria, standards, and policies; measurement and control radiation exposure; and research requirements for radiation programs. The Office provides technical assistance to States through EPA Regional Offices and other agencies having radiation protection programs; establishes and directs a national surveillance and investigation program for measuring radiation levels in the environment; evaluates and assesses the impact of radiation on the general public and the environment; and maintains liaison with other public and private organizations involved in environmental radiation protection activities. The Office coordinates with and assists the Office of Enforcement and Compliance Monitoring in enforcement activities where EPA has jurisdiction. The Office provides editorial policy and guidance, and assists in preparing publications.

§ 1.43 Office of Pesticides and Toxic Substances.

The Office of Pesticides and Toxic Substances is under the supervision of the Assistant Administrator for Pesticides and Toxic Substances who serves as the principal adviser to the Administrator in matters pertaining to assessment and regulation of pesticides and toxic substances. The Assistant Administrator is responsible for managing the Agency's pesticides and toxic substances programs, and for promoting coordination of all Agency programs engaged in toxic substances activities; for establishing Agency strategies; for implementation and integration of the pesticides and the toxic programs under applicable Federal statutes; for developing and operating Agency programs and policies for assessment and control of pesticides and toxic substances; for developing recommendations for Agency priorities for research, monitoring, regulatory, and information gathering activities relating to pesticides and toxic substances; for developing scientific, technical, economic, and social data bases for the conduct of hazard assessments and evaluations in support of toxic substances and pesticides activities; directing pesticides and toxic substances compliance programs; for providing toxic substances and pesticides program guidance to Regional Offices; and for monitoring, evaluating and assessing pesticides and toxic substances program operations in Headquarters and Regional Offices.

(a) *Office of Pesticide Programs.* The Office of Pesticide Programs is under the management of a Director who is responsible for leadership of the overall pesticide activities of the Agency, including the development of strategic plans for the control of the national environmental pesticide situations. Such plans are implemented by the Office of Pesticide Programs, other EPA components, other Federal agencies, or by State, local and private sectors. The Office is responsible for the establishment of tolerance levels for pesticide residues which occur in or on food; registration and reregistration of pesticides; special review of pesticides suspected of posing unreasonable risks to human health or the environment; monitoring of pesticide residue levels in food, humans, and nontarget fish and wildlife; preparation of pesticide registration guidelines; development of standards for the registration and reregistration of pesticide products; provision of program policy direction to technical and manpower training activities in the pesticides area; development of research needs and monitoring requirements for the pesticide program and related areas; review of impact statements dealing with pesticides; and carrying out assigned international activities.

(b) *Office of Toxic Substances.* The Office of Toxic Substances, under the management of a Director, is responsible for the toxic substances activities of the Agency. The Office is responsible for developing and operating Agency programs and policies for new and existing chemicals. In these areas the Office is responsible for information collection; data development; health, environmental and economic assessment; and negotiated or regulatory control actions. The Office provides operational guidance to EPA Regional Offices, reviews and evaluates toxic substances activities at EPA Headquarters and Regional Offices, and coordinates TSCA activities with other EPA offices and Federal and State agencies. The Office is also responsible for coordinating communication with the industrial community on matters relating to implementation of TSCA and managing the joint planning of toxics research and development under the auspices of the Chemical Testing and Assessment Research Committee (CTARC).

§ 1.45 Office of the Assistant Administrator for Research and Development.

The Office of Research and Development is under the supervision of the Assistant Administrator for Research and Development who serves as the principal science adviser to the Administrator, and is responsible for the development, direction, and conduct of a national research, development and demonstration program in: pollution sources, fate, and health and welfare effects; pollution prevention and control, and waste management and utilization technology; environmental sciences; and monitoring systems. The Office participates in the development of Agency policy, standards, and regulations and provides for dissemination of scientific and technical knowledge, including analytical methods, monitoring techniques, and modeling methodologies. The Office serves as coordinator for the Agency's policies and programs concerning carcinogenesis and related problems and assures appropriate quality control and standardization of analytical measurement and monitoring techniques utilized by the Agency. The Office exercises review and concurrence responsibilities on an Agencywide basis in all budgeting and planning actions involving monitoring which require Headquarters approval.

(a) *Office of Monitoring Systems and Quality Assurance.* The Office of Monitoring Systems and Quality Assurance, under the supervision of a Director, is responsible for planning, managing and evaluating a comprehensive program for: (1) Development and demonstration of techniques and methods to measure exposure and to relate ambient concentrations to exposure by critical receptors; (2) research development and demonstration of new monitoring methods, systems, techniques and equipment for detection, identification and characterization of pollutants at the source, in the ambient environment, and

for use as reference or standard monitoring methods; (3) establishment, direction and coordination of Agencywide quality assurance programs; and (4) development and provision of quality assurance methods, techniques and materials including validation and standardization of analytical methods, sampling, techniques, quality control methods, standard reference materials, and techniques for data collection, evaluation and interpretation. The Office identifies specific research, development, demonstration and service needs and priorities; establishes program policies and guidelines; develops program plans, including objectives and estimates or resources required to accomplish objectives; administers the approved program and activities; assigns approved program and activities; assigns program responsibility and resources to the laboratories; directs and supervises assigned laboratories in program administration; and conducts reviews of program progress and takes action as necessary to assure timeliness, quality and responsiveness of outputs.

(b) *Office of Environmental Engineering and Technology.* The Office of Environmental Engineering and Technology, under the supervision of the Director, is responsible for planning, managing and evaluating a comprehensive program for the: (1) development and demonstration of cost-effective methods for control and management of operations with environmental impacts associated with the extraction, processing, conversion, and transportation of energy, minerals, and other resources; and with industrial processing and manufacturing facilities; (2) development and demonstration of cost-effective methods for the prevention or management of pollution discharge or waste disposal into the environment from public sector activities, including publicly-owned waste water and solid waste facilities; (3) improvement of drinking water supply and system operations, including improved understanding of water supply technology and water supply criteria. The Office develops program plans including objectives and justifies these resources, and, after receiving them, carries out the approved program and activities; (4) Assigns objectives and resources to the laboratories assigned to the Office. The Office conducts appropriate reviews to assure the quality, timeliness and responsiveness of outputs, and (5) analysis of the relative environmental and socio-economic impacts of energy, minerals, and other resource extraction, transportation, processing, conversion, and utilization systems, and of other industry operations. The Office is the focal point for providing liaison with the rest of the Agency and with the Department of Energy on issues associated with energy development (excluding issues of research planning and implementation of the measurement, fate, and effects of energy pollutants that are conducted under the Interagency Energy/Environment Program), and liaison with the rest of the Agency on issues related to controlling pollutant discharges.

(c) *Office of Environmental Processes and Effects Research.* The Office of Environmental Processes and Effects Research, under the supervision of the Director, is responsible for planning, managing, and evaluating a comprehensive research program to develop the scientific and technological methods and data necessary to understand ecological processes, and predict broad ecosystems impacts, and to manage the entry, movement, and fate of pollutants upon nonhuman organisms and ecosystems. The comprehensive program includes: (1) The development of organism and ecosystem level effect data needed for the establishment of standards, criteria or guidelines for the protection of nonhuman components of the environment and ecosystems integrity and the prevention of harmful human exposure to pollutants; (2) the develoment of methods to determine and predict the fate, transport, and environmental levels which may result in human exposure and exposure of nonhuman components of the environment, resulting from the discharge of pollutants, singly or in combination into the environment, including development of source criteria for protection of environmental quality; (3) the development and demonstration of methods for the control or management of adverse environmental impacts from agriculture and other rural nonpoint sources; (4) the development and demonstration of integrated pest management strategies for the management of agriculture and urban pests which utilize alternative biological, cultural and chemical controls; (5) the development of laboratory and fieldscale screening tests to provide data that can be used to predict the behavior of pollutants in terms of movement in the environment, accumulation in the food chain, effects on organisms, and broad ecosystem impacts; (6) coordination of interagency research activities associated with the health and environmental impacts of energy production and use; and (7) development and demonstration of methods for restoring degraded ecosystems by means other than source control.

(d) *Office of Health Research.* The Office of Health Research, under the supervision of the Director, is responsible for the management of planning, implementing and evaluating a comprehensive, integrated human health research program which documents acute and chronic adverse effects to man from environmental exposure to pollutants and determines those exposures which have a potentially adverse effect on humans. The Office is responsible for criteria development and scientific assessments in support of the Agency's regulating and standard-settting activities. It develops methodology and conducts laboratory and field research studies; and develops interagency programs which effectively use pollutants. The Office is the Agency's focal point for providing liaison relative to human health effects and related human exposure issues (excluding issues related to the planning and implementation of research on the human health effects of energy pollutants which is conducted under the Interagency Energy/Environment Program). It responds to changing requirements of the Regions, program offices and other offices for priority technical assistance. In close coordination with Agency research and advisory committees, other agencies and offices, and interaction with academic and other independent scientific bodies, the Office develops health science policy for the Agency. Through these relationships and the scientific capabilities of its laboratories and Headquarters' staffs, the Office provides a centrum for matters pertaining to the effects of human exposure to environmental pollutants.

§ 1.47 Office of Solid Waste and Emergency Response.

The Office of Solid Waste and Emergency Response, under the supervision of the Assistant Administrator for Solid Waste and Emergency Response, provides Agencywide policy, guidance, and direction for the Agency's solid waste and emergency response programs. In addition to managing those programs, the Assistant Administrator serves as principal adviser to the Administrator in matters pertaining to them. The Assistant Administrator's responsibilities include: Program policy development and evaluation;

development of appropriate hazardous waste standards and regulations; ensuring compliance with applicable laws and regulations; program policy guidance and overview, technical support, and evaluation of Regional solid waste and emergency response activities; development of programs for technical, programmatic, and compliance assistance to States and local governments; development of guidelines and standards for the land disposal of hazardous wastes; analyses of the recovery of useful energy from solid waste; development and implementation of a program to respond to uncontrolled hazardous waste sites and spills (including oil spills); long-term strategic planning and special studies; economic and long-term environmental analyses; economic impact assessment of RCRA and CERCLA regulations; analyses of alternative technologies and trends; and cost-benefit analyses and development of OSWER environmental criteria.

(a) *Office of Waste Programs Enforcement.* The Office of Waste Programs Enforcement (OWPE), under the Supervision of a Director, manages a national program of technical compliance and enforcement under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). The Office provides guidance and support for the implementation of the CERCLA and RCRA compliance and enforcement programs. This includes the development of program strategies, long-term and yearly goals, and the formulation of budgets and plans to support implementation of strategies and goals. Resource requirements are estimated and allocated to the Regions based on workload models developed under the direction of OWPE. The Office provides program guidance through the development and issuance of policies, guidance and other documents and through training and technical assistance. It develops annual workplans which set forth activity goals, milestones and completion dates with resource requirements for the RCRA and CERCLA compliance and enforcement programs. These plans are then transmitted to the Regions and accountability measures are identified and agreed upon for inclusion in the Agency Management Accountability System (AMAS), the Action Tracking System (ATS) and the OSWER Workplans system. The Office oversees and supports Regions and States in the Implementation of the CERCLA and RCRA enforcement programs; accomplishes oversight through automated tracking systems, periodic field reviews, analysis of reports and other monitoring techniques; and provides support through the Office's scientific and engineering staff and contractual resources. The Office may assume responsibility for direct management of a limited number of CERCLA and RCRA enforcement actions which are multiregional in nature or are cases of national significance. However, management is normally exercised through planning, resource allocation, monitoring and review. The Office serves as the national technical expert for all matters relating to CERCLA and RCRA compliance and enforcement. OWPE relates closely to the Regions; the Office of Emergency and Remedial Response (OERR); the Office of Solid Waste (OSW); the Immediate Office to the Assistant Administrator (IO-OSWER); the Office of External Affairs (OEA); the Office of Enforcement and Compliance Monitoring (OECM); and other EPA offices as necessary. It represents the interests of the CERCLA and RCRA enforcement programs to other offices of the Agency and normally is represented on task forces, work groups and at meetings where issues relating to the programs are under consideration. In coordination with the Office of External Affairs (OEA) and IO-OSWER, represents the program to external organizations, including the Office of Management and Budget (OMB), Congress, the U.S. Department of Justice and other Federal Agencies, the media, public interest and industry groups, State and local governments and their associations and the public.

(b) *Office of Solid Waste.* The Office of Solid Waste, under the supervision of a Director, is responsible for the solid waste activities of the Agency. In particular, this Office is responsible for implementing the Resource Conservation and Recovery Act. The Office provides program policy direction to and evaluation of such activities throughout the Agency and establishes solid waste research requirements for EPA.

(c) *Office of Emergency and Remedial Response.* The Office of Emergency and Remedial Response, under the supervision of a Director, is responsible for the emergency and remedial response functions of the Agency. The Office is specifically responsible for: (1) Developing national strategy, programs, technical policies, regulations, and guidelines for the control of abandoned hazardous waste sites, and response to and prevention of oil and hazardous substance spills; (2) providing direction, guidance, and support to the Environmental Response Teams and overseeing their activities; (3) providing direction, guidance, and support to the Agency's nonenforcement emergency and remedial response to environmental emergencies; (4) providing direction, guidance, and support to the Agency's non-enforcement emergency and remedial response programs, including emergency and remedial responses to hazardous waste sites; (5) developing national accomplishment plans and resources; (6) scheduling the guidelines for program plans; (7) assisting in the training of personnel; (8) monitoring and evaluating the performance, progress, and fiscal status of the Regions in implementing emergency and remedial response program plans; (9) maintaining liaison with concerned public and private national organizations for emergency response; (10) supporting State emergency response programs; and (11) coordinating Office activities with other EPA programs.

§ 1.49 The Office of Water.

The Office of Water, under the supervision of the Assistant Administrator for Water who serves as the principal adviser to the Administrator in matters pertaining to water programs, is responsible for management of EPA's water programs, including program policy development and evaluation; environmental and pollution sources standards development; program policy guidance and overview; technical support; and evaluation of Regional water activities; the conduct of enforcement activities as they relate to water programs; development of programs for technical assistance and technology transfer; and development of selected demonstration programs.

(a) *Office of Water Enforcement and Permits.* The Office of Water Enforcement and Permits, under the supervision of a Director, implements program policy developed by the Office of Enforcement and Compliance Monitoring as it relates to the water and water supply enforcement activities of the Agency, including direct supervision of those enforcement activities reporting directly to the Office of Water Enforcement and Permits and technical program direction to the Regional water enforcement activities. The Office develops objectives and programs for water enforcement activities, including the development of procedures, regulatory material, guidelines, criteria, and policy statements designed to bring about actions by individuals, private

enterprise, and governmental bodies to improve the quality of water.

(b) *Office of Water Regulations and Standards.* The Office of Water Regulations and Standards, under the supervision of a Director, is responsible for the Agency's water regulations and standards functions. The Office is responsible for developing an overall program strategy for the achievement of water pollution abatement in cooperation with other appropriate program offices. The Office assures the coordination of all national water-related activities within this water program strategy, and monitors national progress toward the achievement of water quality goals and is responsible for the development of effluent guidelines and water quality standards, and other pollutant standards, regulations, and guidelines within the program responsibilities of the Office. It exercises overall responsibility for the development of effective State and Regional water quality regulatory control programs. The Office is responsible for the development and maintenance of a centralized water programs data system including compatible water quality, discharger, and program data files utilizing, but not displacing, files developed and maintained by other program offices. It is responsible for developing national accomplishment plans and resource and schedule guidelines for monitoring and evaluating the performance, progress, and fiscal status of the organization in implementing program plans. The Office represents EPA in activities with the Water Resources Council and other Federal agencies concerned with water quality regulations and standards.

(c) *Office of Water Program Operations.* The Office of Water Program Operations, under the supervision of a Director, is responsible for the Agency's water program operations functions. The Office is responsible for developing national programs, technical policies, regulations, and guidelines for the municipal wastewater treatment construction grants program and for water quality management and control of pollution from point and nonpoint sources; for providing technical direction and support to Regional Offices and other organizations; and for evaluating Regional and State programs with respect to municipal point and nonpoint source abatement and control, and manpower development for water-related activities. The Office is responsible for developing national accomplishment plans and resource and schedule guidelines for program plans required of the Divisions; for monitoring and evaluating the performance, progress, and fiscal status of the divisions in implementing program plans.

(d) *Office of Drinking Water.* The Office of Drinking Water, under the supervision of a Director, is responsible for water supply activities of the Agency, including the development of an implementation strategy which provides the national policy direction and coordination for the program. This Office establishes standards, develops regulations, policies, and guidelines for drinking water quality and treatment requisite to protect the public health and welfare and to protect existing and future groundwater sources of drinking water; provides guidance and technical information to State agencies, local utilities, and Federal facilities through the Regional Offices on program planning and phasing; evaluates the national level of compliance with the regulations; plans and develops policy guidance for response to national, Regional, and local emergencies; reviews and evaluates, with Regional Offices, technical data for the designation of sole-source aquifers; designs a national program of public information to encourage citizen participation aimed at the goal, "Safe Drinking Water for All Americans"; provides program policy direction for technical assistance and manpower training activities in the water supply area; identifies research needs and develops monitoring requirements for the national water supply program; develops national accomplishments' plans and resource schedule guidelines for monitoring and evaluating the program plans, and program performance, and fiscal status; develops program plans, and budget and program status reports for the water supply program; coordinates water supply activities with other Federal agencies as necessary; and serves as liaison with the National Drinking Water Advisory Council.

(e) *Office of Groundwater Protection.* The Office of Groundwater Protection, under the supervision of a Director, oversees implementation of the Agency's Groundwater Protection Strategy. This Office coordinates support of Headquarters and regional activities to develop stronger State government organizations and programs which foster groundwater protection. The Office directs and coordinates Agency analysis and approaches to unaddressed problems of groundwater contamination; and is principally responsible for establishing and implementing a framework for decisionmaking at EPA on groundwater protection issues, and serves as the focus of internal EPA policy coordination for groundwater.

Subpart C—Field Installations

§ 1.61 Regional offices.

Regional Administrators are responsible to the Administrator, within the boundaries of their Regions, for the execution of the Regional programs of the Agency and such other responsibilities as may be assigned, and serve as the Administrator's principal representatives in the Regions in contacts and relationships with Federal, State, interstate and local agencies, industry, academic institutions, and other public and private groups. Regional Administrators are responsible for accomplishing national program objectives within the Regions as established by the Administrator, Deputy Administrator, Associate Administrators, Assistant Administrators, and Heads of Headquarters Staff Offices. Regional Administrators develop, propose, and implement an approved Regional program for comprehensive and integrated environmental protection activities. Regional Administrators are responsible for total resource management in the Regions within guidelines provided by the Headquarters, and are responsible for translating technical program direction and evaluation, provided by the various Associated Administrators, Assistant Administrators and Heads of Headquarters Staff Offices, into effective operating programs at the Regional level, and assuring that such programs are executed efficiently. Regional Administrators exercise approval authority for proposed State standards and implementation plans; and provide for overall and specific evaluations of Regional programs, both internal Agency and State activities.

[FR Doc. 84-17443 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

---

40 CFR Part 52

[OAR-FRL 2616-2]

Approval and Promulgation of Implementation Plans; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: A revision to the Nevada State Implementation Plan (SIP) was

submitted to EPA by the Governor of Nevada on May 30, 1984 and is intended to provide for the attainment and maintenance of the Lead National Ambient Air Quality Standard (NAAQS) in Washoe County. This notice approves the submitted revisions with respect to section 110 of the Clean Air Act and incorporates them into the State Implementation Plan (SIP)

EFFECTIVE DATE: August 28, 1984.

FOR FURTHER INFORMATION CONTACT: David P Howekamp, Director, Air Management Division, Region 9, Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Attn: Thomas Rarick, (415) 974-7641, FTS 454-7641.

ADDRESSES: A copy of the Washoe County revision to the Nevada State Implementation Plan (SIP) for Lead is located at the Region 9 Office and the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C.

The Office of the Federal Register, 1100 "L" Street, N.W., Room 8401, Washington, D.C. 20408

Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89770

Washoe County District Health Department, Division of Environmental Health Services, 1001 E. 9th, P.O. Box 11130, Reno, Nevada 89520-0027

SUPPLEMENTARY INFORMATION:

Background

On June 24, 1980, the State of Nevada submitted a revision to their Lead SIP for Clark County. This revision provided a county-wide plan for attainment and maintenance of the Lead NAAQS. On February 12, 1981 (46 FR 12020) EPA proposed to approve Clark County's revision to the Nevada Lead SIP and on June 30, 1982 (47 FR 28374) the Clark County portion of the Nevada Lead SIP was approved. On November 5, 1981 the Governor of Nevada submitted a revision to the SIP for Lead covering all areas except Clark and Washoe Counties. Actions approving this revision were published on February 10, 1983 (48 FR 6105). On May 30, 1984 the Governor of Nevada submitted a revision to the SIP for Lead covering Washoe County. A public hearing was held by the State on April 26, 1984.

Discussion

The May 30, 1984, Washoe County revision to the Nevada Lead SIP was compared with the applicable requirements of 40 CFR Part 51, including emission inventory, control strategy, modeling, and new source review. Although the County has developed a separate Lead plan, the State maintains jurisdiction over certain types of sources, including power plants and all mobile sources. There are no significant stationary sources of Lead located in the County.

The Lead air quality data is taken from a single total suspended particulate (TSP) monitoring station located in the City of Sparks. The air quality data indicates that there have been no violations of the Lead Standard since 1975. Although past monitoring efforts have been hampered due to budget constraints, the County intends to commence analyzing TSP filters from 1982 onward for Lead and to establish another monitoring station in Sparks. The county has indicated, and EPA will ensure, that these sites will be located and operated according to the requirements of 40 CFR Part 58. Once these sites are established, a description will be available at the EPA Region 9 office, the address of which is listed above. Since automobile generated Lead emissions are the only notable Lead emission sources in Washoe County, the evaluation contained in the SIP submittal centers on these sources. The County relies upon Federal regulations which mandate the reduction of Lead in gasoline to achieve and maintain the Lead NAAQS. The SIP revision employs a rollback analysis which demonstrates maintenance of the Lead Standard.

New Source Review

Presently there are no sources located within Washoe County that emit 5 tons or more of Lead per year. In order to protect the County's attainment status, Section 030.010 of their Air Pollution Control Regulations was adopted. This Section provides a preconstruction review program for new sources, including stationary sources of Lead (regardless of size). The review program ensures that no project will be approved if it will result in violations of the Lead Standard. The above SIP elements satisfy the requirements of 40 CFR Part 51 for Lead.

EPA Actions

As a result of the above evaluation, EPA is taking final action under Section 110 of the Clean Air Act to approve the revision to the Nevada Lead SIP.

EPA's approval is being done without prior proposal because the revisions are noncontroversial, have limited impact, and no comments are anticipated. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse comments, the approval will be withdrawn and a subsequent notice will be published.

The subsequent notice will indefinitely postpone the effective date, modify the final action to a proposed action, and establish a comment period.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.) The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 28, 1984. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Incorporation by reference of the State Implementation Plan for the State of Nevada was approved by the Director of the Federal Register on July 1, 1982.

Authority: Sections 110 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601 (a)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Dated: June 21, 1984.

Alvin L. Alm,

Acting Administrator.

PART 52—[AMENDED]

Subpart DD of Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart DD—Nevada

Section 52.1470 is amended by adding paragraph (c)(31)(i) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(31) The following amendments to the plan were submitted on May 30, 1984, by the Governor.

(i) Washoe County, Nevada Lead SIP Revision.

[FR Doc. 84-17333 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL 2617-6]

Standards of Performance for Stationary Sources; Amendments to Equipment Leaks Standard; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects portions of 40 CFR Part 60, Subpart VV, that were published May 30, 1984 (49 FR 22598).

This action is necessary to correct typographical errors that appeared in the May 30, 1984, publication of 40 CFR Part 60, Subpart VV

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert Wood, Standards Development Branch, ESED (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

Dated: June 22, 1984.

Sheldon Meyers,

Acting Assistant Administrator for Air and Radiation.

The following corrections are made in FR Document 84-13949 appearing on 22598 in the issue of May 30, 1984:

1. On page 22598, column two, the document title "Equipment Leaks of VOC in Petroleum Refining Industry—Background Information for Promulgated Standards of Performance (EPA-450/3-80-033b)" is corrected to "Petroleum Fugitive Emissions—Background Information for Promulgated Standards (EPA-450/3-81-015b)."

§ 60.481 [Corrected]

2. On page 22607, columns two and three, in the definition of "Capital expenditure," paragraph (a)(2) is corrected to read "The percent Y is determined from the following equation: $Y=1.0-0.575 \log X$, where X is 1982 minus the year of construction; and"

[FR Doc. 84-17389 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 204 and 205

[A-FRL 2619-1]

Noise Emission Standards for Portable Air Compressors, Medium and Heavy Trucks, Motorcycles and Motorcycle Replacement Exhaust Systems, Truck Mounted Solid Waste Compactors, and Noise Labeling Requirements for Hearing Protectors Final Rule: Revocation of Product Verification Testing, Reporting and Recordkeeping Requirements; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; corrections.

SUMMARY: This document corrects a final regulation published December 28, 1982 (47 FR 57709) which implemented a revocation of product verification testing, reporting and recordkeeping requirements for noise emission standards for portable air compressors, medium and heavy trucks, motorcycles and motorcycle replacement systems, truck mounted solid waste compactors, and noise labeling requirements for hearing protectors. The action is necessary to correct minor inconsistencies.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Louise Giersch, Office of Air and Radiation (AR-445), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2935.

Corrections

PART 204—NOISE EMISSION STANDARDS FOR CONSTRUCTION EQUIPMENT

Subpart B—Portable Air Compressors

§ 204.55-2 [Corrected]

1. In §204.55-2, paragraph (a)(3) is revised to read as follows:

(3) At any time with respect to a configuration under this subpart, the Administrator may require that the manufacturer ship test compressors to an EPA test facility in order for the Administrator to perform the tests required for production verification.

§ 204.55-4 [Corrected]

2. In §204.55-4, paragraph (a)(4)(iii) is revised to read as follows:

(iii) Date of manufacture, which may consist of a serial number or code in those instances where records are specified and maintained.

PART 205—TRANSPORTATION EQUIPMENT NOISE EMISSION CONTROLS

Subpart D—Motorcycles

§ 205.170 [Corrected]

1. In § 205.170, paragraph (c)(5) is revised to read as follows: (5) In addition to any exhaust systems included in paragraphs (c)(2), (3), or (4) of this section, testing of up to 10 percent of the manufacturer's exhaust systems for a model year if the Administrator determines testing these exhaust systems at the EPA test site is necessary to assure that a manufacturer has acted or is acting in compliance with the Act.

(42 U.S.C. 4905; 86 Stat. 1237 and Secs. 6, 10, 11, 13, Pub. L. 92-574, 86 Stat. 1234 (42 U.S.C. 4905, 4909, 4910, 4912))

Dated: June 19, 1984.

John O. Hidinger,

Office of Program Management, Operations, Office of Air and Radiation.

[FR Doc. 84-17391 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 421

[OW-FRL 2289-1]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

Correction

In FR Doc. 84-5738 beginning on page 8742 in the issue of Thursday, March 8, 1984, make the following corrections:

1. On page 8743, column three, the second paragraph under Best Conventional Pollutant Control Technology (BCT), in the next to last sentence, "American Paper Institute v. EPA, 660 f.2d 954 (4th Cir., 1981)" is corrected to read, "American Paper Institute v. EPA, 660 F.2d 954 (4th Cir., 1981)"

2. On page 8747, column one, under Anode-cathode rinse water, in the second sentence, "lo pH" is corrected to read "low pH"

3. On page 8750, column three, in the first paragraph "Truck washing" is corrected to read "(7) Truck washing"

4. On page 8753, column three, in the first complete paragraph, the fourth sentence, "columbiumtantalum" is corrected to read "columbium-tantalum"

5. On page 8755, column one, in the first complete paragraph, the second

sentence, "APT coversion" is corrected to read "APT conversion"

6. On page 8755, column two, the first sentence, "technology bais for the BPT" is corrected to read "technology basis for the BPT"

7 On page 8756, column two, in the second paragraph, the second sentence, "$684.000" is corrected to read "$684,000"

8. On page 8769, column one, in the fourth paragraph, the second sentence, "segreagation costs" is corrected to read "segregation costs"

9. On page 8769, column one, in the sixth paragraph, the second sentence, "subcategory do no undergo" is corrected to read "subcategory do not undergo"

10. On page 8772, column one, in the second paragraph, in the third sentence, "battry manufacturing" is corrected to read "battery manufacturing"

11. On page 8780, column three, in the first complete paragraph, the third sentence, "20 mg/1" is corrected to read "20 mg/l"

12. On page 8789, Appendix E, column two, secondary silver subcategory, "38. ethybenzene" is corrected to read "38. ethylbenzene"

13. On page 8789, Appendix F, column two, primary aluminum smelting subcategory, "20. 2-chlornaphthalene" is corrected to read "20. 2-chloronaphthalene"

14. In the table to § 421.24 (c), on page 8794, column two, "anodes cast" is corrected to read "anodes baked"

15. In § 421.26, introductory text, on page 8795, column two, under Pretreatment Standards for New Sources, "introduced" is corrected to read "introduces".

16. In the table to § 421.33 (c), on page 8797, column two, "drossed" is corrected to read "dross"

17 In § 421.43, introductory text, on page 8801, column one, "best aviable technology" is corrected to read "best available technology"

18. In § 421.53, on page 8801, column three, "(c) Subpart E—Casting Wet Air Pollution Control" is corrected to read "(d) Subpart E—Casting Wet Air Pollution Control"

19. In § 421.62(d), table on page 8803, column two, under the effluent limitations, "Metric Units (mg/1)" is corrected to read "Metric Units (mg/1)"

20. In § 421.72 (a), table on page 8804, column one, the Maximum for Monthly Average for Zinc, "219.000" is corrected to read "219.600"

21. In § 421.72 (f), on page 8804, column two, the Maximum for Monthly Average for Zinc, "259.000" is corrected to read "259.900"

22. In § 421.82, in the table, on page 8808, column three, under Effluent Limitations, the Maximum for Any One Day for Selenium, "0.608" is corrected to read "0.08"

23. In § 421.84(e) on page 8809, column three, the Maximum for Any One Day for Total Suspended Solids, "11270." is corrected to read "11.270"

24. In § 421.102(h), on page 8812, column three, "Coversion to Oxides" should be corrected to read "Conversion to Oxides"

25. In § 421.102(h), on page 8812, column three "sodium tungstate" should be removed.

26. In § 421.120, on page 8821, column three, "protographic" is corrected to read "photographic"

27. In § 421.126(e), page 8825, column three, the pollutant Ammonia (as N) is listed twice. This table is corrected so that Ammonia (as N) appears only once. The Maximum for Monthly Average for Ammonia (as N), "5.099.711.400" is corrected to read "711.400"

28. The term "Mg/kg (pounds per million pounds)" is replaced with "mg/kg (pounds per million pounds)" each time it appears. This term appears in the following sections and tables as shown below.

Subcategory	Section	Table
Primary Aluminum	421.23	All tables
	421.24	All tables
	421.26	All tables
Secondary Aluminum	421.33	All tables
	421.34	All tables
	421.35	All tables
	421.36	All tables
Primary Electrolytic Copper Refining	421.53	All tables
	421.54	All tables
	421.55	All tables
Primary Zinc	421.63	All tables
	421.64	All tables
	421.65	All tables
	421.66	All tables
Metallurgical Acid Plants	421.53	
	421.54	
	421.55	
	421.56	
Primary Tungsten	421.102	All tables
	421.103	All tables
	421.104	All tables
	421.105	All tables
	421.106	All tables
Primary Columbium-Tantalum	421.112	All tables
	421.113	All tables
	421.114	All tables
	421.115	All tables
	421.116	All tables
Secondary Lead	421.132	All tables
	421.133	All tables
	421.134	All tables
	421.135	All tables
	421.136	All tables

29. The term "Mg/kkg (pounds per billion pounds)" is replaced with "mg/kkg (pounds per billion pounds)" each time it appears in Subpart G—Primary Lead Subcategory. This term appears in Tables in paragraphs (a) through (l) of §§ 421.72, 421.73, 421.74, 421.75, and 421.76.

30. The term "Mg/troy ounce" is replaced with "mg/troy ounce" each time it appears in Subpart L—Secondary Silver. This term appears in the tables in §§ 421.122, 421.123, 421.124 (a), (b), (d), (e), (f), (g), (h), (i), (j), (k), 421.125 and 421.126.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[CC Docket No. 81-704]

Earth Station Antenna Performance Standards for Newly Installed Antennas

AGENCY: Federal Communications Commission.

ACTION: Order deferring effective date of rule revisions.

SUMMARY: This action defers until further notice the effective date of compliance with the revisions of 47 CFR 25.209 pertaining to antenna performance standards. The reason for this action is to spare users what may be unnecessary expenses should the Commission ultimately adopt any changes proposed by petitions on reconsideration of its order in *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations*, published in the Federal Register on September 6, 1983, 48 FR 40233.

EFFECTIVE DATE: June 27, 1984.

FOR FURTHER INFORMATION CONTACT: Rosalee C. Gorman, Common Carrier Bureau, (202) 634-1624.

SUPPLEMENTARY INFORMATION:.

List of Subjects in 47 CFR Part 25

Communications equipment, Satellite radio communications.

Order

In the matter of effective date of the revised rules concerning earth station antenna performance standards for newly installed antennas, (47 CFR 25.209) CC Docket No. 81-704.

Adopted: June 22, 1984.

Released: June 27, 1984.

By the Common Carrier Bureau.

1. In *Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations* [1] we adopted

[1] 54 Rad. Reg. 2d (P&F) 577 (1983) (hereinafter cited as *Reduced Orbital Spacing*).

certain revisions in the rules governing earth station antenna performance standards.[2] These changes are scheduled to take effect on July 1, 1984 with respect to newly constructed antennas and on January 1, 1987 for existing equipment.

2. We are currently reviewing a number of petitions for reconsideration of *Reduced Orbital Spacing* in which parties express concerns about their ability to comply with certain technical aspects of the new rules, and request various modifications of the regulations specified in § 25.209.[3] We are also considering a request for a waiver of that section for noncomplying equipment.[4]

3. None of the parties requesting reconsideration of § 25.209 opposes 2° orbital spacing or the concomitant improvements in antenna performance necessary to render reduced spacing efficient and effective. They do, however, question certain technical details of the improved performance specifications and assert that these requested revisions would enable us to achieve our policy objectives with less cost and disruption to their operations and services.

4. One of our stated objectives in *Reduced Orbital Spacing* is to minimize costs to users in achieving 2° spacings. If in fact this objective can be met utilizing the changes requested by petitioners, we see little purpose to be served in requiring absolute compliance with the revised rules at this time before we have considered the merits of the petitions for reconsideration. We anticipate Commission action on the petitions in the near future. Therefore, a delay in the compliance date is warranted to spare users what may prove to be unnecessary expenses should the Commission ultimately adopt some or all of the proposed changes. Even if the rule ultimately adopted does not include any changes, a short delay in the implementation of the technical rules will not substantially affect the 2° spacing plan. In order to perform a careful analysis, we deem it advisable to delay the effective compliance date until action on reconsideration is complete.

5. Accordingly, it is ordered that, in accordance with 47 CFR 1.102(b)(2), the effective date of compliance with the revised Section 25.209 of the rules concerning the antenna performance of newly installed antennas is deferred until further order.[5]

(Secs. 4(i), 303(r) of the Communications Act of 1934, 47 U.S.C. 154(i) and 303(r))

Federal Communications Commission.

William F. Adler,

Deputy Chief, Common Carrier Bureau.

[FR Doc. 84-17457 Filed 6-28-84; 8:45 am]

BILLING CODE 6712-01-M

[2] 47 CFR 25.209.

[3] *See, e.g.*, Petitions for Reconsideration filed by Alascom, Inc.; Equatorial Communication Services; Group W Cable, Inc.; and Vitalink Communications Corp.

[4] *In the Matter of Vitalink Communications Corp.*, File No. 806-DSE-ML-84.

[5] This order is effective June 27, 1984 pursuant to § 1.102(b) of the Commission's rules. 47 CFR 1.102(b).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 15, 17, 31, 52, and 53

[Federal Acquisition Circular 84-3]

Federal Acquisition Regulation

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

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular (FAC) 84-3 amends the Federal Acquisition Regulation (FAR) with respect to the following:

- Revision of the prescriptive language in FAR Subpart 4.1, Contract Execution, pertaining to the contract clause at FAR 52.204-1, Approval of Contract, and revision of the preface to the contract clause at FAR 52.204-1;
- Revision of FAR Part 15, Contracting by Negotiation, with respect to requirements for competition, circumstances permitting noncompetitive acquisitions, and requirements for justifying noncompetitive acquisitions, in order to implement in the FAR the requirements of the Office of Federal Procurement Policy Letter 84-2, subject "Noncompetitive Procurement Procedures," and the related restrictions contained in Pub. L. 98-72;
- Revision of FAR Subpart 17.2, Options, to provide a more realistic basis for making a determination that will permit a contracting officer to consider an option quantity in an award evaluation for a firm-fixed-price contract or a fixed-price contract with economic price adjustment;
- Revision of FAR Part 31, Contract Cost Principles, to include a cost principle that makes unallowable the costs associated with goodwill, including the cost of money resulting from including goodwill in the facilities capital employed base; and
- Revision of the language in FAR Part 53, Forms, to conform the prescriptive language concerning Standard Form 33, Solicitation, Offer, and Award, with the requirements for the form's use that are specified in FAR Part 15, Contracting by Negotiation.

Also included in FAC 84-3 is a statement that the requirements of Pub. L. 98-72 dealing with the publicizing of acquisition actions will be published in a later FAC.

EFFECTIVE DATE: October 1, 1984, but may be observed sooner.

FOR FURTHER INFORMATION CONTACT: Roger M. Schwartz, Director, FAR Secretariat, Room 4041, GS Building, Washington, D.C. 20405, Telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular (FAC) 84-3 amends the Federal Acquisition Regulation (FAR). The following is a summary of the amendments:

Item I—"Approval of Contract" Clause

The language in FAR Part 4, Administrative Requirements, that prescribes the contract clause at FAR 52.204-1, Approval of Contract, has been erroneously interpreted to require the use of the clause in certain situations in which the use of the clause is inappropriate. Accordingly, the prescriptive language is revised.

Additionally, the preface to the clause is revised to eliminate instructions from FAR Part 52, Solicitation Provisions and Contract Clauses, that repeat instructions that are specified in the FAR text that governs the use of the clause. The revision of the preface results from a decision that all prefaces to the solicitation provisions and contract clauses prescribed by the FAR will be revised to eliminate (a) the repetition of prescriptive language that is specified elsewhere in the FAR, and (b) the possibility that the prefaces will be incorporated into the language of the solicitation provisions and contract clauses.

Item II—Noncompetitive Procurement Procedures

Consistent with the requirements of the Office of Federal Procurement Policy Letter 84-2, subject "Noncompetitive Procurement Procedures," FAR Part 15, Contracting by Negotiation, is amended with respect to the following: (1) Requirements for competition; (2) Circumstances permitting noncompetitive acquisitions; (3)

Requirements for justifying noncompetitive acquisitions; (4) Review and approval requirements for noncompetitive acquisitions; (5) Additional restrictions on noncompetitive acquisitions from Pub. L. 98-72; and (6) Requirements for forwarding certain noncompetitive acquisition justifications to the agency's point of contact with the Office of the United States Trade Representative.

The remaining requirements of Pub. L. 98-72 dealing with the publicizing of acquisition actions will be published in a future Federal Acquisition Circular.

Item III—Options

The language in FAR Subpart 17.2, Options, concerning consideration of an option quantity in an award evaluation for a firm-fixed-price contract or a fixed-price contract with economic price adjustment, is unduly restrictive in that it requires a determination, before the solicitation is issued, concerning factors that may not be definitively known at that time. Accordingly, the FAR is revised to provide a more realistic basis for making the required determination before the solicitation is issued.

Item IV—New Cost Principle on Goodwill

FAR Part 31, Contract Cost Principles and Procedures, is amended to include a cost principle that makes unallowable the costs associated with goodwill, including the cost of money resulting from including goodwill in the facilities capital employed base.

Item V—Use of Standard Form 33, Solicitation, Offer, and Award

The language in FAR Part 53, Forms, that prescribes the use of Standard Form 33, Solicitation, Offer, and Award, does not reflect the full range of requirements for the form's use as specified in FAR Part 15, Contracting by Negotiation. Accordingly, FAR Part 53 is revised to conform with the requirements in FAR Part 15.

List of Subjects in 48 CFR Ch. I

Government procurement.

Eugene M. Femberg,
Acting Director, FAR Secretariat.
June 27, 1984.

Federal Acquisition Circular

[Number 84-3]

Unless otherwise specified, all Federal Acquisition Regulation and other directive material contained in this Federal Acquisition Circular is effective October 1, 1984.

John A. Mittino,
Acting Deputy Under Secretary (Acquisition Management).
June 27, 1984.

Ray Kline,
Acting Administrator.
June 27, 1984.

S. J. Evans,
Assistant Administrator for Procurement, NASA.
June 27, 1984.

Therefore, 48 CFR ch. I is amended as set forth below.

PART 4—ADMINISTRATIVE MATTERS

1. Section 4.103 is revised to read as follows:

4.103 Contract clause.

The contracting officer shall insert the clause at 52.204-1, Approval of Contract, in solicitations and contracts if required by agency procedures.

PART 15—CONTRACTING BY NEGOTIATION

2. The table of contents for Part 15 is revised to read as follows:

* * * * *

15.101 Definitions.
* * * * *
15.105-1 General.
15.105-2 Competition exceptions and justification.
15.105-3 Acquisitions subject to the Agreement on Government Procurement
* * * * *

3. Section 15.101 is revised to read as follows:

15.101 Definitions.

"Follow-on acquisition" means a new acquisition, whether placed by a separate new contract or by a supplemental agreement, placed with a particular contractor to continue or augment a specific program in instances where such placement was necessitated by prior acquisition decisions.

"Follow-on after competition acquisition" means a follow-on acquisition subsequent to an acquisition in which the contractor was selected following price, design or technical competition.

"Negotiation" means contracting without formal advertising. Any contract awarded without the use of formal advertising procedures is a negotiated contract (see 14.101).

"Noncompetitive acquisition" means an acquisition in which the contractor is not expected to be selected through price, design, or technical competition and includes follow-on acquisitions in which the original selection of the contractor was on a noncompetitive basis.

4. Section 15.105 is revised to read as follows:

15.105 Competition.

15.105-1 General.

Negotiated contracts shall be awarded on a competitive basis to the maximum practical extent. To this end:

(a) Offers shall be solicited from the maximum number of qualified sources consistent with the nature of and the need for the supplies or services being acquired. Acquisition information shall be publicized in accordance with 5.101.

(b) Before negotiating a contract on a noncompetitive basis, the contracting officer is responsible not only for ensuring that competition is not feasible and practicable under the existing conditions and circumstances but also for acting whenever possible to avoid the need for subsequent noncompetitive contracts. This process shall include—

(1) Examining the reasons precluding competition of the current requirement;

(2) Taking steps to foster competition in the future, particularly with respect to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive contracting; and

(3) Complying with the further requirements specified in 15.105-2 and 15.105-3.

(c) Contracts in excess of the small purchase limitation in Part 13 shall not be negotiated on a noncompetitive or follow-on after competition basis without prior review and approval at a level above the contracting officer in accordance with 15.105-2(c).

15.105-2 Competition exceptions and justifications.

This subsection does not apply to modifications to existing contracts for other than new work or to orders under existing contracts described in Subpart 16.5.

(a) *Competition exceptions.* For acquisitions of supplies or services in excess of the small purchase limitation in Part 13, competition shall be obtained unless valid justification for a noncompetitive acquisition exists (see also 15.104). In addition, one or more of the following circumstances must apply:

(1) The supplies or services required by the Government are available from only one source and there is no competitive alternative (i.e., there is only one source that because of unique capabilities is the only source able to meet the Government's minimum requirements) nor can competition be

developed in time to satisfy the requirements of the Government.

(2) The supplies or services required by the Government are urgently needed under unusual and compelling circumstances, caused by other than a lack of advance planning or funding concerns. Urgency in itself does not necessarily justify a noncompetitive acquisition decision unless fully supported by the facts of the acquisition situation.

(3) An award must be made to a specified source or sources—

(i) When it is necessary to—

(A) Maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency;

(B) Achieve industrial mobilization in the case of such an emergency; or

(C) Maintain an essential research capability to be provided by an educational or other nonprofit institution or a Federally Funded Research and Development Center;

(ii) To establish or maintain an alternative source which will likely increase or maintain competition and will likely result in lower overall cost to the Government; or

(iii) For follow-on acquisitions, in order to avoid—

(A) Substantial duplication of cost to the Government for the supplies or services being acquired that cannot be expected to be recovered through competition, or

(B) Unacceptable delays in accomplishing the agency's mission objectives.

(4) The contract to be awarded results from acceptance of an unsolicited proposal that demonstrates a unique or innovative concept which fills a requirement or general mission need of the Government, and that meets all of the other requirements of Subpart 15.5.

(5) A specific source is required by the terms of an international agreement or treaty between the United States Government and a foreign government or for the directed acquisition for a foreign government that is reimbursing the U.S. Government for the cost of the acquisition.

(6) The supplies or services are authorized or required by statute to be obtained from or through another Federal agency; e.g., mandatory Federal Supply Schedules or the SBA under section 8(a) of the Small Business Act, or required by statute to be obtained from a specified source; e.g., the National Industries for the Blind, the National Industries for the Severely Handicapped, or Federal Prison Industries.

(7) Disclosure of the supplies or services required by the Government to more than one source would jeopardize the national security.

(8) For circumstances not within 15.105–2(a) (1) through (7), the approval of the Agency Senior Procurement Executive has been obtained.

(b) *Justification for noncompetitive or follow-on after competition acquisitions.* For each noncompetitive or follow-on after competition acquisition exceeding the small purchase limitation in Part 13 (see 13.106 for competition and price reasonableness requirements for small purchases), the contracting officer shall document the contract file with a written justification that sets forth the facts and circumstances substantiating that competition is not feasible and practicable. Technical and requirements personnel are responsible for providing all necessary data to support their recommendation that competition is not feasible and practicable.

(1) The written justification shall—

(i) Describe the requirement the acquisition is intended to satisfy;

(ii) Cite one or more of the circumstances set forth in 15.105–2(a) that permit use of a noncompetitive acquisition or follow-on after competition acquisition; and, except for those under 15.105–2 (a)(5) and (a)(6),

(iii) Describe the unique capabilities possessed by the prospective contractor that make it the only source capable of meeting the minimum needs of the Government;

(iv) Describe the extent of attempts made to ascertain whether there are other qualified sources capable of satisfying the Government's requirement. This testing of the marketplace may range from written or oral contacts with knowledgeable experts regarding similar or duplicate requirements and the resuts of any formal market test recently undertaken, to the more formal sources-sought announcements in pertinent publications (e.g., technical/scientific journals or the Commerce Business Daily). If no such attempts were made, explain why;

(v) Provide any other facts supporting (A) citation of one or more of the circumstances set forth in 15.105–2(a) that permit use of a noncompetitive acquisition or follow-on after competition acquisition, or (B) other reasons for not obtaining competition. Other types of supporting facts include—

(1) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for competitive acquisition have not been developed or are not available;

(2) Data, estimated cost, or other rationale as to the extent and nature of the harm to the Government if a competitive acquisition is initiated or attempted;

(3) When either circumstance 15.105–2(a)(3)(ii) or (a)(3)(iii)(A) is cited, a description of the estimated cost avoidance and how the estimates were derived.

(2) All supporting data which is the responsibility of technical or requirements personnel (e.g., verification of the Government's minimum needs or the schedule requirements; recommendation that competition is not feasible and practicable) shall be certified as accurate by the requirements or technical personnel.

(c) *Review and approval requirements.*

(1) The written justification prepared in accordance with 15.105–2(b) shall be reviewed and approved at a level above the contracting officer in accordance with agency procedures. However, this review and approval is not required under the circumstances described in 15.105–2(a)(5) and (a)(6) or for acquisitions of electric power or energy, gas (natural or manufactured), water, or other utility services, or educational services from nonprofit institutions. Acquisitions of such public utility services shall comply with Subpart 8.3, Acquisition of Utility Services. Competition should be obtained in the case of bottled gas distributors.

(2) Any justification under 15.105–2(a)(8) shall be reviewed and approved by the Agency Senior Procurement Executive. This function may not be delegated.

(3) Notwithstanding subparagraphs (c)(1) and (2) above, the following additional requirements from Pub. L. 98–72 apply.

(i) For purposes of this subparagraph only, "sole source contract" means a contract for the purchase of supplies or services that is entered into or proposed to be entered into after soliciting and negotiating with only one source.

(ii) When a synopsis is required under 5.201, the contracting officer may not commence negotiations for award of a sole source contract until at least 30 days after publication of the synopsis with the required notice of intent to contract.

(iii) Except when exempted by subparagraph (c)(3)(iv) below, the contracting officer shall not commence negotiations for the award of a sole source contract with a value in excess of $1,000,000 in fiscal year 1984, $500,000 in fiscal year 1985, and $300,000 in fiscal

year 1986 and each year thereafter unless—

(A) The head of the contracting activity or deputy has approved the authority to enter into such contract (this authority is not delegable), and

(B) When synopsis is required under 5.201, the contracting officer has evaluated the responses to the notice of intent to contract on a sole source basis.

(iv) Subparagraph (c)(3)(iii) above does not apply to acquisitions—

(A) Made under section 8(a) of the Small Business Act (15 U.S.C. 637(a));

(B) Made under section 9 (Research and Development) of the Small Business Act (15 U.S.C. 638) (the "Small Business Innovation Development Act"); or

(C) If the agency's need for the supplies or services is of such unusual and compelling urgency that the Government would be seriously injured if the requirements of subparagraph (c)(3)(iii) above were complied with.

15.105-3 Acquisitions subject to the Agreement on Government Procurement.

Acquisitions subject to the Agreement on Government Procurement (Subpart 25.4) may be made on a noncompetitive basis only when permitted and justified pursuant to this 15.105. If, in such an acquisition, one of the circumstances set forth in 15.105-2(a)(3)(i)(A) or (B), or in 15.105-2(a)(3)(ii) is being cited as a basis for not obtaining competition, or if the noncompetitive acquisition justification is being reviewed and approved pursuant to 15.105-2(c)(2), the justification shall also be forwarded, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

5. Section 15.501 is amended by revising the definition for "Unsolicited proposal" as follows:

15.501 Definitions.

* * * * *

"Unsolicited proposal" means a written proposal that is submitted to any agency on the initiative of the submitter for the purpose of obtaining a contract with the Government, and which is not in response to a formal or informal request (other than an agency request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the agency).

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

6. Section 17.206 is amended by revising the first sentence of paragraph (a)(2) to read as follows:

17.206 Evaluation.

(a) * * *

(2) Competition for the option quantity may be impracticable once the initial contract is awarded. * * *

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

7 The following is added to the table of contents for Part 31:

* * * * *

31.205-49 Goodwill.

* * * * *

8. Subsection 31.205-10 is amended by adding paragraph (a)(5) to read as follows:

31.205-10 Cost of money.

(a) * * *

(5) The cost of money resulting from including goodwill (however represented) in the facilities capital employed base is unallowable.

* * * * *

9. Subsection 31.205-49 is added to read as follows:

31.205-49 Goodwill.

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. The contract clause preface in subsection 52.204-1 is revised to read as follows:

52.204-1 Approval of contract

As prescribed in 4.103, insert the following clause:

* * * * *

PART 53—FORMS

11. Subsection 53.215-1 is amended by revising paragraph (d) to read as follows:

53.215-1 Solicitation and receipt of proposals and quotations (SF's 18, 26, 30, 33, 36, 129)

* * * * *

(d) SF 33, Solicitation, Offer, and Award. SF 33, prescribed in 53.214(c), shall be used in connection with negotiated acquisitions when it appears advantageous to begin negotiations by soliciting written offers that, if accepted by the Government, would create a binding contract without further action. Award of such contracts may be made by either SF 33 or SF 26, as specified in 15.408-1(b) and 15.414.

* * * * *

(40 U.S.C. 486(c), Chapter 137, 10 U.S.C., and 42 U.S.C. 2473(c))

[FR Doc. 84-17245 Filed 6-28-84; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

48 CFR Part 970

Department of Energy Acquisition Regulation; Technical Amendment

AGENCY: Department of Energy.

ACTION: Final rule: Technical amendment.

SUMMARY: Paragraph (d) of § 970.3102-2 (Compensation for personal services) of the Department of Energy Acquisition Regulation (DEAR) provides internal procedural guidance requiring Department of Energy (DOE) contracting officers to review and approve individual management and operating contractor employee compensation of $50,000 or more. As a result of the Department's continuing review of its system of control covering approval levels of contractor employee compensation, § 970.3102-2(d) is revised to increase the amount of individual contractor employee compensation which the contracting officer is required to review and approve from $50,000 to $80,000.

EFFECTIVE DATE: June 29, 1984.

ADDRESS: Comments, if any, should be addressed to the Department of Energy, Procurement Policy Branch, MA-421.2, Forrestal Building, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen L. Feinsilber, Business and Financial Policy Branch, Department of Energy, (202) 252-6173.

SUPPLEMENTARY INFORMATION: DOE finds that advance notice and comment, which are generally required by the Administrative Procedure Act, are unnecessary for this technical amendment. This finding is based on the facts that the change is limited to internal procedural guidance concerning contracting officers' review requirements and that this change will

not adversely affect the public or impose any additional burden on the public.

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC, on June 22, 1984.

Thomas J. Davin, Jr.,

Acting Director, Procurement and Assistance Management Directorate.

Subpart 970.31—Contract Costs Principles and Procedures

Section 970.3102-2(d) is revised to increase the amount of individual contractor employee compensation requiring contracting officer review and approval from $50,000 to $60,000. The text of 970.3102-2(d) is revised to read as follows:

970.3102-2 Compensation for personal services.

* * * * *

(d) *DOE Review and approval of compensation paid individual employees.* In determining the reasonableness of compensation, the compensation of each individual contractor employee normally need not be subjected to review and approval. Generally, the compensation paid individual employees should be left to the judgment of contractors subject to the limitations of DOE-approved compensation policies, programs, classification systems, and schedules, and amounts of money authorized for wage and salary increases for groups of employees. However, all compensation due an individual of $60,000 or more shall require the contracting officer's or designee's review and approval. In addition, it will often be necessary that employee compensation be subjected to review and approval on an individual basis at a level below $60,000, when the contracting officer finds it appropriate for the particular situation. The contract shall specifically provide for the approval by the contracting officer of the cost of compensating an individual contractor employee above the level determined by the contracting officer, if a total of 50 percent or more of such compensation is reimbursed under DOE cost-type contracts. For purposes of determining the level for individual review and approval, total compensation as used in this paragraph includes only the employee's salary and bonus or incentive compensation. As in the case of other personnel and compensation costs, it is intended that contracting officer review and approval of individual compensation normally will be prior to incurrence of costs.

(Sec. 161 of the Atomic Energy Act of 1954, 42 U.S.C. 2201, Sec. 644 of the DOE Organization Act, 42 U.S.C. 7254)

[FR Doc. 84-17442 Filed 6-28-84; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 23

[FRA Docket No. SA-3, Notice No. 10]

Safety Appliance Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule eliminates the requirement that railroads and other freight car owners remove the roof running boards from box and other house cars by June 30, 1984. It responds to a petition from the Association of American Railroads (AAR) that FRA eliminate this requirement.

EFFECTIVE DATE: July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Principal Program Person: Philip Olekszyk; Office of Safety, Federal Railroad Administration, Washington, D.C. 20590; Telephone (202) 426-0897

SUPPLEMENTARY INFORMATION:

Background

In 1966 the Interstate Commerce Commission (ICC), which was then responsible for administration of the Federal railroad safety program, amended its regulations concerning the arrangement of safety appliances on box cars and other freight cars of similar design, *i.e.*, "house cars." The ICC amendment reflected changes in railroad operating practices and increases in the size of certain types of freight cars by eliminating the requirement for installation of roof running boards on newly constructed cars unless that car was to be equipped with roof hatches. Additionally, the ICC directed the removal of roof running boards and modification of ladders and handholds of existing box and house cars unless equipped with roof hatches.

The regulation adopted by the ICC is contained in the first sentence of the Note in § 321.1 of the Safety Appliance Standards (49 CFR 231.1) and is now administered by FRA. The original regulation contained a compliance date of April 1, 1974, for the removal of roof running boards and completion of the related changes in the associated ladders and handholds for all box and other house cars built on or before April 1, 1966, or under construction prior to that date and placed in service before October 1, 1966. That compliance date has been extended by FRA until June 30, 1984.

The AAR has filed a petition requesting that FRA delete this provision and eliminate the requirement for modifying cars placed in service built prior to October 1, 1966. AAR estimates that at the time the rule was initially adopted there were aproximately 700,000 cars that required modification. That number has steadily and substantially diminished over the years, and the AAR estimates that only 30,000 unmodified cars are still in service. Because of the large number of cars that are stored in serviceable condition, AAR states that it is particularly difficult and expensive to ensure that the retrofit program is completed. Additionally, a large portion of these cars is scheduled for retirement in the next few years.

AAR's position is that the difficult and expensive task of modifying the remaining cars cannot be supported as necessary for safety. AAR suggests that the universal existence of railroad operating rules, which prohibit engine and train crews from going on the roof of freight cars, and of a like rule prohibiting other employees from going on the roof of a moving freight car, means that the safety of personnel will not be jeopardized by eliminating the requirement for continued removal of the roof running boards. AAR estimates that the cost of locating, moving, and modifying the remaining cars would exceed $10 million.

FRA accident data indicate that there is no accident or injury in which FRA can identify unmodified equipment as a causal factor in incidents involving on-duty railroad personnel. In the absence of such data, FRA has repeatedly granted extensions of the compliance deadline and on October 27, 1983, (48 FR 49666) issued a notice of proposed rulemaking to delete this requirement. Only the AAR responded to this notice and it urged prompt adoption of the proposed amendment. Consequently, FRA has decided to adopt the amendment as proposed.

List of Subjects in 49 CFR Part 231

Railroad safety.

Regulatory Impact

This final rule has been evaluated in accordance with existing regulatory policies. It is considered to be nonmajor under Executive Order 12291 and nonsignificant under the DOT policies

and procedures (44 FR 11034, February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

It is estimated that fewer than 30,000 freight cars remain to be brought into compliance and that the cost of the retrofit program would total approximately $10 million. This final rule will have a positive economic impact by permitting those costs to be avoided since it eliminates any retrofit requirement.

Although this final rule may affect some small entities that own or lease a minimal number of these cars, that economic impact will not be significant. Based on these facts, FRA certifies that the final rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The final rule will not have any environmental impact and does not involve directly or indirectly any information collection requirements.

The Final Rule

PART 231—[AMENDED]

In consideration of the foregoing, Part 231 of Title 49, Code of Federal Regulations, is amended as set forth below:

1. In § 231.1 the section heading, the introductory language, and paragraph (a)(1) are revised to read as follows:

§ 231.1 Box and other house cars built or placed in service before October 1, 1966.

Except for box and other house cars that comply with either § 231.27 or § 231.28, each box and other house car shall be equipped to meet the following specifications:

(a) *Handbrake.* (1) Number—One efficient handbrake which shall operate in harmony with the power brake installed on the car. Each such handbrake shall (i) provide the same degree of safety as the design shown on plate A, or (ii) provide the same degree of safety as that specified in § 231.27

* * * * *

2. In § 231.27, the section heading is revised to read as follows:

§ 231.27 Box and other house cars without roof hatches or placed in service after October 1, 1966.

* * * * *

3. In § 231.28, the section heading is revised to read as follows:

§ 231.28 Box and other house cars with roof hatches built or placed in service after October 1, 1966.

Authority: Secs. 2, 4, and 6, 27 Stat. 531, as amended; secs. 1 and 3, 32 Stat. 943, as amended; sec. 6(e) and (f), 80 Stat. 939; 45 U.S.C. 2, 4, 6, 8, and 10, 11–16; and 49 U.S.C. 103(c)(1).

Issued in Washington, D.C. on June 26, 1984.

John H. Riley,

Administrator.

[FR Doc. 84-17401 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-18)]

Exemption From Regulation; Poultry, Meat and Dairy Products

AGENCY: Interstate Commerce Commission.

ACTION: Notice of final rules (exemption).

SUMMARY: The Commission is exempting from regulation all rail transportation of poultry, meat, and dairy products. Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101a or to protect shippers from the abuse of market power by railroads, and the service is of limited scope. This proceeding is aimed at essentially completing the exemptions process (other than for grain and sunflower seeds) within the general area of agricultural and food products.

DATES: The exemption is effective on July 30, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245, or Gerald Proger, (202) 275–7957.

SUPPLEMENTARY INFORMATION: The specific commodities exempted are listed in the Appendix. Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Regulatory Flexibility, Environment, and Energy

The Commission certifies that the exemption will not have a significant economic impact on a substantial number of small entities, since the commodities move predominantly by motor carriers, and since no new reporting requirements are being imposed. Also, this action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Railroads.

Authority: 49 U.S.C. 10505, 5 U.S.C. 553.

Decided: June 22, 1984.

By the Commission, Chairman Taylor, Vice Chairman Andre, Commissioners Sterrett and Gradison.

James H. Bayne,

Secretary.

Appendix

PART 1039—[AMENDED]

Title 49 of the Code of Federal Regulations, § 1039.10, is amended by adding the following commodities in alphabetical order to the list of miscellaneous commodities exempt from regulation.

§ 1039.10 Exemption of agricultural commodities except grains, soybeans, and sunflower seeds.

* * * * *

20	11	___	Fresh meat.
20	15	___	Fresh dressed poultry
20	17	___	Processed poultry.
20	21	___	Creamery Butter.
20	23	___	Condensed, Evaporated or Dried Milk.
20	25	___	Cheese and Special Dairy Products.
20	29	___	Processed Wet'd Milk.
20	141	___	Hides and Skins.
20	144	___	Animal refuse, tankage, or meat meal.
20	000	29	Butter and honey mixed.
20	000	76	Freeze-dried poultry
20	000	77	Freeze-dried meat.
20	000	78	Freeze-dried salad ingredients.
20	000	83	Fresh and salted meat and products mixed, not hung.
20	000	84	Fresh and salted meat and products mixed, hung and not hung.

* * * * *

[FR Doc. 84-17413 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Guidelines on Apportionment From Civil Service Retirement Benefits

AGENCY: Office of Personnel Management.

ACTION: Guidelines on apportionment from Civil Service Retirement Benefits.

SUMMARY: The Office of Personnel Management is publishing for public information and comment, guidelines which it developed through adjudication of claims, for interpreting State court orders dividing civil service retirement benefits. These guidelines are intended to assist the legal community in drafting orders dividing benefits to ensure that the orders will be interpreted to carry out the intent of the court and the parties.

DATE: Comments must be received on or before August 28, 1984.

ADDRESS: Send comments to Lucretia F. Myers, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Washington DC. 20044, or deliver to Room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 632–4684.

SUPPLEMENTARY INFORMATION: Pub. L. 95–366, enacted September 15, 1978, authorized the Office of Personnel Management to pay a portion of a former employee's civil service retirement benefits to an estranged spouse in accordance with certain State court orders. Final rules implementing this statute were published in the Federal Register on March 7, 1980 (45 FR 14835).

The Office of Personnel Management has received approximately 1,200 State court orders dividing civil service retirement benefits. In implementing these orders, the Office has been forced to interpret many terms which are capable of more than one meaning. To insure consistency in interpretation and to simplify the task of interpreting ambiguous terms which are frequently used, the Office of Personnel Management has developed a set of guidelines which it will use in interpreting State court orders.

The legal community has attempted to draft orders dividing civil service retirement benefits to minimize the potential confusion generated in interpreting the orders. However, without knowledge that a term used in a decree has a technical meaning within the civil service retirement law, unclear orders frequently resulted. The guidelines for interpreting these technical terms should assist the legal community in drafting orders that will be interpreted by the Office of Personel Management to produce the intended result.

These guidelines contain no regulatory language.

Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management is giving notice that it will use the following set of guidelines in interpreting State court orders which divide civil service retirement benefits:

United States of America Office of Personnel Management Compensation Group

Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits

Recent inquiries and controversies resulting from ambiguous court orders seeking to divide civil service retirement benefits have demonstrated a need for written guidelines explaining the interpretation which the Office of Personnel Management will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of the Office of Retirement Programs, but also for the legal community as a whole, with the hope that by informing attorneys, in advance, about the manner in which the Office of Personnel Management will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper language to accomplish the aims of the court.

I. Cost-of-Living and Salary Adjustments

A. Unless the court directly and unequivocally orders otherwise, decrees which divide annuities either on a percentage basis or by use of a formula will be interpreted as subject to adjustment for cost-of-living and salary adjustments occurring after the issuance of the decree.

B. On the other hand, decrees which award a former spouse a specific dollar amount from the annuity will be interpreted as excluding cost-of-living and salary adjustments unless the court expressly orders their inclusion.

C. Orders which contain both a formula or percentage instruction and a corresponding fixed dollar amount will be interpreted as including the fixed amount only as the court's estimate of the initial amount of payment. The formula or percentage instruction will control in cases where conflicting instructions appear.

D. A formula containing an instruction to calculate the former spouse's share effective at the time of divorce will not be interpreted to prevent cost-of-living or salary adjustments. To award a fixed dollar amount based on the rate of annuity which woud have been paid if retirement occurred at the date of divorce, the decree must either state the dollar amount of the award or explain with sufficient clarity that salary adjustments, as well as service, after the date of the decree are to be disregarded in computing the former spouse's share.

II. Types of Annuity

A. Gross annuity will be interpreted as the amount shown as gross annuity on civil service annuity master record printouts, i.e., the annuity payable after any applicable survivor deduction but before any other deduction.

B. To divide an annuity before any applicable survivor deduction, the decree must contain language to the effect that the division is to be made on the life rate annuity, or the annuity unreduced for survivor benefit, or equivalent language. A division of "gross annuity" will not accomplish this purpose.

C. Net annuity or disposable annuity will be interpreted to mean the amount remaining after the deductions listed in § 831.1705(a) of Title 5, Code of Federal Regulations, have been subtracted from the gross annuity (defined above).

D. Orders which fail to state the type of annuity which they are dividing will be interpreted as dividing gross annuity (defined above).

III. Calculating Time

A. The smallest unit of time which will be used in computing a formula in a decree is a month.

1. This policy is based on the provision of section 8332 to title 5, United States Code, which allows credit for service for years or twelfth parts thereof. Requests to calculate smaller units of time will not be honored.

2. Smaller periods of time stated in terms of decimal fractions of a year contained in a decree will be limited in application to simple numerical operations performed using the extra precise number. Time calculations by the Office of Personnel Management will be no more precise than years and twelfth parts. For example, the share of a former spouse awarded a portion of the annuity equal to ½ of the fraction whose numerator is 12.863 years and whose denominator is the total service on which the annuity is based would be computed by taking ½ of the quotient obtained by dividing 12.863 by the total service measured *in years and twelfth parts.*

B. The term "military service" will generally be interpreted to include only periods of service within the definition of military service contained in section 8331(13) of title 5, United States Code, i.e., active duty military service. Civilian service with military organizations will not be included as "military service," except where the exclusion of such civilian service would be manifestly contrary to the intent of the court order.

C. When a decree contains a formula for dividing annuity which requires computation of service, and unused sick leave has been used in the annuity computation, the amount of credit attributable to the unused sick leave will be computed as service if the formula instructs the use of "creditable service" (or other phrase using "credit" or its equivalent), but will exclude the time attributable to unused sick leave if the formula is based on "years of service" or "total service." Credit for unused sick leave always accrues on the date of separation for immediate retirements; it is never apportioned over the time when earned.

IV Distinguishing Between Divisions of Annuity and Contributions

A. Orders which are unclear about whether they are dividing an annuity or contribution will be interpreted as dividing an annuity.

B. Orders using "annunities," "pensions," "retirement, benefits," or similar terms will be interpreted as dividing an annuity and whatever other employee benefits become payable, such as refunds. Orders which divide "contributions," "deductions," "deposits," "retirement accounts," "retirement funds," or similar terms will be limited to division of the amount which the employee has paid into the Fund.

Orders Directing the Annuitant To Make Payment

A. Orders which specifically direct the annuitant to pay a portion of retirement benefits to a former spouse will be honored unless the annuitant objects to direct payment by the Office of Personnel Management, but will not be honored even if the annuitant raises only a general objection to payment by the Office of Personnel Management.

B. Orders which direct or imply that the Office of Personnel Managment is to make payment of a portion of retirement benefits, or are neutral about the source of payment, will be honored unless the annuitant can demonstrate that the order is invalid.

[FR Doc. 84-17345 Filed 6-28-84; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 84-NM-84-AD]

Airworthiness Directives: Boeing Model 757-200 and 767-200 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD) applicable to Boeing Model 757-200 and 767-200 aircraft which requires periodic checks of the Fuel Quantity Indicating System (FQIS). This amendment would require replacement of the FQIS processor unit and termination of the repetitive checks. Failure of the FQIS may result in fuel exhaustion.

DATE: Comments must be received on or before August 21, 1984.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to The Boeing Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington; telephone 206-431-2969. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notce may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directive Rules Docket, Docket No. 84-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The Federal Aviation Administration is proposing to amend Part 39 of the Federal Aviation Regulations by revising AD 83-15-05, Amendment 39-4698, applicable to Boeing Model 757 and 767 airplanes. This revision would require replacement of the Fuel Quantity Indication System (FQIS) processor.

During a delivery flight, the crew noted a 4,300 pound variance between FQIS readings and the calulated values shown by the Flight Management Computer (FMC). This error was traced to an FQIS fault. Subsequent investigation by Boeing showed that specific faults in the P/N S345T002-310 (757-200) and S345T002-41 (767-200) FQIS processor units can affect the fuel

quantity readings in both main tanks equally. Fault insertion tests resulted in total fuel readings in the Model 757 which were 2,000 pounds high. Similar tests on the Model 767 resulted in total fuel readings which were 3,400 pounds high.

If the subject FQIS fault is present during fueling, the aircraft can be significantly underfueled. This underfueling and the associated erroneous flight deck display and FMC initialization signal, combined with an inflight delay for any reason, have the serious potential to cause inflight fuel exhaustion.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive was issued which required periodic checks of the fuel quantity indication system. It was recognized that the periodic check implied that there was a risk time in which there was small probability that an undetected fault might exist. A new FQIS processor design has now been certificated. The new design makes it possible to eliminate the risk of undetected processor failure between periodic checks. The FAA is therefore proposing to revise the AD to require installation of the new FQIS processor units and, after installation of the new units, to delete the periodic check requirement of the FQIS.

It is estimated that 114 U.S. registered airplanes would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The replacement components will be provided without cost. Based on these figures, the total cost impact of this AD to the U.S. operators is estimated to be $4560. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few, if any, small entities within the meaning of the Regulatory Act would be affected.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revising Amendment 39-4696 (48 FR 34731; August 1, 1983, AD 83-15-05, the read as follows:

§ 39.13 [Amended]

Boeing: Applies to Boeing Model 757 and 767 series airplanes certificated in all categories. To prevent loss of engine power due to fuel exhaustion resulting from erroneous fuel quantity indications, accomplish following:

A. For Model 757 aircraft, replace Fuel Quantity Indicating System (FQIS) processor part number S345T002-310 with part number S345T002-350 in accordance with Boeing Service Bulletin 757-28A7 dated March 23, 1984, or later FAA approved revision, prior to April 1, 1985.

B. For Model 767 aircraft, replace Fuel Quantity Indicating System (FQIS) processor part number S345T002-41 with part number S345T002-42 in accordance with Boeing Service Bulletin 767-28A5 dated March 15, 1984, or later FAA approved revision, prior to April 1, 1985.

C. For Model 757 aircraft, continue an inspection program in accordance with Boeing Alert Service Bulletin 757-28A7, dated June 17, 1983, or later FAA approved revision, until FQIS processor part number S345T002-350 is installed.

D. For Model 767 aircraft, continue an inspection program in accordance with Boeing Alert Service Bulletin 767-28A5, dated June 12, 1983, or later FAA approved revision, until FQIS processor part number S345T002-42 is installed.

E. Alternate means of compliance with this AD which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Moutain Region.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.85))

Note.—For the reasons discussed earlier in the preamble: The FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transporation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have significant economic impact on a substantial number of small entities because few, if any, Model 757 and 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on June 22, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-17333 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-NM-18-AD]

Airworthiness Directives: British Aerospace Model DH-114 Heron Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD) that would require modification of the horizontal stabilizer upper pick-up eyebolt holes and replacement of the eyebolts on all British Aerospace Model DH-114 Heron series airplanes. One case of in-service eyebolt failure has occurred. The upper eyebolts are the main attachment points for the upper spar chord of the horizontal stabilizer. Failure of these eyebolts could lead to loss of the stabilizer.

DATES: Comments must be received no later than August 20, 1984.

ADDRESSES: The applicable service information may be obtained from British Aerospace Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041, or may also be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified below. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public

contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-18-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition on DH-114 airplanes which must be corrected by complying with British Aerospace Technical News Sheet No. F. 21.

There has been one reported case in which a horizontal stabilizer upper pick-up eyebolt was found fractured. Investigation revealed that fatigue was the cause of the failure. An adverse tolerance build-up may have caused the fatigue failure. British Aerospace Technical News Sheet No. F.21 requires the removal and discarding of existing pick-up eyebolts, modification to the eyebolt holes to elimate mismatch, and the installation of new pick-up eyebolts.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the previously mentioned corrective action.

It is estimated that 45 U.S. registered airplanes would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $400 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $90,000. For these reasons, the proposed rule is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act would be affected.

List of subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

§ 39.13 [Amended]

British Aerospace Inc.: Applies to Model DH-114 Heron series 2A, 2DA, and 2X airplanes certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent fatigue failure of the tailplane upper pick-up eyebolts, accomplish the following within 90 days after the effective date of this AD, unless already accomplished:

A. Remove the eyebolts, modify the eyebolt holes, and install new eyebolts in accordance with paragraphs 4.1, 4.2, and 4.3, respectively, of British Aerospace, Aircraft Group Technical News Sheet No. F.21, Issue: 1, dated January 8, 1979.

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

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

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DH-114 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington on June 21, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-17327 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 71 and 73

[Airspace Docket No. 84-ANM-11]

Proposed Alteration of VOR Federal Airways and Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to redescribe several Restricted Areas, alter the Continental Control Area in connection with these Restricted Areas and alter the descriptions of V-253 and V-200 in the vicinity of the Utah, NV, test range to widen the corridor west of Salt lake City, UT, (ASD No. 84-ANM-11 (49 FR 23392; June 6, 1984)). This action will extend the comment period closing date to allow for a 60-day comment period instead of the existing 45-day comment period.

DATES: Comments must be received on or before August 6, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 84-ANM-11, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments

are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this Correction to NPRM must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-ANM-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Correction to Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this Correction. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Background

ASD No. 84-ANM-11, published on June 6, 1984 (49 FR 23392), proposed to redescribe several Restricted Areas, alter the Continental Control Area in connection with these Restricted Areas and alter the descriptions of V-253 and V-200 in the vicinity of the Utah, NV, test range to widen the corridor west of Salt Lake City, UT. This action will extend the comment period closing date to allow for a 60-day comment period instead of the existing 45-day comment period on ASD No. 84-ANM-11.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, VOR Federal airways, Continental control area and restricted areas.

Extension of Comment Period

The comment period for ASD No. 84-ANM-11 is extended to close on August 6, 1984.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 108(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65.)

Note.—This document extends the comment period for a notice of proposed rulemaking to afford the public and industry with additional time in which to review and respond to the notice. Therefore, this document is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) as no regulatory or economic burden is imposed on any person by this action. A full regulatory evaluation will be prepared if further rulemaking is warranted based on the comments received as a result of the Notice.

Issued in Washington, D.C., on June 22, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-17330 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 75

[Airspace Docket No. 83-AWP-17]

Proposed Alteration of Jet Route, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign a segment of Jet Route J-7 in the State of California to facilitate a more efficient use of the navigable airspace.

DATES: Comments must be received on or before August 13, 1984.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 83-AWP-17, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 83-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) 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) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to delete the segment of Jet Route J-7 between Oakland, CA,

Sacramento, CA, and Reno, NV, and establish a segment between Los Angeles, CA, and Reno, NV. Efficiency is improved through the codification of a route that is presently being requested routinely by pilots. Also, a reduction of air traffic controllers' workload is realized by eliminating the need for radar vectoring and route monitoring procedures along the route. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

§ 75.100 [Amended]

J-7 [Amended]

By deleting the words "Oakland, CA, via Sacramento, CA;" and substituting the words "Los Angeles, CA, via INT Los Angeles 319°T(304°M) and Avenal, CA, 145°T(129°M) radials; INT Avenal 145°T(129°M) and Friant, CA, 181°T(164°M) radials; Friant;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.65)

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

Issued in Washington, DC., on June 22, 1984.

John W. Baier,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 84-17329 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

15 CFR Part 377

[Docket No. 40677-4077]

Request for Public Comment of Lifting the Short Supply Validated Licensing Requirement for Exports of Linear Alpha Olefins and Other Products Without a Likely Energy End Use

AGENCY: Office of Industrial Resource Administration, International Trade Administration, Department of Commerce.

ACTION: Advanced notice of proposed rulemaking and request for public comment.

SUMMARY: A number of exporters have requested that the Department of Commerce consider the removal of linear alpha olefins as a product subject to short supply licensing controls (15 CFR 377.6). Such commodities are included in Group N of Supplement No. 2 to Part 377 of the Export Administration Regulations and are included within an outdated Schedule B Number (431.0280). In 1982 the Census Bureau assigned a new number to linear alpha olefins (431.0270).

Linear alpha olefins do not have a likely end-use as an energy source. At present, linear alpha olefins require validated export licenses as refined petroleum products under Group N. If these products are removed from Group N, validated licensing requirements would be eliminated. Accordingly, the Department is soliciting comments from the public as to whether these commodities and comparable commodities in Group N without a likely energy end-use should continue to be included in the list of refined petroleum products subject to licensing.

DATE: Comments must be received by July 13, 1984.

ADDRESS: Comments may be mailed to: Department of Commerce, Resource Assessment Division, PO Box 663, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: John Richards, Director, Office of Industrial Resource Administration, International Trade, Administration (Telephone: 202/377-4508).

SUPPLEMENTARY INFORMATION: After receiving public comments the International Trade Administration will make a decision regarding this matter and issue an appropriate notice in the Federal Register. The period for submission of comments will close two weeks from the publication of this notice. All comments received before the close of the comment period will be considered by the Department. While comments received after the end of the comment period will be considered if possible, their consideration cannot be assured.

Public comments will become a matter of public record, and will be available for public inspection and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning this Notice will be maintained in the International Trade Administration Freedom of Information Records Inspection Facility, Room 4001-B, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, DC 20230. Records in this facility may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Patricia L. Mann, the International Trade Administration Freedom of Information Officer, at the above address or by calling 202/377-3031.

Authority: Secs 203, 205, Pub. L. 95-223, as amended (50 U.S.C. 1702, 1704); E.O. 12470 of March 30, 1984 (49 FR 13099, April 3, 1984); Sec. 103, Pub. L. 94-163 as amended (42 U.S.C. 6212); E.O. 11912 of April 13, 1976 (41 FR 15825, as amended); Section 201 (10), Pub. L. 94-273 amending 10 U.S.C. 7430.

Dated: June 25, 1984.

John A. Richards,

Director, Office of Industrial Resource Administration.

[FR Doc. 84-17313 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21079; S7-24-84]

Two-Tier Tender Offer Pricing and Non-Tender Offer Purchase Programs—Advance Notice of Possible Commission Actions

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: The Commission is studying two-tier pricing in tender offers and non-tender offer purchase programs. This review has evolved from recommendations proposed to the Commission by its Advisory Committee on Tender Offers. The Commission is requesting public comment on these

recommendations as well as on other proposals, issues and data described in this release. This initiative will assist the Commission in its review of the tender offer regulatory scheme. The Commission will review comments made in response to this release with a view toward possible rulemaking and legislative proposals.

DATE: Comments should be received on or before September 14, 1984.

ADDRESS: Comment letters should refer to File S7-24-84 and be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Joseph G. Connolly, Jr. or Robert E. Burns, ((202) 272-3097), Office of Tender Offers, Division of Corporation Finance, or, regarding the Report that is an annex to this release, Gregg A. Jarrell ((202) 272-7102), Chief Economist, Securities and Exchange Commission 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Securities and Exchange Commission (the "Commission") is considering two practices in the change of control area that have raised serious concerns and have come under increased scrutiny. The first is an acquisition, initiated by a tender offer, where the per share consideration is higher for one portion of the shares to be acquired than for the other portion ("two-tier pricing" or a "two-tier bid").[1] The second is the acquisition of a significant percentage of stock through open market or privately negotiated purchases.

The issues surrounding two-tier pricing and non-tender offer acquisition programs have been focused recently by the Report of Recommendations of the Commission's Advisory Committee on Tender Offers.[2] The Advisory Committee identified concerns with these practices and made proposals to address those concerns.[3] The Commission expressed reservations with those recommendations and has initiated a study of the issues in this area.[4] As part of the study, this release discusses concerns regarding two-tier bids and open market or privately negotiated purchase plans. It identifies possible solutions to alleviate these concerns, including the Advisory Committee's recommendations, and requests pubic comment.

Finally, as a further part of the Commission's study, the Office of the Chief Economist ("OCE") has compiled data regarding successful tender offers in calendar years 1981-1983. This study covers 91 any-or-all, 32 two-tier, and 25 partial tender offers. The data show that the average premium for the any-or-all tender offers is 63.4 percent, compared with an average blended premium of 55.1 percent for two-tier offers, and 31.3 percent for partial tender offers. A closer comparison of any-or-all uniform premiums with two-tier blended premiums shows that 68 percent of the any-or-all offers have premiums above 40 percent, while 72 percent of the two-tier offers have blended premiums above 40 percent. This study is attached as an annex to this release and provides complete detailing of the sample studied and the methodology used. Commentators are requested to comment upon the OCE Report and suggest further research directions.

II. Concerns With the Practices and Recommendations of the Advisory Committee on Tender Offers

A. Two-Tier Pricing

The two-tier bid is a recent practice that has evolved from the partial tender offer. The partial tender offer itself is not new. As a bidding practice it has been used for many years in a variety of ways—standing alone or as part of a series of transactions such as an open market acquisition, followed by a partial tender offer, followed by a final merger.[5] As noted above, of the 148 successful tender offers included in OCE's three-year sample, 32 are two-tier offers, 25 are partial offers and 91 are any-or-all offers. Recently, the partial offer has been amplified by the two-tier bidding strategy where a proposed second step, lower priced acquisition of the minority interests is disclosed in the first step partial tender offer.[6]

Concerns with two-tier pricing pivot principally around what many see as coercion or pressure on shareholders to tender into the first step cash tender offer.[7] The alternative of not accepting the tender offer is virtual assurance that, if the offer is successful, the shares will have to be sold in the lower priced, second step.[8] Given that pressure, it is

---

[1] A two-tier bid usually involves an acquisition that is accomplished in two steps. In the first step, the bidder uses a tender offer to buy, at a premium price and generally for cash, enough shares to establish a controlling position in the target. Once control is established, the offeror will take the second step in the acquisition, a merger of the target into the bidder or a subsidiary, freezing out minority shareholders with a forced acceptance of cash or securities valued at a lower price than the original tender offer. The second step merger generally is disclosed in the tender offer materials and usually involves securities of the bidder.

[2] Advisory Committee on Tender Offers, *Report of Recommendations* (July 8, 1983) ("Advisory Committee Report"). The Advisory Committee was established by the Commission to examine the tender offer process and other techniques for acquiring control of public issuers and to recommend to the Commission appropriate or necessary legislative and regulatory changes. *See* Release No. 34-19528 (February 25, 1983) [48 FR 9111, March 3, 1983]. Members of the public may obtain copies of the Advisory Committee Report, on a one per request basis, by sending a self-addressed 9×12 inch envelope with prepaid postage of $3.20 affixed, to Securities and Exchange Commission, Publications Section, Public Reference Branch, Stop 1-2, 450 Fifth Street, NW., Washington, D.C. 20549.

[3] Advisory Committee Recommendation 16 proposed that a partial offer have a longer minimum offer period than a bid for all shares. That regulatory disincentive would tend to mitigate what the Committee saw as the coercive elements of partial and two-tier bids. Recommendation 14 proposed that any acquisition resulting in total ownership of over 20 percent of the voting power of an issuer be made by tender offer. Such a provision was intended to assure equal opportunity for all shareholders be benefit from any premium associated with a control acquisition, an opportunity the Advisory Committee believed was not available where control passed through a non-tender offer acquisition program.

[4] The Commission considered all of the Advisory Committee's recommendations at its open meeting on March 13, 1984. Chairman Shad testified as to the Commission's positions on March 28, 1984 before the Subcommittee on Telecommunications, Consumer Protection and Finance of the House Committee on Energy and Commerce. The Commission is now engaged in a three part response to the Advisory Committee's Report: first, proposed legislation (*see* Tender Offer Reform Act of 1984 (H.R. 5693, 98th cong., 2d Sess. (1984)) submitted by the Commission to Congress on May 21, 1984 and introduced on May 22, 1984); second, proposed rulemaking; and third, further study on certain issues.

[5] *See, e.g.*, Freund & Easton, *The Three-Piece Suitor: An Alternative Approach to Negotiated Corporate Acquisitions*, 34 Bus. Law. 1679 (1979).

[6] Some, including certain members of the Advisory Committee, argue that even the pure partial offer is a two-tier bidding strategy, where the first step is a cash tender offer and the second step is the open market.

[7] The OCE Report computes the first- and second-tier premium in two-tier offers to determine if first-tier premiums encourage shareholders to tender into an offer with a lower second-tier premium. OCE finds that the second-tier premium equals at least 80 percent of the first-tier premium in over three-fourths of the cases and most second-tier premiums are equal to at least 80 percent of the first-tier premium. The average first-tier premium in two-tier offers is 63.5 percent, and the average second-tier premium is 47.1 percent. The average bid premium in partial tender offers is 45.9 percent. The Commission notes, however, that the OCE Report does not attempt to determine the extent to which "market professionals" or any other group of shareholders of a target may receive a disproportionately high percentage of the first tier premium.

[8] The pressure based on price differential in the first and second step can be accentuated where the consideration in the second step is securities whose market value may be less than stated value.

argued that there is no realistic means for shareholders to reject a two-tier bid, even where they believe the combined, or blended, first and second step price for the target is too low.[9]

The Commission's Advisory Committee on Tender Offers identified many of these concerns with coercive effects of two-tier bids. Indeed, the Advisory Committee considered these concerns to be applicable to partial offers as well. The Committee proposed that a regulatory disincentive be placed on all partial offers. That disincentive would be substantially longer minimum offering period than that applicable for an offer for all shares ("full bid").[10] This was expected not only to encourage the use of the full bid but also of offset to some degree the advantage of a two-tier bid.

The Advisory Committee envisioned an extension of the offering period for a partial bid beyond the current, 20 business day minimum offering period for a full bid.[11] The concept of different time periods for partial and full bids, however, could also be implemented by reducing the full bid period and leaving partial offers on the current time schedule. For instance, the minimum offering period for a full bid could be reduced to 10 business days, and the partial offer could be left at 20 business days. Commentators are specifically requested to address this alternative along with that of the Advisory Committee.

The Commission is sensitive to the Committee's concerns regarding two-tier and partial offers. At its meeting on March 13, however, the Commission stated that it did not think the Committee's recommendation is the best way to address these concerns. The Commission's reservation is based on a number of points.

First, the Commission is not satisfied that the case for the supposed coercion in a two-tier bid has been made with sufficient precision. In this regard, the Commission notes that any tender offer, and particularly any partial tender offer, involves an element of coercion or pressure. The Commission requests commentators to address specifically cases in which two-tier bids have created pressure on shareholders which is different than that present in other tender offers.

Second, assuming that the two-tier bid is unduly coercive, the Commission is not certain that the two week extension of the minimum offering period for the partial offer recommended by the advisory Committee is a strong enough response. Currently, there is a timing disincentive for the partial bid. This arises from the ability of a bidder in a full bid to begin purchases upon the termination of the withdrawal rights. With a partial offer, purchases cannot commence until the expiration of the offer.[12] Notwithstanding this disparity, however, it is not clear that it has discouraged bidders from using the two-tier bidding strategy. Commentators are requested to address this point specifically in their comment letters.[13]

Third, aside from questions about the effectiveness of the proposal, the Commission is concerned with any regulation that does not distinguish the two-tier bid from the partial offer. The partial tender offer has long been an accepted bidding practice which can serve valid business purposes.[14] The Commission specifically requests commentators to discuss whether it is appropriate to regulate two-tier bids in a way that would also regulate partial offers. Further, it requests comments on whether in is possible to formulate regulation that distinguishes between partial and two-tier offers.

Fourth, the Commission believes that any restriction on two-tier pricing must appreciate the impact of the regulation on broader corporate control transfer issues. For instance, if two-tier bidding is restricted, will there be fewer bids made? Or, alternatively, will restrictions on two-tier bidding simply force bidders into pure partial tender offers with no second step into which minority shareholders can sell? The OCE study shows that any-or-all tender offers are common for small target firms, while partial and two-tier offers predominate among larger targets, as measured by the market value of equity. If two-tier bidding is restricted, will the distribution of tender offers by firm size change?

Finally, the Commission believes there is some indication that recent regulatory changes and proposals may effectively reduce the appeal of two-tier pricing for bidders. Since the Commission adopted Rule 14d-8 (*see* Release No. 34-19336 [December 15, 1982]), which eliminated the use of multiple proration pools by requiring that proration rights be extended throughout the offering period of any partial offer, there has been a decline in the use of two-tier pricing in tender offers. *See* OCE Report. Futher, the Advisory Committee proposed, and the Commission concurred, that cash and exchange offers be placed on a more equal regulatory footing.[15] Under current regulations, because of the need to register securities to be offered in exchange, the Advisory Committee found that there was major disincentive to using securities as consideration in a tender offer. To the extent that regulatory disincentives are reduced for exchange offers,[16] the Commission requests comment on whether bidders may find it less necessary to structure bids with a high cash front end and a lower priced securities back end or whether bidders may have greater flexibility to design other forms of two-tier bids.

B. Open Market or Privately Negotiated Purchase Programs

The second area the Commission is studying involves the acquisition of a

[9] So effective is the pressure of the two-tier bid, some have theorized, that it is possible for a two-tier bid with a lower blended price to prevail over a higher priced offer for all the shares. This may result because the risk of proration in a two-tier offer is reduced by the likelihood of shareholders tendering into the competing bid and the fact that a percentage of shareholders may not tender into either offer. On the basis of the 1981–1983 data in the OCE Report, there is no evidence of a two-tier bid with a lower blended price prevailing over a higher priced offer for all the shares. *See* section V of OCE Report.

[10] *See* Advisory Committee Report at Recommendation 16 which provides as follows:

The minimum offering period for a tender offer for less than all the outstanding shares of a class of voting securities should be approximately two weeks longer than that prescribed for other tender offers.

[11] *See* Rule 14e-1 (17 CFR 240.14e-1).

[12] Under Rule 14d-7 (17 CFR 240.14d-7) any person who has deposited securities in a tender offer has a right to withdraw those shares for the first 15 business days of the tender offer. Thus, after that, the bidder in an offer for all the outstanding securities may commence purchasing. Where the offer is for less than all the shares, however, Rule 14d-8 (17 CFR 240.14d-8) requires proration rights to be extended throughout the offering period. The bidder, therefore, cannot commence purchases until the expiration of the offer because it cannot determine the proration factor until the offer expires.

[13] In addressing this point, commentators should note that the Advisory Committee recommended, and the Commission concurred, that withdrawal rights be extended throughout the offering period. *See* Advisory Committee Report at Recommendation 17. The Commission will make this the subject of a separate rulemaking proposal.

[14] There was substantial sentiment on the Advisory Committee itself that partial tender offers are important to the economy. The Report cited six valuable roles for partial offers. *See* Report at pp. 24–25.

[15] *See* Advisory Committee Report at Recommendations 5, 11, and 12.

[16] The Commission has proposed for comment a new form, Form S-4, for registration of securities in business combinations which, if adopted, would implement the Advisory Committee's proposal to extend principles underlying the integrated disclosure system to exchange offers. *See* Release No. 33-6334 (May 9, 1984) [49 FR 20333]. Another element of the Advisory Committee's recommendation which involves commencing bids and receiving tenders prior to the effective date of the registration statement will be the subject of a separate rulemaking project.

significant position through open market or privately negotiated purchases. Concern here is raised by the fact that where such purchases do not involve a tender offer [17] and where control passes as a result of the purchases, there are not the same substantive protections as would be present if the acquisition had been by tender offer. In a tender offer, the bidder must provide disclosure about the offer, keep the offer open for a minimum period of time, provide the substantive protections of withdrawal, proration and the best price rule, and make the offer to all shareholders. The tender offer procedure and regulations will assure that market forces will price the premium and that this premium is offered to all shareholders. Those same assurances do not exist in ordinary open market or privately negotiated purchase programs which are regulated essentialy from a disclosure standpoint.[18] Thus, although it may have substantially the same effect as a tender offer, the open market or negotiated acquisition program has the tendency to proceed with the lowest control premium and to pass that premium to a selective group of shareholders.[19]

Additional regulation of these acquisitions has been proposed form time to time by the Commission [20] and was addressed by the Advisory Committee specifically. The Advisory Committee proposed that any acquisition resulting in total ownership over 20 percent of the voting power of an issuer be required to be made by a tender offer.[21] Above the 20 percent threshold, this proposal would eliminate concerns of those who believe open market or privately negotiated purchase programs unfairly and unevenly set and distribute control premiums. The recommendation is founded on the premise that control is a corporate asset and that shareholders should have an equal opportunity to share in the premium paid for that asset.[22]

At its meeting on March 13, the Commission expressed serious reservations about the Committee's proposal. Principal among the drawbacks with such a proposal is the regulatory burden that it would place on all forms of acquisition that result in more than percent ownership, even those where control is not the ultimate objective. For instance, the proposal could inhibit such acquisitions as those for investment or technology transfer purposes by increasing the expense of assembling such holdings and by decreasing the alienability of blocks in excess of 20%. The proposal, which would represent a fundamental change in the current system, could have significant impact on capital formation and corporate governance. The Advisory Committee itself acknowledged the difficult issues that such a proposal would present, noting its own "extended debate" on the question.

III. Alternative Proposals

In addition to the proposals of the Advisory Committee and the legislative and rulemaking proposals of the Commission in 1979 and 1980,[23] three alternative proposals have been made to address two-tier bids and non-tender offer acquistion programs. The first would require a bidder to make a tender offer for all the shares of a class once holdings in that exceed a certain threshold. The key determinant with this suggestion is the level of the trigger threshold. Various proposals have ranged from as low as 10 percent to as high as 30 percent. As noted by the Advisory Committee, under the regulation of takeover bids in the United Kingdom, the City Code on Take-overs and Mergers ("City Code") imposes a general obligation to make an offer for all shares if the amount owned or sought exceeds 30% of the outstanding shares.[24]

Consequences of this type of regulation, which combines certain policy elements of the Advisory Committee's Recommendations 14 and 16, are similar to those already described. A system that requires the tender offer to be used above a certain threshold could increase the costs of toe-hold acquisitions and restrict the alienability of blocks. Moreover, a system that requires a tender offer for all the shares above a certain threshold could limit partial ownership of companies, an economic consequence of uncertain limits. In addressing this alternative commentators are requested, if they believe a threshold is appropriate, to indicate at what level they would place it and why.

The second proposal also derives from the British system of regulation. Under the City Code, a letter of transmittal by which target company shareholders respond to an offer must provide an opportunity to approve or disapprove an offer for less than all of the outstanding shares.[25] The tender offer reply form thus permits the shareholder to exercise two choices in response to the bid. First, the shareholder may tender or not tender shares that are the subject of the offer. Second, the shareholder is permitted to vote for or against the offer. If a majority of the shareholders vote against the offer, the shares will be returned and the bid will not be permitted to proceed. Thus, in the case of a partial offer, including an explicit two-tier priced offer, a shareholder may tender shares and vote against the transaction at the same time.

This type of provision appears to eliminate effectively the perceived coercive aspects of the two-tier bid that have evoked concern. A shareholder who is not satisfied with the price of the offer, in either the first or the second step, but who feels compelled to tender shares into the first step tender offer, may at the same time protect his or her position by voting against the offer. To the extent that the market as a whole concurs, the regulatory system would

[17] Courts have found that certain purchase programs constitute tender offers. *See, e.g., Wellman* v. *Dickinson*, 475 F.Supp. 783 (S.D.N.Y. 1979); *S–G Securities, Inc.* v. *Fuqua Investment Co.*, 466 F. Supp. 1114 (D.Mass. 1978); *Cattlemen's Investment Co.* v. *Fears*, 343 F.Supp. 1248 (W.D.Okla. 1972).

[18] *See* 10(b) and 13(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act"). Section 10(b) is the general antifraud provision of the Exchange Act. Section 13(d) requires certain disclosure within 10 days after an acquisition that results in a beneficial ownership of more than 5% of an issuer's registered equity securities. Recently, the Commission has proposed legislation that would empower it to close the 10-day window period in section 13(d). *See* H.R. 5693, 98th Cong., 2d Sess. (1984). That legislative proposal was in direct response to Advisory Committee Recommendation 13.

[19] For a general discussion of the impact on target shareholders of the open market or privately negotiated acquisition program, *see* Maiwurm & Tobin, *Beachhead Acquisitions: Creating Waves in the Marketplace and Uncertainty in the Regulatory Framework*, 38 Bus. Law. 419, 425–26 (1983).

[20] In 1979, the Commission proposed a regulatory structure that would require the use of a tender offer for an acquisition above a specified threshold of beneficial ownership. *See* Release No. 34–16385 (November 29, 1979). These rules were not adopted. In 1980, the Commission proposed legislation that would have effected a similar result. *See* S. 3188, 96th Cong., 2d Sess. (1980). The legislation was not enacted. *See also* note 17.

[21] *See* Advisory Committee Report at Recommendation 14 which provides as follows: No person may acquire voting securities of an issuer, if, immediately following such acquisition, such person would own more than 20% of the voting power of the outstanding voting securities of that issuer unless such purchase were made (i) from the isssuer, or (ii) pursuant to a tender offer. The Commission should retain broad exemptive power with respect to this provision.

[22] The question whether control should be deemed a corporate asset has been debated for some time. *See, e.g.*, Andrews, *The Stockholder's Right to Equal Opportunity in the Sale of Shares*, 78 Harv. L. Rev. 505 (1965); Berle, *"Control" in Corporate Law*, 58 Columb. L. Rev. 1212 (1958). *See also Perlman* v. *Feldmann*, 219 F.2d 173 (2d Cir.), *cert. denied*, 349 U.S. 952 (1955).

[23] *See* note 19.

[24] *See* Rule 34 of the City Code.

[25] Under the City Code, partial offers are permitted under certain circumstances. *See* Rule 27 of the City Code.

provide a mechanism for the coalescence of that estimate.

A third approach would permit partial offers but would require any second-step acquisition within a specified period to be of at least equal per share value. Under this proposal, a bidder could make a partial tender offer. Any further acquisitions within a specified period, two years for instance, whether by merger, tender offer, or non-tender offer purchases, would only be permitted if the consideration was of at least equal value per share as that given in the first step partial tender offer. This proposal would mitigate against the perceived coercive effects of both partial and two-tier offers by eliminating the price differential between the initial tender offer and the second step take-out merger or the open market absorption of minority interests.

IV. Specific Questions

In addition to Advisory Committee Recommendations 14 and 16, the alternative proposals described in Part III, and other specific inquiries in Parts II and III, commentators are requested to consider the following questions.

1. Is two-tier pricing an acceptable means to induce tendering?

2. Is a two-tier offer coercive, and, if so, how and in what situations is it most coercive?

3. Does the partial offer with no stated second step involve less certainty and more coercion than the explicity two-tier bid, and if so, explain how?

4. Is it possible to regulate two-tier offers without also regulating partial offers, and, if so, how?

5. Is a partial offer inherently more complicated than an offer for all shares, and, if so, is it necessary to keep a partial offer open longer than a full offer in order to give shareholders time to evaluate its terms?

6. If regulation restricted bidders to using only tender offers for all shares, would this have a chilling effect on takeover activity and, if so, how?

7. As a conceptual matter, should "control" in any form be deemed a corporate asset, and why?[26] If so, for what form of "control" is that premise most apt?

8. Should federal regulation be structured around the premise that "control" is a corporate asset, and, if so, what system of regulation is most appropriate?

9. What are the principal benefits and detriments to an open market or privately negotiated acquisition program to obtain control?

10. If a non-tender offer acquisition program occurs over a long period of time and incremental acquisitions are fully disclosed, are there still adverse consequences that require additional regulation?

11. Should the regulatory scheme assure that the tender offer is the fastest means to acquire a substantial percentage of an issuer's equity?

12. What would be the economic consequences of a regulation that prohibited open market acquisitions above a certain threshold, and required that above that threshold any acquisition be made by a tender offer?

13. Some reason that, from an economic standpoint, the partial offer should always have a higher premium than the full offer. Assuming this is true, if the initial bid is two-tier priced, will the high premium in the first step partial tender offer necessarily force a subsequent competing bidder to use a two-tier bid, as opposed to a full bid. If so, why? If not, why not?

14. It has been argued that the partial offer can induce shareholders to accept less than the best alternative. Is that argument apt and if so, would a requirement that target company shareholders approve a partial tender offer in the manner described in Part III resolve the predicament?

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Dated: June 21, 1984.
By the Commission.

George A. Fitzsimmons,
Secretary.

The Economics of Partial and Two-Tier Tender Offers

Concern over partial and two-tier tender offers is very evident. The Securities and Exchange Commission's Advisory Committee on Tender Offers noted those concerns and suggested possible regulatory changes. Recent legislative proposals would severely hinder the use of partial or two-tier tender offers. Before regulatory changes are pursued however, a comprehensive economic analysis of partial and two-tier tender offers is required. In this paper, we consider tender offers in 1981, 1982 and 1983, and relate empirical information on partial and two-tier tender offers to the controversy surrounding them.

Our attention is focused on the premiums paid to target shareholders in partial or two-tier offers as opposed to any-or-all offers. A predominant concern when any-or-all offers are not used is that target shareholders may be encouraged to tender in the first tier when the offer price of the second tier is substantially lower (or nonexistent in partial offers). We compare the overall "blended" premium in partial and two-tier tender offers (a weighted average of first- and second-tier premiums) to any-or-all premiums to determine relative premiums paid to target shareholders in each case. In addition, we note other characteristics of partial and two-tier offers. Frequency of these offers over time and possible rationale for such offers are considered.

This memorandum is organized into several sections. The first section is a brief overview of the criticism of partial and two-tier offers. The second section describes our data and empirical methodology. The third section considers some theoretical explanations of partial and two-tier tender offers. The fourth section relates our empirical information to the controversy. Section five reviews multiple bidder contests. A summary and conclusion ends the paper.

Our study reveals these characteristics of any-or-all two-tier and partial tender offers in 1981, 1982 and 1983:

- Any-or-all offers are more frequent than partial and two-tier offers (91 as opposed to 57). However, the incidence of any-or-all offers is much higher among smaller targets while partial and two-tier offers predominate among medium-size and large targets.
- Any-or-all offers yield a higher overall premium (63.4 percent) than the blended premiums in two-tier (55.1 percent) and partial (31.3 percent) offers. Any-or-all premiums and two-tier blended premiums are very similar in magnitude—72 percent of two-tier premiums exceed 40 percent while 68 percent of any-or-all premiums do so.
- The first-tier of a two-tier offer is virtually equal to the overall premium of an any-or-all offer at 63.5 percent. However, the offer premium of partial offers is lower at 45.9 percent.
- Nearly three-fourths of the 32 two-tier offers have less than a 20 percent difference between the first- and second-tier premiums. In contrast, less than half of the 25 partial offers have less than a 20 percent difference between the offer price and the post-offer trading price.

I. The Controversy Behind Partial and Two-Tier Tender Offers

In Release No. 34-21079, the Commission describes the concerns surrounding partial and two-tier offers. Central to these concerns is that target shareholders may be induced to tender

[26] *See* note 21.

to a partial or two-tier offer when an alternative any-or-all offer may have a higher overall premium. A two-tier offer might be accepted over an any-or-all offer in this case because shareholders tender to a high first tier to avoid a relatively low second tier. Though shareholders would be better off on an overall basis if they tendered to the any-or-all offer rather than tendering to the two-tier offer, shareholders are not certain which offer will be accepted. A situation is created where shareholders may tender to the first tier of the two-tier bid because of fear of being forced to accept a lower second-tier offer if the bidder obtains control in the two-tier offer. Commentators suggest that this process is coercive and encourages shareholders to tender when the overall two-tier premium is not as attractive as existing or potential any-or-all offers.

Our research focuses on identifying partial and two-tier offers and computing any-or-all, first-tier and "blended" premiums (which combine first-tier and second-tier premiums).

These premiums are compared for evidence of shareholders accepting relatively low overall bids in partial or two-tier offers or indications of coercive behavior. In addition, the frequency of such offers and the role of these offers in takeovers are studied. It is hoped that the evidence presented will provide a springboard for further discussion and reserach.

II. Data and Methodology

The debate surrounding partial and two-tier offers lacks empirical evidence. Although commentators from investment banking firms and other industry sources are very knowledgeable about partial and two-tier offers, there has been no data compiled to specifically address the empirical questions arising in this issue.

The Austin data base compiles all tender offer filings at the Commission and provides details on offer terms and target characteristics.[1] From this data base, we take all "successful" cash offers (defined as those in which some target shares were purchased) in 1981, 1982 and 1983.[2] For these offers, we compile a data base detailing offer terms, pre- and post-offer prices of target shares, and other information such as total number of target shares and number of shares held and sought by the bidder.[3]

In general, tender offers may be divided into two basic groups depending on whether prorationing is a factor in the bid. An any-or-all offer states that the bidder will buy any-or-all tendered shares of the target firm, as long as some minimum conditions are met. In general, such conditions related to a minimum number of tendered shares to insure control. In an any-or-all offer, the target shareholder knows that all of his tendered shares will be purchased at the offered premium as long as the minimum conditions are met.

The second type of tender offer is one in which the bidder states a maximum number of shares to be purchased in addition to a minimum condition. If the offer is oversubscribed, the tendered shares will be subject to prorationing. When the offer is executed under prorationing, each tendering account has the same fraction accepted. Prorationing requirements insure that each target shareholder receives proportionate share of the terms of the tender offer.

This second type of offer may be divided into several subgroups. A *pure partial offer* we define as one in which there is no announced second-tier offer during the tender offer and no clean-up merger of tender offer closely following the execution of the tender offer. Assuming the partial offer is for control off the target firm and is successful, a minority interest is left trading the target firm's shares in the market. Following the execution of the tender offer, it should be noted that the trading price is generally lower than the offer price. This trading price of the target shares is essentially the second tier of a partial offer.

A two-tier offer combines a partial tender offer for control with an offer for remaining shares following the execution of the original tender offer. In an *explicit two-tier* offer, the bidder, at the time of the first-tier offer, agrees with target management to purchase the remaining shares following the execution of the first-tier. The first tier usually is for controlling interest in the target firm and almost always offers cash for the target shares. The second tier is more likely to offer securities for the remaining shares after the cash first-tier offer closes successfully. The first-tier price is offered to shareholders on a prorata basis and the value of the second-tier offer is less than the first-tier offer on a per-share basis.

An *implicit two-tier* offer lies between the pure partial offer and the explict two-tier offer. Though no second tier is agreed to at the time of the original offer for control, a second tier is revealed shortly after the execution of the offer. The second-tier price in implicit two-tier offers is again generally lower than the first-tier price and offers securities for the target shares. The second-tier offer often takes the form of a merger.

Central to our research is the determination of premiums paid in the various categories of tender offers. The premium of the any-or-all offer is simply the precentage difference between the tender offer price and the pre-offer price:

$$(1)\ P_A=(P_T-P_M)/P_M$$

Where:

P_A= any-or-all tender offer premium,
P_T= price offered for target shares, and
P_M= pre-offer market price of target shares.

The premium of partial and two-tier tender offers is more difficult to determine. The "blended" premium we compute reflects the overall premium paid to all outstanding shares, where the premium paid to each tier is weighted by the fraction of shares receiving that premium. This blended premium is applicable to pure partial, explicit two-tier and implicit two-tier offers. In a pure partial offer, the price of the remaining traded shares is essentially the second-tier price. We express the blended premium as:

$$(2)\ P_B=(F\times T_1)+((1-F)\times T_2),$$

Where:

P_B= the blended price of the offer,
T_1= the per-share, first-tier offer price,
T_2= the per share, second-tier offer price,
F= the fraction of outstanding shares demanded through the first tier of the offer,
$T_1=(T_1-P_M)/P_M$,
$T_2=(T_2-P_M)/P_M$, and
P_M= pre-offer market price of target shares.

Most of the needed data is readily available. The tender offer price in any-or-all offers (P_T) and the first-tier price (T_1) in partial and two-tier offers is stated in the terms of the tender offer. The fraction of outstanding shares sought (F) is measured as the fraction of

[1] *Tender Offer Statistics, 1971–1983*, Douglas Austin & Associates, 3178 Republic Blvd. N., Suite 2, Toledo, Ohio 43615, 1984.

[2] In our study, we do not distinguish explicitly between "friendly" and "hostile" offers. In many cases, the target management has agreed to the bidding firm's offer terms. This is especially true in the case of two-tier offers when the second-tier terms are stated at the time of the first-tier offer.

[3] For our study, we augment the Austin data base with more detailed information from the *Wall Street Journal*. In a few cases it was necessary to eliminate a tender offer from our sample due to lack of contemporaneous price informatin about the target firm. Tendor offers were also excluded if they were clean-up offers after the bidder had already obtained control of the firm. A list of excluded offers is available upon request.

Mergers, as opposed to tender offers, are specifically excluded from our sample. For example, in the complicated Martin Marietta/Bendix case, we include only the various tender offers in which shares were purchased. These offers include Martin Marietta's offer for Bendix and Bendix's offer for Martin Marietta. United Technologies friendly tender offer for Martin Marietta is not included because no shares were purchased under it and Allied's merger with Bendix is also excluded since no tender offer was involved.

outstanding shares purchased in the first round of the tender offer. The pre-offer market price of the target shares (P_M) is measured 20 trading days before the announcement of the initial offer of the contest. This earlier price is used to lower the probability that leakage of information about an impending tender offer has raised P_M above its value in the case of no tender offer.

The second-tier or clean-up price (T_2) is more difficult to determine. In cases where the second-tier offer is composed of securities, the actual security value may not equal that stated by the bidder. In implicit two-tier offers, the value of T_2 is not known until the second-tier offer is made. In pure partial offers, the second-tier price is essentially the post-offer trading price of the target shares. For uniformity in comparing these offers, we estimate T_2 in each type of offer as the market price of target shares 20 trading days after the execution of the initial offer.[4]

III. Why Bidders Use Partial and Two-Tier Tender Offers

The formula for the blended premium of a partial or two-tier offer can be used to show that any partial offer has a matching any-or-all offer in which target shareholders receive the algebraically equivalent premium. For example, a two-tier offer of $20 for 50 percent of the outstanding shares and $10 for the other 50 percent is algebraically equivalent to a uniform offer of $15 for any-or-all shares outstanding. The premium of the any-or-all offer equals the blended premium of the two-tier bid. Total outlay to the acquiring firm is equal under these bids assuming both induce 100 percent tenders. What are the economic differences, then, between partial and two-tier offers and any-or-all offers, and why are partial or two-tier tender offers preferred by some bidders? Several explanations have been suggested:

1. A partial tender offer leaves outstanding a minority equity interest in the target firm with the value of the outstanding shares determined in a competitive exchange market. In its report, the SEC Advisory Committee on Tender Offers cites several benefits of partial offers in addition to those listed below.[5]

2. The acquirer wishes to limit the financial risk of the takeover bid. An any-or-all tender offer exposes the bidder to financal risk because it is difficult to predict with precision how many shares will be tendered in response to a particular offer. The total outlay required to obtain control depends on the offer price and the number of shares purchased. Because the bidder must choose the offer price before he knows the number of shares tendered, and because an any-or-all offer requires the bidder to purchase all tendered shares as long as the minimum conditions are met, the total outlay for the bidder seeking control cannot be known precisely in advance.

In contrast, a partial tender offer obligates the bidder to purchase only up to a pre-set maximum number of shares regardless of how many shares are tendered, as long as the minimum conditions are met. The partial offer sets an upper bound on the total outlay required for control and eliminates this source of financial risk to the bidder.[6]

3. A two-tier offer can increase the incentive for target shareholders to tender by offering a high first-tier premium and a relatively low second-tier premium. The greater the difference between the first-tier premium and the second-tier premium, the greater is the opportunity cost to target shareholders of not tendering if the offer succeeds. Under certain conditions, target shareholders can be induced to tender into a two-tier offer even though its blended premium is less than the uniform premium of an alternative any-or-all offer that is forthcoming. As identified by Professor Bradley, this situation is analogous to the classic prisoner's dilemma.[7]

The prisoner's dilemma analysis as applied to two-tier tender offers is clearer with an example. Suppose a target firm with 1,000 outstanding shares has a market value of $10 per share before the tender offer, for a total equity value of $10,000. Assume that a bidder is willing to pay $5,000 above this market value for control of the target firm. Therefore, the bidder is willing to pay $15 per-share in an any-or-all offer. Let us further assume that there is a strong expectation that in the near future (say 50 days) another bidder will offer $18 per share through an any-or-all offer.

Despite the expectation of a higher offer in the near future, the first bidder can fashion a two-tier offer to pressure target shareholders into responding while still paying only a $5,000 premium. Specifically, the first bidder offers $20 per-share for 500 shares on a proration basis, and $10 per share for the other 500 shares, to be paid after the first offer is executed. The blended price is $15, which equals the outlay in an any-or-all offer of $15 per share.

Faced with this offer, each target shareholder will reason that: (i) If other shareholders tender, then I should tender to avoid receiving only $10 for my shares; (ii) if other shareholders hold, then I should tender to receive the first-tier price of $20 per-share, with little prorationing risk if the offer succeeds. This reasoning will lead rational shareholders to tender. The result holds even though all shareholders know that concerted, organized refusal to tender would be the best strategy since it would allow by assumption all to receive $18 per share in the near future from an alternative bidder. The prisoner's dilemma that is created by the two-tier offer causes the shareholders to accept the lower-valued offer having a $15 blended price.

We studied all control contests involving partial or two-tier offers in 1981, 1982 and 1983 for evidence that any-or-all offers are disadvantaged relative to partial or two-tier offers in contests or that shareholders may be accepting a lower return by approving a partial or two-tier offer. As detailed in section V, there are no cases which support the suggestion that two-tier or partial offers can defeat competing any-or-all offers while providing lower premiums to target shareholders. Thus, though theoretically a two-tier offer can force the acceptance of a lower-valued offer, we find no cases where this actually happened.

4. Under SEC regulations in effect before December 15, 1982, a two-tier or partial tender offer forced shareholders to commit to tender their shares earlier

[4] In the case of exchange offers, it is especially important to use the market value of the target stock rather than the stated value of the securities offered. Shareholders will base their decisions on the market value of the securities, not the value as stated by the bidder.

[5] SEC Advisory Committee on Tender Offers, *Report of Recommendations*, July 8, 1983, pp. 24–25.

[6] Uncertainty about how many shares will be tendered in response to an any-or-all offer can create considerable risk. For example, the total outlay for control doubles if 100 percent of outstanding shares are tendered compared with 50 percent. In view of the large per share premiums offered and the large investments represented by many tender offers the incentive can be great for the bidder to put a ceiling on the total outlay required by the tender offer.

[7] Michael Bradley, "Interfirm Tender Offers and the Market for Corporate Control," *Journal of Business*, 1980, pp. 345–376. See especially pp. 355–356. The prisoner's dilemma is created by placing two suspected perpetrators of a crime in separate rooms and presenting each with the following proposition. If you confess and your partner does not, he receives the harshest punishment and you go free. If he confesses and you do not, then you receive the harshest punishment and he goes free. If both confess, then both receive moderate punishment. The rational prisoner will confess to avoid the harshest punishment, even though no confession results in both going free.

than they would under an any-or-all tender offer. This incentive resulted from the SEC's increase in the minimum offer period from 10 calendar days to 20 business days in 1979. At the same time, the minimum period for the proration pool remained at 10 calendar days. Therefore, while an any-or-all offer gave target shareholders 20 business days to make their tendering decisions, the partial or two-tier offer forced target shareholders to decide within 10 calendar days or forfeit their right to prorata acceptance of their tendered shares.

Earlier commitments by target shareholders benefit the bidding firm because target shareholders have less time to consider alternatives or wait for additional offers. This advantage to bidders of prorated offers have been eliminated since December 15, 1982, when the SEC extended proration rights throughout the offering period. We measure a moderate reduction in the incidence of two-tier and partial tender offers relative to any-or-all offers following this rule change.

IV Empirical Results

A. Frequency of Tender Offers

Table 1 presents a breakdown by year and type of 148 tender offers in 1981, 1982 and 1983. There are 91 any-or-all offers accounting for 61 percent of the total. There are 57 partial and two-tier offers accounting for the remaining 39 percent. The relative incidence of any-or-all offers is roughly constant across the three years, with a modest increase ot 66.7 percent of the total in 1983. Two-tier and partial tender offers accounts for at least one-third of the total in each of the three years.

B. Size of Target Firms

Table 2 reports the average size of target firms by type of tender offer. Any-or-all offers are used generally for smaller target firms than either two-tier or pure partial offers. Target firms of any-or-all offers average $113.7 million in total equity value, as measured using the pre-contest stock price times the fully diluted number of shares. In contrast, targets of two-tier offers average $631 million and targets of pure partial offers average $353.8 million.

Tables 3a, 3b and 3c provide more detailed information on the distribution of target size by type of offer. Table 3a shows the absolute distribution of target size by type of offer and Table 3b reports the relative distribution of the same information. These tables reveal that 87.5 percent of two-tier offers and 60 percent of pure partial offers are for target firms of more than $40 million in equity value. On the other hand, only 46.2 percent of any-or-all offers are for these larger firms.

Table 3c reports the percentage of each type of offer in each class of target size. As the size of the target firm increases, two-tier and pure partial offers become increasingly prevalent and any-or-all offers play a lesser role. For target firms with less than $5 million in equity value, 93 percent of the 14 tender offers made are any-or-all offers. For the very largest firms (more than $320 million in equity value), only 25 percent of the 20 offers are any-or-all offers, while 75 percent are two-tier and pure partial tender offers. Clearly, two-tier and pure partial tender offers play an important role in takeover contests for medium-sized and large targets while any-or-all offers are used mainly for smaller targets.

C. Premiums in Tender Offers

1. *Any-or-All and Blended Premium.* The any-or-all and blended premiums for the three different types of tender offers are compared by year in Table 4. The three year average show that the mean premiums for any-or-all offers is hughest at 63.4 percent, compared with a moderately lower blended premium of 55.1 percent for two-tier offers. Partial offers yield a much lower blended premium of 31.3 percent.

Through the average premium for any-or-all offers is higher than the average blended premium for two-tier offers, a closer look at the distribution of premiums (Tables.5a and 5b) reveals the similarity between the magnitude of any-or-all and two-tier premiums. For example, 72 percent of two-tier blended premiums are greater than 40 percent while 68 percent of the any-or-all offers exceed 40 percent premiums. Therefore, we do not find a substantial difference between any-or-all premiums and blended two-tier premiums.

2. *Bid Premiums.* The bid premium is defined as the overall premium in any-or-all offers and the first-tier premium for tow-tier and partial offers. As shown in Table 6, the bid premium is virtually identical for any-or-all and two-tier offers at 63 percent. The pure partial offer premium is 45.9 percent. Referring back to blended premiums, it is clear that the blended premiums in two-tier and pure partial offers are less than the corresponding bid premiums. Clearly, the generally lower second-tier price pulls down the blended premium, especially for partial offers.

3. *First-Tier and Second-Tier Premiums.* Table 7 divides the blended premiums of two-tier and pure partial offers into its components—the first-tier and second-tier premiums. In every year the mean second-tier premium is positive for both two-tier and for pure partial offers, indicating that the market value of the second tier generally exceeds the pre-offer market price of the target. The average second-tier premium is 47.1 percent for two-tier offers and 18.6 percent for pure partial offers. These second-tier premiums are clearly substantial on average.[5]

Table 8 reports data on the difference in magnitude between first-tier and second-tier premiums. This computation addresses the concern that target shareholders are induced to tender to two-tier and partial offers because of large differences between the values of the two tiers. The first-tier premium is 14.5 percent larger than the second-tier premium for two-tier offers on average. For partial offers, the first-tier premium is 28.7 percent larger than the second-tier premium on average. In two-tier offers, this difference between the value of the two tiers is not very large, especially when compared to the difference in pure partial offers.

Table 8 provides a detailed breakdown of the relative difference between the value of the two tiers in two-tier and pure partial offers. The second-tier premium is no more than 20 percent less than the first-tier premium for 72 percent of the two-tier offers. For partial offers, the second-tier premium is no more than 20 percent less than the first-tier premium in 48 percent of the cases.

V Multiple Bidder Contests

We survey the outcomes of multiple-bidder contests for corporate control between 1981 and 1983 with a view toward the question of whether partial or two-tier offers have an unfair advantage vis-a-vis other kinds of offers. Table 9 lists a total of 26 contests, in alphabetical order of the target firm's name. This table accounts for all multiple-bidder control contests between 1981 and 1983 in which at least one offer was a partial or two-tier tender offer.[1] There are a total of 62

[5] The second-tier price of target shares has not been purged of overall market trends. T2 will more accurately reflect changes in share value due strictly to the tender offer when the market model is used to extract out overall market influences.

[1] There is one notable control case which is not included in this table—the Bendix case. There were two tender offers simultaneously on the table in that contest. United Technologies made a formal tender offer for Bendix which was exactly the same as the Martin Marietta bid in terms of percent sought and price per share. However, it was made as a fallback bid rather than as a competing bid despite the fact that its effective date was only eight days later than the Martin Marietta withdrawal date. The United Technologies offer was specifically designed so as not to lure any shares away from the Martin Marietta proration pool, i.e., so as not to compete.

bidders, for an average of 2.4 bidders per target. Seventeen of these bidders (27 percent) made any-or-all offers. For these purposes, we count a merger proposal that treats all shareholders equally as an any-or-all bid even if part or all of the consideration involves securities of the bidder. We are interested in cases that force shareholders to choose between a partial or a two-tier tender offer, on the one hand, and a uniform-bid tender offer or merger that does not involve prorationing, on the other hand. Therefore, we identify those cases in which partial or two-tier offers are subscribed to by target shareholders despite the availability of a more lucrative uniform-bid merger proposal or any-or-all tender offer.

Table 9 highlights such cases by the indication of a "No" response to the column (4) question "Winner Was Any-or-All?", and a "No" response to the column (5) question "Offer with Highest Value Won?" Of the 16 targets that received at least one any-or-all offer, the any-or-all bid loses to a competing partial or two-tier tender offer in only four cases. In three of these cases, it is clear that the rejected any-or-all bid provided less overall compensation to target shareholders than did the competing tender offer. In the remaining case (Conoco), what appears to be the best offer (Mobil's any-or-all bid) was rendered ineffective by the Justice Department's preliminary injunction. Therefore, the any-or-all offer did not have to be topped by the competing bidders.

This investigation of control contests occurring between 1981 and 1983 produces no case supporting the hypothesis that a two-tier or partial tender offer, because of its potentially coercive nature, can dominate a competing any-or-all tender offer or merger bid without offering greater overall compensation. The evidence is that: (i) 12 of 16 head-to-head contests between any-or-all and partial of two-tier offers are won by any-or-all bids, (ii) in three of the four exceptions, the partial or two-tier bid clearly offered greater compensation, and (iii) in the remaining case (Conoco), the losing any-or-all bid, although apparently higher-valued, was ineffective because of antitrust opposition.

VI. Conclusion

This study of 148 tender offers between 1981 and 1983 has several noteworthy results. In general, any-or-all offers are more frequent than partial and two-tier offers, with the former accounting for 91 of the total 148 offers. However, the incidence of any-or-all offers is much higher among smaller targets, while partial and two-tier offers predominate among moderate and large targets. This empirical regularity may reflect an underlying economic difference between any-or-all and two-tier or partial offers, with the latter types favored by bidders for relatively large targets. This implies that any regulatory disincentives currently under consideration to partial and two-tier offers may have more important effects for larger takeover targets than smaller targets.

We present detailed comparisons of uniform premiums in any-or-all offers with blended premiums in two-tier and partial offers. The average premium for the 91 any-or-all offers is highest at 63.4 percent relative to the pre-offer market price. (Note that this is for generally smaller targets.) The 32 two-tier offers yield an average blended premium of 55.1 percent, while the 25 pure partial offers yield 31.3 percent. Any-or-all premiums and two-tier blended premiums are very similar in magnitude—72 percent of two-tier premiums exceed 40 percent while 68 percent of any-or-all premiums do so.

The two-tier offer yields an average first-tier premium of 63.5 percent, virtually identical to the average uniform premium for any-or-all offers. The average second-tier premium of 47.1 percent for two-tier offers is less than the first-tier premium, but it is considerably larger than the "implicit" second-tier premium of 18.6 percent afforded by the 25 partial tender offers. Indeed, the average second-tier premium for two-tier offers (47.1 percent) exceeds the average blended premium for pure partial offers (45.9 percent). Therefore, two-tier "blended" offers are nearly as beneficial to target shareholders as any-or-all offers, and two-tier offers are significantly more beneficial than pure partial offers which have no second-tier purchases by the bidders.

The study also investigates the relative differences between first-tier and second-tier premiums for two-tier and partial tender offers. Nearly three-fourths of the 32 two-tier offers have less than a 20 percent difference between the first and second-tier premiums. In contrast, less than half of the 25 pure partial offers have less than a 20 percent difference between the first- and second-tier premiums. Therefore, while the second tier of a two-tier offer generally provides a lower premium than does the first-tier, the difference in magnitude between the two premiums is not large, especially when compared to pure partial offers. The average first-tier premium is 14.5 percent larger than the second-tier premium for two-tier offers, while it is 28.7 percent larger than the implicit second-tier premium in pure partial offers.

In view of these results, it probably would not be beneficial to adopt regulatory changes which would encourage the use of partial tender offers instead of two-tier offers. The second-tier premium in two-tier offers is on average twice as large as the implicit second-tier value in partial offers. Any substitution of partial offers for two-tier offers would deprive target shareholders of this greater return.

Also, these results suggest that it is problematic whether target shareholders would benefit from regulatory inducements to use any-or-all instead of two-tier offers. First, such a switch increases the returns to target shareholders only modestly, since any-or-all premiums on average exceed the blended premiums for two-tier offers by a relatively small margin. Second, in view of this data it is likely that forcing the use of any-or-all offers will deter some takeovers, especially of larger targets. The losses to target shareholders from such foregone transactions, even if they are few, can outweigh the benefits of higher any-or-all premiums. This conclusion is strengthened by the expectation that shareholders of large targets are the likely losers in deterred transactions and these large transactions account for much of the dollar gains to target shareholders.

Although it is necessary for policymakers to consider carefully the possible deterrence effects of proposed regulatory changes, the data required for the task is not complete. Specifically, this study does not measure the returns to the acquiring firms so we can only speculate about how regulatory changes such as increased minimum offer periods will reduce takeover activity. Since deterrence effects can have important consequences for shareholder welfare, it is a critical consideration. It is our intention to pursue research that will help one understand better the deterrence effects of takeover regulations.

A second caveat to keep in mind is that the study does not (as yet) utilize the market model of finance to purge the data of the effects of general market movements. This adjustment for market-wide movements in stock prices is especially needed in the computation of the second-tier premiums, which equal the percentage change of the stock price twenty days after the close of the first-tier offer relative to the market price of

the target twenty days before the first offer. These two prices are separated by a few months, during which time the changes in the general level of stock prices could cause these two prices to change significantly. Ignoring the adjustment for general market movements should not greatly affect the overall averages, but it can make important differences in certain cases. Therefore, we are currently in the process of statistically adjusting the value of the second-tier premiums to abstract from general market movements.

A final caveat is that the sample includes only 1981, 1982 and 1983 tender offers. It is desirable to enlarge this sample by including offers over a longer period of time. Future research will incorporate tender offers from the 1970s as well as 1980.

TABLE 1.—Number of Tender Offers, By Type and Year, 1981–83

[Type of tender offer]

Year	Any-or-all[1]	Two-tier[2]	Pure partial[3]
1981	37	12	15
1982	32	12	7
1983	22	8	3
Total	91	32	25

[1] Any-or-all offers are for all tendered shares, as long as minimum conditions are met.
[2] In two-tier offers, the offer for shares is in two steps. In an explicit two-tier offer, the bidding firm agrees at the time of the initial offer with target management to purchase the remaining shares following the execution of the first-tier partial offer. In implicit two-tier offers, a second tier is revealed shortly after the execution of the tender offer.
[3] Pure partial offers are for less than all shares. There is no clean-up merger or tender offer closely following the execution of the tender offer.

Source: *Tender Offer Statistics, 1971–1983,* Douglas Austin & Associates Inc., 1984 and the *Wall Street Journal.*

TABLE 2.—AVERAGE SIZE[1] OF TARGETS, BY TYPE OF TENDER OFFER AND YEAR, 1981–83

[Type of tender offer—in millions of dollars]

Year	Any-or-All	Two-tier	Pure partial
1981	125.6	965.4	517.2
1982	67.9	581.2	119.8
1983	160.2	204.2	192.6
Total	113.7	631.0	353.8

[1] Size is measured as the market value of target's equity. It is computed as the number of fully diluted common shares multiplied by the pre-offer market price of those shares.

TABLE 3A.—ABSOLUTE DISTRIBUTION OF TARGET SIZE, BY TYPE OF TENDER OFFER, 1981–83

[Type of tender offer]

Range of target size (in dollars)	Any-or-all	Two-tier	Pure partial
Less than 5m	13	0	1
5m to 10m	11	1	2
10m to 20m	9	1	6
20m to 40m	16	2	1
40m to 80m	12	7	5
80m to 160m	11	2	3
160m to 320m	14	9	2
Greater than 320m	5	10	5
Total	91	32	25

TABLE 3b.—RELATIVE DISTRIBUTION OF TARGET SIZE, BY TYPE OF TENDER OFFER, 1981–83

[Type of tender offer—in percentages]

Range of target size (in dollars)	Any-or-all	Two-tier	Pure partial
Less than 5m	14.3	0.0	4.0
5m to 10m	12.1	3.1	8.0
10m to 20m	9.9	3.1	24.0
20m to 40m	17.6	6.3	4.0
40m to 80m	13.2	21.9	20.0
80m to 160m	12.1	6.3	12.0
160m to 320m	15.4	28.1	8.0
Greater than 320m	5.5	31.2	20.0
Total	100.0	100.0	100.0

TABLE 3c.—PERCENTAGE OF TENDER OFFERS ACCOUNTED FOR BY EACH TYPE OF OFFER, BY TARGET SIZE, 1981–83

[Type of tender offer]

Range of target size (in dollars)	Any-or-all	Two-tier	Pure partial
Less than 5m	92.8	0.0	7.2
5m to 10m	78.6	7.2	14.2
10m to 20m	56.2	6.2	37.5
20m to 40m	84.2	10.5	5.3
40m to 80m	50.0	29.2	20.8
80m to 160m	68.8	12.5	18.7
160m to 320m	56.0	36.0	8.0
Greater than 320m	25.0	50.0	25.0

TABLE 4.—AVERAGE PERCENT PREMIUMS FOR ANY-OR-ALL OFFERS,[1] AND PERCENT BLENDED PREMIUMS FOR TWO-TIER AND PARTIAL OFFERS,[2] BY YEAR, 1981–83

[Type of tender offer]

Year	Any-or-all	Two-Tier	Pure partial
1981	65.2	55.4	15.4
1982	70.7	47.3	37.5
1983	49.6	66.4	49.4
Total	63.4	55.1	31.3

[1] The any-or-all offer premium equals: $P_A = (P_t - P_m)/P_m$.
[2] The blended offer premium equals: $P_a = (F \times T_1) \times ((1-F) \times T_2)$.

TABLE 5A.—ABSOLUTE DISTRIBUTION OF ANY-OR-ALL PREMIUMS AND BLENDED PREMIUMS, BY TYPE, 1981–83

[Type of tender offer]

Range of percent premium	Any-or-all	Two-tier	Pure partial
Less than 0	3	1	2
0 to 20	12	2	9
20 to 40	11	6	7
40 to 60	21	14	4
60 to 80	16	6	0
80 to 100	12	2	2
100 to 120	9	0	1
Greater than 120	7	1	0
Total	91	32	25

TABLE 5b.—RELATIVE DISTRIBUTION OF PREMIUMS AND BLENDED PREMIUMS, BY TYPE OF TENDER OFFER, 1981–83

[Type of tender offer—in percentages]

Range of percent premium	Any-or-all	Two-tier	Pure partial
Less than 0	3.3	3.1	8.0
0 to 20	13.2	6.2	36.0
20 to 40	12.1	18.8	28.0
40 to 60	23.1	43.8	16.0
60 to 80	17.6	18.8	0.0
80 to 100	13.2	6.2	8.0
100 to 120	9.9	0	4.0
Greater than 120	7.7	3.1	0.0
Total	100	100	100

TABLE 6.—AVERAGE PERCENT BID PREMIUMS[1], BY TYPE AND YEAR, 1981–83

[Type of tender offer]

Year	Any-or-all	Two-tier	Pure partial
1981	65.2	69.0	30.2
1982	70.7	51.6	72.9
1983	49.6	73.2	61.5
Total	63.4	63.5	45.9

[1] The bid premium is the overall premium in any-or-all offers and the first-tier premium in two-tier and pure partial offers.

TABLE 7.—FIRST- AND SECOND-TIER PREMIUMS IN TWO-TIER AND PURE PARTIAL OFFERS, 1981–83

Year	Two-tier			Pure partial		
	First tier	Second tier	Blended premium	First tier	Second tier	Blended premium
1981	69.0	41.5	55.4	30.2	8.5	15.4
1982	51.8	46.4	47.3	72.9	30.3	37.5
1983	73.2	58.4	66.4	61.5	41.9	49.4
Total	63.5	47.1	55.1	45.9	18.6	31.3

TABLE 8.—ABSOLUTE AND RELATIVE FREQUENCIES OF PERCENT DIFFERENCES BETWEEN FIRST- AND SECOND-TIER VALUES,[1] for Two-Tier and Partial Tender Offers, 1982–1983[2]

Range of percent difference in tiers	Absolute frequency		Relative frequency	
	Two-tier	Partial	Two-tier	Partial
Less than 0	7	6	21.9	24.0
0 to 10	10	5	31.3	20.0
10 to 20	6	1	18.8	4.0
20 to 30	2	3	6.2	12.0
30 to 40	1	1	3.1	4.0
40 to 50	4	4	12.5	16.0
50 to 60	0	1	0.0	4.0
60 to 70	1	1	3.1	4.0
70 to 80	0	1	0.0	0.0
80 to 90	0	0	0.0	0.0
90 to 100	0	0	0.0	0.0
Greater than 100	1	2	3.1	8.0
Total	32	25	100	100

[1] The percent difference in tier values equals: $(T_1 - T_2)/T_2 \times 100$.
[2] The mean percent difference between first- and second-tier values is 14.5 percent for two-tier offers and 29.7 percent for pure partial offers.

TABLE 9.—TENDER OFFER AUCTION CONTESTS FOR CONTROL 1981–83

(1) Target	(2) No. of bidders	(3) No. of any-or-all bidders	(4) Winner was any-or-all?	(5) Offer with highest value won?	(7) Reason if (5) is "No"
Brookwood Health	2	2	Yes	Yes	
Brunswick	2	0	No	Yes	
Buffalo Forge	2	1	Yes	Yes	
Cities Service	3	0	No	No	July 83, 1982, FTC authorized the issuance of a preliminary injunction of Gulf acquisition. Gulf then abandoned its bid.
Conoco	4	1	No	No	In Nov. of 1981 the Justice Dept issued a preliminary injunction against a Mobil Corp. Acquisition of Conoco.
Fisher Scientific Corp.[1]	2	1	No	Yes	
General American Oil	3	1	Yes	Yes	
General Steel Industries[2]	2	1	Yes	Yes	
Gray Drug Stores	2	1	Yes	Yes	
HMW Industries	2	1	No	Yes	
Interpace	2	1	No	Yes	
Lightolier	2	0	No	Yes	
Manufacturers Bancorp	2	0	No	Yes	
Marathon	3	0	No	Yes	
Means Services, Inc	2	0	No	Yes	
National Mine Service	2	0	No	Yes	
Norton Simon	3	0	No	Yes	
Pabst	4	0	No	Yes	
Property Investors of Colorado	2	1	Yes	Yes	
Richardson	2	1	Yes	Yes	
Standard Coosa Thatcher	2	1	Yes	Yes	
St. Joe Minerals	2	1	Yes	Yes	
Stokely Van Corp	3	1	Yes	Yes	
Sunbeam	2	0	No	Yes	
Texas Gas Resources	2	1	Yes	Yes	
Union Commerce	3	1	Yes	(3)	

[1] This is nominally a contest. In April of 1981 a merger proposal was turned down by management. This offer was never made to shareholders. Then in July, when the first offer was long gone, a successful partial tender offer was launched by another firm. The partial offer won, however, it was clearly the better offer.
[2] This is another case where an any-or-all beats a partial. However, it should be pointed out that the partial bid ran into legal problems because of prior open market purchases.
[3] In this case Central Bancorp had the highest per share price on its partial offer. However, it lost to Huntington Bankshares' any-or-all offer when the Federal Reserve blocked Central's bid. Since we don't know what Central Bancorp's second tier would have been, and since the offers were otherwise close, it is difficult to determine whether the best offer won.

[FR Doc. 84-17306 Filed 6-28-84; 8:45 am]
BILLING CODE 6310-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 151 and 158

[CGD 78-035]

Reception Facilities

Correction

In FR Doc. 84-16287 beginning on page 25196 in the issue of Tuesday, June 19, 1984, make the following correction.

On page 25198, first column, the seventh complete paragraph, line three, "thermal" should read "terminal"

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAR-FRL-2616-5]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA proposes to disapprove a revision to the ozone Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision is an alternative emission reduction plan (bubble) for Senco Products, Inc. which is located in Cincinnati, Ohio. This action is consistent with EPA's January 20, 1984, SIP revision policy regarding averaging times for compliance with VOC emission limits.

DATE: Comments on this revision and on the proposed EPA action must be received by July 30, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Debra Marcantonio, at (312) 886-6033, before visiting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit

an original and five copies, if possible)
Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On January 20, 1984, EPA revised its SIP revision policy for "Averaging Times for Compliance with VOC Emission Limits." This policy memorandum contains certain air quality considerations that were not previously included in EPA's April 15, 1983, policy memorandum on long-term averaging. (Long-term averaging refers to determining compliance by averaging emissions over more than a 24-hour period) One aspect of the revised policy states that sources in areas lacking approved SIPs or in areas with approved SIPs but showing measured violations, cannot be considered for longer averaging periods until the SIP has been revised to provide for attainment and maintenance of the national ambient air quality standard for ozone. In addition, the State must demonstrate that reasonable further progress (RFP) is being maintained with respect to the maximum daily emissions from the source with long-term averaging.

This policy affects the Senco Products, Inc., proposed VOC SIP revision which was submitted by the Ohio Environmental Protection Agency (OEPA). This revision request consists of a bubble with monthly averaging for the source's miscellaneous metal products coating lines. EPA cannot approve this monthly averaging proposal because there have been measured violations of the ozone National Ambient Air Quality Standard in Cincinnati, and this area lacks an approved 1982 ozone SIP In a separate Federal Register notice, EPA is proposing to disapprove the Ohio 1982 ozone SIP for the Cincinnati area based on the 1983 air quality data. Until Ohio's 1982 ozone SIP for Cincinnati is approved, EPA cannot approve a site-specific SIP revision for a source in that area if it might lead to increased daily VOC emissions. Therefore, EPA is proposing to disapprove the revision to the Ohio ozone SIP for the Senco Products, Inc.

Moreover, EPA might be unable to approve this bubble even if it used 24-hour compliance averaging, because the pre-trade baseline it uses is actual emissions, rather than the emissions associated with reasonable available control technology (RACT). For the reasons described in EPA's August 31, 1983 notice soliciting comment on emissions trading in nonattainment areas without approved attainment demonstrations, expiration of the July 1982 deadline for submitting ozone extension area SIPs prevents the continued use of actual emissions as the trading baseline in ozone extension areas whose extension SIPs have not received EPA approval (48 FR 39584, col. 3, last paragraph through 39585, col. 1, second paragraph). The Clean Air Act now requires use of a RACT trading baseline for *all* sources in these areas. Thus, where the existing SIP does not already specify EPA-approved RACT for sources in these areas, the State must establish a RACT trading baseline for the sources. If the State of Ohio were to specify RACT for the lubricant, which is providing credit in this bubble, and RACT-level emissions were lower than the actual emissions now used in this trade, only a portion of the reduction resulting from the switch from the original lubricant to the lubricant with exempt solvent would be creditable. This smaller amount of credit might be insufficient to offset the emissions increases that the bubble currently would allow.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source.

Under Executive Order 12291, today's action is not "Major" It has been submitted to the Office of Management and Budget (OMB) for review. Any comments form OMB to EPA, and any EPA response, are available for public inspection at the EPA Region V office listed above.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Dated: March 27,1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-17392 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[OAR-FRL-2617-3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The State of Wisconsin submitted a State Implementation Plan (SIP) for lead on September 20, 1983. Additional information was submitted on February 14, 1984, and March 14, 1984. This revision to the SIP is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) for lead.

The purpose of this notice is to announce receipt of Wisconsin's lead SIP, discuss the results of EPA's review, and propose rulemaking action. EPA is today proposing to approve the plan because it meets all applicable Federal requirements.

DATE: Comments on this revision and on the proposed EPA action must be received by July 30, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Anne E. Tenner, at (312) 886-6036 before visiting the Region V office).

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management, 101 South Webster, Madison, Wisconsin 53707

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible)

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604

FOR FURTHER INFORMATION CONTACT: Anne E. Tenner, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Background

On October 5, 1978, EPA promulgated National Ambient Air Quality Standards (NAAQS) for lead (43 FR 46258). Both the primary and secondary standards were set at a level of 1.5 micrograms of lead per cubic meter of air ($\mu g/m^3$), maximum arithmetic mean as averaged over a calendar quarter. Section 110 (a)(1) of the Clean Air Act (Act),

requires each State to submit a SIP which provides for the attainment and maintenance of the primary and secondary NAAQS.

The general requirements for a SIP are outlined in section 110(a)(2) of the Act and EPA regulations at 40 CFR Part 51, Subpart B. Specific requirements for developing a lead SIP are outlined in 40 CFR Part 51, Subpart E, and in the Supplementary Guidelines for Lead Implementation Plans (EPA-450/2-78-038, August 19, 1970; revised July 1979). These provisions require the submission of air quality data, emissions data, air quality modeling, a control strategy, a demonstration that the NAAQS will be attained within the time frame specified by the Act, and provisions for insuring maintenance of the NAAQS.

An attainment demonstration is required: (1) In the vicinity of primary lead smelters, secondary lead smelters, primary copper smelters, lead gasoline additive plants, and lead-acid storage battery manufacturing plants that produce 2,000 or more batteries per day, [that emit 5 or more tons of lead per year;] (2) In the vicinity of any other stationary source that emits 25 or more tons of lead per year; or (3) in any other area that has had measured lead concentrations in excess of the NAAQS for lead since January 1, 1974. (See 40 CFR 51.80(a) and 51.81)

In addition, EPA established lead monitoring and data handling requirements (46 FR 44159) in a September 3, 1981, notice, codified at 40 CFR Part 58. Wisconsin's responses to all of these requirements are also addressed in this notice.

The State of Wisconsin submitted a SIP for the attainment and maintenance of the lead NAAQS to EPA on September 20, 1983. Additional information was submitted on February 14, 1984, and March 14, 1984 based on EPA's letter dated January 23, 1984 which requested additional data from the State. Wisconsin's plan includes a discussion of air quality data measured since 1974, an emissions inventory of lead sources, atmospheric dispersion modeling analyses, and the necessary control strategies.

II. Air Quality Data

The State of Wisconsin has monitored ambient levels of lead in several areas of the State, including Milwaukee and Madison, since 1974. The State has submitted all available lead monitoring data for the period 1974 to 1982. Four monitoring locations showed violations of the lead ambient air quality standard during this period.

Three of these lead monitors are mobile-source related and are located near the Milwaukee downtown expressway (711 W. Wells, 845 N. 35th Street, and 814 W. Wisconsin Avenue). The fourth monitor is located in Madison (City-County Building, 202 Monona Avenue), and is also apparently mobile-source related. The lead monitor located at 711 W. Wells showed three exceedances, which occurred in the 2nd and 3rd quarters of 1975, and the 4th quarter of 1977. This monitor is located in the downtown area near two expressways (at the Marquette Interchange) and is primarily a mobile-source related site. Violations were also recorded at two other mobile-source related sites: 845 N. 35th Street (1st quarter of 1974) and 814 W. Wisconsin Avenue (4th quarter of 1975). The Wisconsin Avenue site is very close to the Wells Street site and the 35th Street, site is located near two expressways (at the County Stadium Interchange).

An additional exceedance of the lead NAAQS was recorded in Madison at the City-County Building, 202 Monona Avenue, in the 4th quarter of 1975. However, EPA believes that this data is not representative, since the quarterly average was obtained from a single composite analysis. The recent air quality data demonstrates that the lead NAAQS are being attained in Madison.

III. Emission Inventory

The State developed an emission inventory for all lead stationary, point, area, and mobile sources in Milwaukee County, Wisconsin. Based on this emission inventory, the State identified two significant lead stationary sources. These sources are:

1. Minerals Reclamation Corporation (a secondary lead smelter at 5116 W. Lincoln Avenue, Milwaukee.

2. Globe Battery, Division of Johnson Controls (a lead acid battery manufacturer) at 900 East Keefe Avenue, Milwaukee.

The Minerals Reclamation Corporation was closed down in March, 1979. On February 14, 1984, the State confirmed in a submittal to EPA that this shutdown is permanent. The State also indicated that Minerals Reclamation has been shutdown for almost six years. There is a chain link and sheet metal fence surrounding the premises. In addition, the State indicated that if this source planned to start up again, it would be subject to the State New Source Review requirements under Section NR 154.04 of the Wisconsin Administrative Code, a part of the Federally approved SIP

The Globe Battery Division was initially considered a point source (a lead acid battery manufacturer emitting more than 5 tons of lead per year—see 40 CFR 51.81). However, most of the processes at this facility that have the potential to emit lead have been shutdown in recent years, reducing the annual lead emissions to less than 5 tons/year.

On February 14, 1984, the State submitted additional information showing evidence of permanent shutdowns of many Globe processes. Globe, however, refused to acknowledge the shutdown of the lead oxide mill line. Therefore, the State added this operation back into the inventory contained in the September 20, 1983, SIP submittal. In its February 14, 1984 letter, the State said that the other processes that have been shut down will be subject to the New Source Review procedures required under 40 CFR 51.18, if they resume operation in the future.

IV. Dispersion Modeling

According to the State's SIP emission inventory, the Globe Battery Division, the largest stationary lead emitter in the State, presently emits less than 5 tons per year. The State elected to perform a limited dispersion modeling analysis, based on the Climatological Dispersion Model (CDM). The State of Wisconsin used the CDM instead of the Industrial Source Complex Model (ISC), which is considered to be the reference model for lead SIP's. This was determined to be acceptable because the Globe Battery Division was not required to be included in the inventory and the inventory did not contain the detailed information needed to take advantage of a sophisticated model like ISC (i.e., for the inventory at hand, CDM and ISC will give similar results).

The results of the modeling analysis indicate that the lead emissions from Globe will not result in a violation, or interfere with maintenance of the NAAQS for lead. The maximum predicted quarterly average was 1.10 $\mu g/m^3$

In the only area of valid representative monitored violations (i.e., downtown Milwaukee area), a modified rollback modeling approach must be applied as a minimum requirement. However, the State exceeded this requirement and performed a limited dispersion modeling analysis instead, using the same general approach as for Globe. In addition, the State modeled several foundries located south, southwest, and west of downtown Milwaukee with the limited dispersion modeling approach. The maximum predicted quarterly average in downtown Milwaukee was 0.72 $\mu g/m^3$, and in the vicinity of the foundries was 0.47 $\mu g/m^3$.

The analysis of the excursion of the lead standard in the Madison area indicates that it is due to mobile-related sources, since there are not significant lead stationary sources in Madison. Recent lead ambient data indicates attainment of the NAAQS for lead in Madison, therefore, verifying the effectiveness of the Federal lead gasoline phase-down program.

V Control Strategy

The State of Wisconsin's control strategy to regulate the emissions of lead from existing sources consist of: (a) The existing TSP strategies associated with lead emitting sources, (b) the existing sources of lead will be tracked and controlled through the State's monitoring and permit review program, under Section NR 154.145 of the Wisconsin Administrative Code, and (c) the federal programs to improve fuel economy and the phase-down of lead as an additive in gasoline to control the lead emitted from motor vehicles. In addition, to control lead emitted due to misfueling (the use of leaded gasoline in vehicles certified for use of unleaded gasoline only), Section 144.42(6) of the Wisconsin statute prohibits the tampering of the catalytic converters in motor vehicles that burn unleaded gasoline. Based on the existing control measures and the corresponding demonstrations of attainment, EPA proposes to approve this portion of the Wisconsin lead plan.

VI. New Source Review

40 CFR Part 51.18 requires that the State demonstrate that it has procedures for controlling emissions from new sources and from modifications to existing sources. All lead SIPs must provide for preconstruction review of new lead sources that would emit lead in excess of 5 tons per year, and of modifications to existing point sources that would result in new emission increases of 0.6 tons of lead or more per year (see 40 CFR 51.18).

The New Source Review (NSR) requirement for the lead SIP is satisfied by Section NR 154.04 of the Wisconsin Administration Code, and other statutory and regulatory sections, which require permits for the construction of new sources and modifications of existing sources. Section NR 154.05 provides for review of application for permits. None of the proposed sources exempted from NR 154.04 would have the potential to emit lead. Based on its review, EPA has determined that the Wisconsin's lead SIP has an adequate New Source Review program for lead. Therefore, EPA proposes to approve this portion of the Wisconsin lead plan.

VII. Monitoring Plans

On September 3, 1981, EPA published its final rules pertaining to ambient lead monitoring and data handling (46 FR 44159), codified at 40 CFR Part 58. The rules call for the development of a State monitoring plan for lead and its inclusion into the surveillance and ambient monitoring programs. These plans must meet the requirements detailed in the September 3, 1981, notice and must include scheduling requirements as well as requirements concerning the establishment of a monitoring network, and data handling and reporting procedures.

On July 30, 1982, the State of Wisconsin submitted to EPA a revision to the SIP which provided for the establishment of an air quality surveillance network for lead that meets the requirement of 40 CFR Part 58. The submittal included the designation of two proposed National Air Monitoring Station (NAMS) sites in the Milwaukee urban area. These NAMS sites have been in operation for two years. The NAAQS lead network for Wisconsin was approved by EPA on July 1, 1983. In addition, the State proposed to monitor for lead in the vicinity of Globe Battery. This lead monitor is located at the Northeast corner of the plant and will run for 2 years in order to confirm that the lead NAAQS is continuing to be maintained around Globe. This monitor commenced operation on April 1, 1984.

The lead monitoring system will be reviewed on an annual basis and modified, as needed, to eliminate any unnecessary sites or to correct inadequacies indicated by the annual review. All changes to the network will be submitted to EPA for prior written approval. The annual NAMS report will be submitted to EPA by July 1 of each calendar year.

EPA reviewed the Wisconsin lead monitoring plan and has determined that it meets the requirements of sections 110 and 319 of the Act. Therefore, EPA is proposing approval of the revised Air Quality Surveillance Plan in today's Federal Register notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, and 301 and 319 of the Clean Air Act, as amended (42 U.S.C. 7410, 7601 and 7619)

Dated: May 10, 1984.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 84-17387 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Part 52

[OAR-FRL 2609-2]

Approval and Promulgation of Implementation Plans; 1979 Plan Conditions for California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The State of California submitted to EPA nonattainment area plans concerning ozone, carbon monoxide, total suspended particulate matter (TSP), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). During 1981 and 1982 EPA took final actions on California's 1979 plans. As part of these final actions, EPA imposed a number of conditions of plan approval where deficiencies in the plans needed to be corrected. EPA specified due dates for these conditions ranging from May of 1981 to January of 1983.

This notice addressed 1979 plan conditions for California which have not yet been submitted to EPA and are past due. Specifically, this notice proposes to remove several 1979 plan conditions and to extend the due dates on certain other 1979 conditions of plan approval.

DATE: Comments may be submitted until July 30, 1984.

ADDRESSES: Comments may be sent to: Regional Administrator, ATTN: Air Management Division, SIP Section (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Thomas Rarick, Chief, SIP Section, Air Programs Branch, Air Management Division, EPA, Region 9, (415) 974-7641, (FTS) 454-7641.

SUPPLEMENTARY INFORMATION:

Background

The 1977 Clean Air Act Amendments (CAA or Act) required states to submit to EPA State Implementation Plan (SIP) revisions by January 1, 1979 for all areas designated nonattainment under Section 107 of the CAA. These SIP revisions or nonattainment area plans were to insure

attainment of the National Ambient Air Quality Standards (NAAQS) by December 31, 1982. For areas that demonstrated they could not attain the ozone (O_3) or carbon monoxide (CO) standards by the 1982 deadline, even with the implementation of all reasonably available control measures, Section 172(a)(2) of the CAA allowed EPA to extend the attainment deadline to December 31, 1987

The State of California submitted to EPA nonattainment area plans concerning ozone, carbon monoxide, total suspended particulate matter (TSP), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2). During 1981 and 1982 EPA took final actions on California's 1979 plans. As part of these final actions, EPA imposed a number of conditions of plan approval where deficiencies in the plans needed to be corrected. EPA specified due dates for these conditions ranging from May of 1981 to January of 1983.

On February 3, 1983 (48 FR 4972) EPA published a notice of proposed rulemaking which outlined the statutory actions that can be imposed for failure to meet any of a number of requirements of the CAA. The notice indicated that many areas in the country were subject to sanctions because outstanding 1979 conditions remained unfulfilled. Appendix D of the February 3 notice lists those areas in each state which were not requesting an extension of the attainment deadline to 1987, yet were not anticipated to meet the requirements of the CAA because of failure to comply with 1979 plan conditions. Under section 110(a)(2)(I) of the CAA, the notice proposed to impose a construction moratorium on all areas listed in Appendix D.

On November 2, 1983 (48 FR 50691) EPA published a policy statement which included a delineation of EPA's intended actions on outstanding plan conditions. The November 2 notice indicated EPA's intention of reviewing all outstanding conditions to determine whether they are still germane to attainment and maintenance of the NAAQS or to meeting Part D requirements. For conditions which are no longer considered germane to attainment and maintenance of the NAAQS or Part D requirements, the policy indicated that EPA would propose to revoke the conditions.

Where EPA finds that a condition remains necessary, the November 2 notice outlines EPA's policy for addressing unmet conditions which are germane to attainment or maintenance of the standards. First, where an unmet condition involves a serious plan deficiency, EPA may impose a construction ban under section 110(a)(2)(I). EPA would take this action in a final rulemaking notice. For an unmet condition which is considered necessary, but less serious, EPA will propose to extend the due date if the State commits to the new due date. Final actions on these less serious conditions are then deferred until the new due date. If a State makes a submittal intended to satisfy a condition before the new due date, EPA will continue to defer action while it reviews the submittal. If EPA disapproves the submittal, EPA may disapprove the plan thereby imposing a construction ban pursuant to section 110(a)(2)(I) of the CAA.

Where serious or less serious unmet conditions result in plan disapproval, EPA may proceed with a proposal for funding limitations pursuant to either section 176(a) or section 176(b) of the Act as appropriate. For further information on EPA's policy regarding funding restrictions and the construction moratorium as they apply to both unfulfilled 1979 plan conditions and other CAA requirements, please refer to the November 2, 1983 notice and to EPA's January, 1984 "Guidance Document for Correction of Part D SIP's for Nonattainment Areas."

Evaluation

There are nineteen conditions for which the State of California has, to date, not submitted the required-plan revisions. Five of the nineteen outstanding conditions concern adopted new source review (NSR) rules which EPA expects to be submitted shortly. Since the State Air Resources Board is in the process of submitting these five NSR rules to EPA, EPA is not acting on them in today's notice. As is the case with those plan revisions already submitted to EPA in response to conditions, action on these five adopted NSR rules will be taken in other rulemaking notices.

Today's notice addresses the remaining fourteen unsubmitted conditions. As discussed further below, one of the fourteen conditions is serious, eleven are less serious and two are no longer germane to attainment or maintenance of the NAAQS or Part D requirements.

Serious Plan Deficiency

The one serious and germane condition requires a revised NSR rule in Kern County. EPA considers this condition serious since considerable new source permitting activity is expected in this area and the deficiencies in the existing NSR rule could allow significant deviations from the requirements of the CAA. EPA will take final rulemaking action on the Kern NSR condition in a separate notice. EPA intends to disapprove the Kern plan and impose a construction moratorium on major sources in the Kern County portion of the San Joaquin Valley Air Basin. EPA also intends to propose funding limitations pursuant to section 176(a) and/or section 176(b) when final action is taken on this condition.

Due Date Extensions

Of the eleven less serious conditions, five involve NSR deficiencies in El Dorado, Placer, San Bernardino, San Joaquin, and Yolo-Solano Counties, four pertain to Kern County's ozone control strategy, and two are conditions requiring volatile organic compound (VOC) rules for Ventura (valves and flanges) and Santa Barbara Counties (cutback asphalt).

The conditions calling for revised NSR rules in El Dorado, Placer, San Bernardino, San Joaquin and Yolo-Solano Counties are considered less serious at this time. Therefore, EPA proposes to extend the due date of NSR SIP conditions until October 30, 1985. This date is chosen to match the approximate due date for SIP revisions expected to be contained in a forthcoming national schedule for making NSR rule updates. If the rule revision due date contained in the national schedule for NSR rule updates that is eventually issued is later than October 30, 1985, then EPA will extend through subsequent rulemaking the condition accordingly.

The O_3 plan conditions in Kern County are: (1) A revised control strategy demonstrating attainment of the ozone standard; (2) a revised demonstration of reasonable further progress (RFP); (3) revised emission reduction estimates (EREs) for control tactic SSI, "Steam Drive Controls," based on refined emission inventory estimates; and (4) emission estimates and adequate documentation of emissions from tertiary oil production operations for VOC emission sources. On February 24, 1984 EPA issued a call for a revised O_3 control strategy for Kern County pursuant to section 110(a)(2)(H) of the CAA. The revised control strategy must demonstrate attainment by 1987 and will be due to EPA by February 24, 1985. Since the SIP call requires the development of plan revisions that will satisfy the four conditions noted above, EPA is proposing in today's notice to extend the due for these Kern County conditions to February 24, 1985.

The conditions requiring Ventura County to include pumps, compressors

and pressure relief valves in their refinery fugitive rule and the condition requiring a cutback asphalt rule for Santa Barbara are both less serious because the emission reductions associated with the correction of these deficiencies are relatively small compared with the overall emission inventories for the two areas. EPA is proposing to extend the due date on these two less serious VOC conditions to August 1, 1984. The ARB in a letter dated March 20, 1984 has committed to submit to EPA revised rules by this new due date.

Removal of Conditions

The two conditions which are no longer germane to attainment of the standards or Part D requirements require a revised CO control strategy in Kern County and replacement measures equivalent to inspection and maintenance (I/M) in Kern County for CO. These two conditions are no longer germane since Kern County currently has eight quarters of violation-free CO data, and therefore a revised control strategy does not appear to be necessary at this time. Today's notice proposes to remove these two non-germane Kern County conditions.

EPA Proposed Action

The due dates for the 1979 plan conditions requiring revised NSR rules in El Dorado, Placer, San Barnardino, San Joaquin, and Yolo-Solano Counties are proposed to be extended to a date consistent with forthcoming national SIP requirements relating to the conformity of all NSR rules with EPA's revised permit program requirements (40 CFR 51.18, August 7, 1980).

The due date for the 1979 plan condition requiring revised valve and flange rule for Ventura County is proposed to be extended to August 1, 1984. The due date for the 1979 plan condition requiring a revised cutback asphalt rule for Santa Barbara County is proposed to be extended to August 1, 1984.

The due date for the following 1979 plan conditions for Kern County's O_3 plan proposed to be extended to February 24, 1985:

- revised attainment demonstration.
- revised demonstration of RFP
- ERE for "Steam Drive Control"
- oil production emission estimates.

Today's notice also proposes to remove the following 1979 plan conditions for Kern County's CO plan:

- revised attainment demonstration.
- replacement measures for I/M.

Regulatory Process

Under Executive Order 12291, today's action is not "Major" It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA, and any EPA response, are available for public inspection at EPA's Region 9 office in San Francisco.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

Authority: Secs. 110, 171 to 178, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7501 to 7508 and 7601(a)).

List of Subjects in 40 CFR Part 52

Intergovernmental relations, Air pollution control, Particulate matter, Ozone, Sulfur oxides, Nitrogen oxides, Hydrocarbons, Carbon monoxide, Lead.

Dated: March 27, 1984.

John Wise,

Acting Regional Administrator.

[FR Doc. 84-17451 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 251

Implementation procedures for the National Defense Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) is withdrawing an advance notice of proposed rulemaking published on September 10, 1981. It would authorize, when funds become available, payments to United States ship operators for installing communications equipment on existing U.S.-flag vessels that are suitable for use in time of war or national emergency.

FOR FURTHER INFORMATION CONTACT: Mr. James J. McCoy, Jr., Office of Naval Architecture and Engineering (Code M-721), Maritime Administration, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 Telephone: (202) 426-5727.

SUPPLEMENTARY INFORMATION: Pursuant to authority in section 502 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1152), the Secretary of Transportation may enter into a contract with an operator of a U.S.-flag vessel to pay for the fitting or retrofitting of national defense features (NDF) on ships under construction or existing ships in the U.S.-flag fleet, after the "Secretary of the Navy approves such plans, specifications or proposals submitted." In the advance notice of proposed rulemaking (46 FR 45164), MARAD proposed to pay to operators of U.S.-flag vessels, when funds become available, for the purchase and installation of specified NDF communications equipment on vessels likely to be involved in national security support operations. Funding contemplated would be under MARAD's Construction-Differential Subsidy Program (CDS). No funding has been provided for CDS in the Agency's appropriations since fiscal 1981, and is not likely to occur with respect to fiscal 1985. Accordingly, MARAD has decided to terminate rulemaking action on this proposal.

Authority: 46 U.S.C. 1114(b), 1152; Pub. L. 97-31, August 6, 1981; 49 CFR 1.66.

Dated: June 26, 1984.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 84-17403 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-81-M

Notices

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Cash in Lieu of Commodities; Value of Donated Commodities for School Year 1984

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that, since the value of agricultural commodities and other foods provided meets the level of assistance authorized under the National School Lunch Act, there will be no shortfall cash payments to States for the National School Lunch Program for the 1984 school year. The Secretary of Agriculture has determined that the annually programmed level of assistance was met in food donations by June 30, 1984.

FOR FURTHER INFORMATION CONTACT: Gwena Kay Tibbits, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 756-3660.

SUPPLEMENTARY INFORMATION: Classification: This action, which implements a mandatory provision of Section 6(b) of the National School Lunch Act, has been reviewed under Executive Order 12291 and Secretary's Memorandum 1512-1 and has been classified as "nonmajor." It meets none of the three criteria in the Executive Order; the action will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs, and will not have a significant impact on competition, employment, productivity, innovation, or the ability of U.S. enterprises to compete.

The action has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act of 1980. Robert E. Leard, Administrator, Food and Nutrition Service has determined that it will not have a significant economic impact on a substantial number of small entities. The primary purpose of the action is to notify States that the amount of foods donated will meet the programmed level for the school year 1984; therefore, no payment of cash in lieu of donated foods will be necessary.

Section 6(b) of the National School Lunch Act (the Act), as amended (7 U.S.C. 1755) and the regulations governing cash in lieu of donated foods (7 CFR Part 240) require the Secretary of Agriculture by May 15 of each school year to estimate the value of agricultural commodities and other foods that will be delivered to States during that school year. Under the food distribution regulations (7 CFR Part 250), these foods are used by schools participating in the National School Lunch Program. If the estimated value is less than the total level of commodity assistance authorized under section 6(e) of the Act, the Secretary is required by June 15 of that school year to pay to each State administering agency funds equal to the difference between the value of programmed deliveries and the total level of authorized assistance for each State.

For school year 1984 the adjusted minimum national average value of donated foods or payment of cash in lieu thereof per lunch has been established under Section 6(e) at 11.50 cents per lunch (48 FR 32841). In accordance with this requirement, a national entitlement of $432,178,070 in commodities was established for school year 1984. The Secretary has determined that at least that amount was available for delivery nationally by June 30, 1984, to meet the mandated level of assistance.

Notice is hereby given, therefore, that no shortfall cash payments will be made for the school year ending June 30, 1984.

This notice contains no reporting or recordkeeping provision necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance No. 10.550)

Dated: June 22, 1984.

Robert E. Leard,
Administrator, Food and Nutrition Service.

[FR Doc. 84-17418 Filed 6-28-84; 8:45 am]
BILLING CODE 3410-30-M

Fiscal Year 1984; Food Stamp Program State and Local Demonstration Project Initiatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: General Notice.

SUMMARY: With this Notice the Food and Nutrition Service (FNS) announces the award of funds by Cooperative Agreement to assist State and local Food Stamp Program administrative jurisdictions in demonstrating improved practices for reducing error in certification of program benefits. These projects are conducted under the authority of Section 17 of the 1977 Food Stamp Act, as amended. Public comment is invited.

This Notice is divided into two parts. Part I explains General Considerations such as background information, the selection process, and public comments. Part II is a Description of Demosntration Project Activities which discusses the specific projects and their basis and purpose.

DATE: Comments must be received by July 30, 1984 to ensure consideration.

ADDRESS: Comments should be submitted to Ms. Patricia Warner, Chief; Legislative Policy Planning and Demonstration Branch; Program Planning, Development and Support Division; Family Nutrition Programs, Food and Nutrition Service, USDA; 3101 Park Center Drive; Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Jacobs: Legislative Policy Planning and Demonstration Branch; Program Planning, Development and Support Division; Family Nutrition Programs; Food and Nutrition Service, USDA; 3101 Park Center Drive; Alexandria, Virginia 22302 (703) 756-3383.

SUPPLEMENTARY INFORMATION: In accordance with 7 CFR 282.5, this General Notice establishes the specific operational procedures and explains the basis and purpose for the funded demonstration projects. If comments received in response to this notice result, in the opinion of the Department, in a need for significantly changed operational procedures, an amended General Notice advising of such changes will be published in the Federal Register.

Part I—General Considerations

A. Background

In Fiscal Year 1981, FNS funded an initial group of State and local error reduction research and demonstration projects. The findings concerning these error reduction strategies have been shared among State agencies both directly and through professional groups such as the American Public Welfare Association. These final reports increase States' contributions to the literature and the process of improving program administration.

In Fiscal Year 1984, FNS is funding State and local demonstration projects to test strategies to improve management practices for reducing error and abuse occurring in the certification process. This is the second cycle of solicitations intended to provide a systematic mechanism for improving Food Stamp Program (FSP) certification operations through demonstration activities, and it continues the framework of the earlier grants in providing opportunities for new developments in controlling error through sound managerial strategies. This is also one of many FNS actions under the "Operation Awareness" campaign to reduce program losses due to fraud, waste and abuse.

B. Preapplication Selection

Thirty-seven preapplications were received by FNS in response to the Notice of Intent published in the Federal Register on July 8, 1983 (Vol. 48, No. 132, page 31424). The preapplications dealth with specific topics within one or more of the following areas:

(1) Fraud and Error Prevention
—Client/public education
—Development of error/fraud/abuse-prone profiles
—Application/interview investigative skills
—Intensive verification/prevention strategies
—Computer match at application

(2) Fraud and Error Detection
—Computer assisted verification and matching techniques
—Intensive verification/detection strategies
—Advanced training for eligibility technicians

(3) Fraud Prosecution
—Fraud referral, prosecution and collection
—Alternatives to financial restitution for prosecuted food stamp fraud.

FNS compared and ranked the preapplications according to the technical criteria stated in the July 8, 1983, Notice. The State agencies which had preapplications ranked in the top 15 were invited to submit full applications.

C. Application Selection

Fourteen full applications were received by FNS in response to the invitation to submit. FNS compared and ranked the applications based on criteria stated in the July 8, 1983, Notice. The final selection of three proposals was made based on technical merit and available funds.

D. Public Comments

In response to the Notice of Research, Demonstration and Evaluation projects published in the Federal Register on June 28, 1983, which solicited comments on these proposed demonstration projects, FNS received several comments in favor of such efforts. One commenter said that the practices being developed to combat fraud are not actually new approaches but are applications of ideas that have been tried elsewhere. This person went on to say that because it is common for a lapse in time to occur between the performance of a study and the publication of results, there is a need to develop ways to facilitate the sharing of this information on both a regular and timely basis. FNS is fully cognizant of this problem and will make every effort to disseminate the results of all demonstration project findings and evaluations.

One commenter urged a focus upon prevention-oriented projects in order to reduce the impact of losses to fraud. FNS agrees that preventive strategies are effective weapons against fraud and is testing projects which incorporate prevention. This person also name three administrative factors which might be causing some administrative problems for State and local agencies: turnover among caseworkers, investigators and other field staff; shifts of organizational structures and responsibilities; and slow channels of communication among Federal, State and local agencies. If a State or local agency has identified a strategy which may remedy or eliminate the effects of one or more of these factors, FNS invites that agency to submit a suggestion at any time.

E. Classification

This Notice has been reviewed under Executive Order 12291. The Notice will not result in annual economic impacts of more than $100 million or major increases in costs or prices nor will it have a significant adverse effect on competition, employment productivity, investment, or foreign trade. Further, the Notice is unrelated to the ability of United States based enterprises to compete with foreign based enterprises. Therefore, the Notice has been classified as "non-major"

This Notice also has been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities.

This Notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget.

F Statutory Authorities

Subsection 17(b)(1) of the Food Stamp Act of 1977, as amended, gives the Secretary of Agriculture the authority to "conduct on a trial basis in one or more areas of the United States, pilot or experimental projects designed to test program changes that might increase the efficiency of the Food Stamp Program and improve the delivery of food stamp benefits to eligible household. The Secretary may waive the requirements of this Act to the degree necessary for such projects to be conducted, except that no project shall be implemented or provided waivers which would lower or further restrict the income or resource standards or benefit levels provided pursuant to sections 5 and 8 of this Act."

Subsection 18(a)(1) of the Act, as amended, authorizes the Secretary of Agriculture to use funds not in excess of one-fourth of one percentum of the previous year's appropriations to carry out the provisions of section 17 of the Act.

G. Governing OMB Circulars for Grant Administration

The FNS grant process is governed by USDA Uniform Federal Assistance Regulations (7 CFR Part 3015 Federal Register Volume 46, No. 217 55636) which primarily implement OMB Circular A-102 "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments", as well as A-87, A-21, and A-122. The application, reporting and recordkeeping, performance monitoring, and payment procedures established for these demonstration projects follow the requirements of 7 CFR Part 3015. Cooperators have been reminded of their obligations under this section in the text of the Cooperative Agreements.

H. Evaluation

FNS has contracted for a national evaluation of this demonstration project

effort. Such evaluation will not replace the requirement for each individual project to evaluate its own demonstration project effort. Cooperators will cooperate with the contractor by arranging convenient access to project staff and operations, and to records for data collection purposes. Additionally, FNS or its contractor may deliver technical assistance for project design methodologies and report writing as needed for maximum utility and transferability of project results.

Part II—Description of Demonstration Project Activities

In seeking State and local initiatives to fund, FNS has put a priority on new, innovative ideas which have not yet been attempted, have been tried only on a very limited basis, or have yet to be rigorously evaluated. The agency does not provide assistance through Section 17 demonstration monies to supplement the costs of normal program operations.

A. North Carolina State Agency—"A Computer-Assisted Food Stamps Eligibility Interview to Reduce Errors and Detect Fraud"

The goal of the North Carolina proposal is to reduce the Food Stamp Program error rate by improving the eligibility interview process. The methodology is the development, testing, and comparison of a structured interview format, a microcomputer-assisted structured interview format, and a traditional unstructured interview. A structured interview format is a data collection instrument that aids interviewers in obtaining all necessary information to make eligibility and allotment level determinations.

The structured interview format offers several potential advantages over the traditional eligibility interview: (1) It asks relevant questions of the applicant; (2) it requests information in a clear and consistent manner; (3) the format can be tailored to the circumstances of the individual household; (4) it ask follow-up questions based upon prior responses to verify internal consistency and eliminate logical errors; (5) it aids more efficient and effective time management by directing the flow of questions; and (6) it captures all necessary information without wandering from topic to topic. The proposed computer-assisted structured interview employs data processing techniques to check for logical errors and internal consistency. It will also provide a hard copy record and a list of needed verifications on a printout for the applicant.

The demonstration design is a test and comparison of results in three counties, with three groups per county and each containing an equivalent caseload. Group One applicants will be interviewed using the structured interview format. Group Two will be interviewed using the microcomputer-assisted structured interview format. Group Three will be interviewed using the current unstructured interview techniques. The groups will be compared according to several criteria: case error rate; time per interview; cost per interview; and cost/effectiveness of treatments. Worker attitudes toward the interview format will also be considered in assessing the treatments.

The results of this project will give State agencies across the country the information they need to determine whether implementing this or similar interview techniques, software and equipment will reduce Federal benefit dollar losses while lowering local administrative costs.

B. Vermont State Agency—"Error Reduction Project"

The Vermont Department of Social Welfare (DSW) proposes to develop and test a performance evaluation and error reduction program to decrease errors detected in the quality control process and increase the number of fraud referrals. The project will include the following measures to reduce fraud and error in the food stamp household certification process: (1) Training for eligibility staff in "assertive" interviewing focused toward more accurate eligibility and allotment determination; (2) the development of quality circles for District Office eligibility staff and their supervisors to make ongoing improvements in error and fraud reduction; (3) the implementation of a computer-assisted supervisory case review system to provide information on case determinations by unit and individual staff; and (4) based upon the supervisory review system findings, the establishment of performance standards consisting of quantitative performance goals for line staff and their supervisors. These measures represent an integrated program for improving line staff effectiveness in identifying and eliminating Food Stamp Program errors.

These strategies will be tested in three Vermont district offices with high or moderate error rates. Using a pretest/post-test comparison group framework, any resulting change in quality control error rates in the three experimental offices will be compared with any change in error rates in a control group of three similar district offices. An augmented quality control review will be conducted in the experimental and control offices to provide sufficient data for a statistically valid comparison. From this data, DSW will determine whether these techniques have the effect of reducing quality control error levels, and, based on the observable error rate effects and administrative costs, will assess their overall cost-effectiveness. Interviews conducted with district office staff will also provide evidence on the effects of fraud and error reduction training and quality circles on staff perceptions and morale.

C. Maryland State Agency—"A Communications Strategy for the Reduction of Client Error and Fraud in Food Stamps"

This project will test whether an intensive multi-media educational effort regarding food stamp application rules will result in a reduction of food stamp client error and fraud. The demonstration design encompasses the following techniques: (1) The messages communicated to clients are geared to correct errors due to a lack of information, misinterpretation or misrepresentation; (2) an advertising agency will be engaged to develop brochures and audio/visual materials; (3) the brochure(s) and audio/visual materials will be used in conjunction and separately at different sites; (4) quality control findings and other evaluation measures will be used for establishing which method or combination of methods reduces the error rate to the greatest extent.

In their proposal, Maryland projected that 560 applicants will (1) read a written brochure or a pictorial-style brochure, or (2) view a videotape, or (3) receive exposure to combinations of treatments. The communications will stress requirements expected of food stamp applicants and recipients and the possible penalties for failing to meet requirements. Project evaluation will include the extent to which client error rates are reduced. The results of this study will prove whether these interventions are useful in reducing food stamp client error and fraud.

(91 Stat. 953 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Program No. 10.551 Food Stamps)

Dated: June 22, 1984.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 84-17403 Filed 6-28-84; 8:45 am]

BILLING CODE 3410-30-M

CIVIL RIGHTS COMMISSION

Colorado Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 9:00 a.m. and will end at 12:00 noon, on July 21, 1984, at the Conoco, Inc., Conference Room, 555 17th Street, 9th Floor, Denver, Colorado 80202. The purpose of the meeting is to plan for future activities and to receive information on the comparable pay issue.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission..

Dated at Washington, D.C., June 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–17419 Filed 6–28–84; 8:45 am]

BILLING CODE 6335–01–M

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:00 p.m. and will end at 3:30 p.m., on July 19, 1984, at the U.S. Commission on Civil Rights, Mid-Atlantic Regional Office, 2120 L Street, NW., Room 510, Washington, D.C. 20037 The purpose of the meeting is to discuss a proposed project on race and sex discrimination in housing.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Mid-Atlantic Regional Office at (202) 254–6670.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–17420 Filed 6–28–84; 8:45 am]

BILLING CODE 6335–01–M

Utah Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 4:00 p.m., on July 19, 1984, at the Howard Johnson Motor Lodge, Lisa Room, 122 W. South Temple Street, Salt Lake City, Utah 84101. The purpose of the Meeting is to discuss current projects and to plan for future activities. There will also be a mini-forum of persons interested in civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Rocky Mountain Regional Office at (303) 844–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 26, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84–17421 Filed 6–28–84; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 33–84]

Foreign-Trade Zone 74, Baltimore, Maryland; Application for a Subzone at Bethlehem Steel's Sparrows Point Shipyard

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Baltimore, Maryland, grantee of Foreign-Trade Zone 74, requesting special-purpose subzone status for the shipyard of Bethlehem Steel Corporation at Sparrows Point, Maryland, within the Baltimore Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 18, 1984. The applicant is authorized to make this proposal under Article 23, Section 466–469 of the Annotated Code of Maryland.

The proposed subzone is on a 215-acre facility located on the lower east bank of the Patapsco River, on the west side of the Sparrows Point Peninsula, some 6 miles southeast of Baltimore. It is a major U.S. shipyard used for the construction, conversion, and repair of oceangoing vessels such as oil tankers, bulk cargo carriers, container ships, and roll on/roll off cargo ships, as well as offshore oil drilling platforms. The facility currently has orders for the conversion of 3 container ships into 3 Maritime Prepositioning (TAKX) vessels to be leased to the Navy. It is also bidding for construction of six container ships. Some 21 percent of the finished product material value (exclusive of steel) on the TAKX vessel involves foreign sourced components such as diesel generators, boilers, pumps, air conditioning equipment, anchors, chain, cranes, deck machinery, hatches, electrical gear and control consoles. About 27 percent of the material value (exclusive of steel) of the container ships is expected to be sourced abroad and will include components similar to those of the TAKX vessel.

Zone procedures will help Bethlehem to reduce costs on its current orders and to compete internationally on bids for new projects. The benefits are related to the fact that most of the components are subject to significant duties, and that the finished products, as oceangoing vessels' are duty free.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Edward A. Goggin, Assistant Regional Commissioner, U.S. Customs Service, Northeast Region, 100 Summer Street, Boston, MA 02110; and Colonel Gerald C. Brown, District Engineer, U.S. Army Engineer District Baltimore, P.O. Box 1715, Baltimore, MD 21203.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 31, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 415 U.S. Customhouse, Gay and Lombard Streets, Baltimore, MD 21202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1872, 14th and Pennsylvania Avenue, NW., Washington, D.C. 20230

Dated: June 26, 1984.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 84-17434 Filed 6-28-84; 8:45 am]
BILLING CODE 3510-25-M

[Docket No. 32-84]

Foreign-Trade Zone 26, Shenandoah, Georgia (Atlanta Port of Entry); Application for Subzone at Ford's Auto Plant in Hapeville, Georgia

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, requesting special-purpose subzone status for Ford Motor Company's automobile assembly plant in Hapeville, Georgia, within the Atlanta Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on June 18, 1984. The applicant is authorized to make this proposal under Chapter 10, Title 52 of the Official Code of Georgia Annotated.

The subzone will be located at Ford's Atlanta area auto assembly plant on a 110-acre site at 340 Henry Ford II Avenue, Hapeville, Fulton County. Ford is in the process of renovating the plant, which employs 1650 persons, to produce a new line of front-wheel drive cars. Although most of the parts and material used at the plant are produced domestically, about 3 percent of the components such as engines, transaxles and radios are imported.

Zone procedures will exempt Ford from paying duties on foreign components used for its exports. On its domestic sales, the company will be able to defer duty and to take advantage of the same duty rate available to importers of finished autos. The averge duty rate for the foreign components Ford uses at its Atlanta plant is 4.9 percent whereas the rate for finished autos is 2.7 perent. The savings from zone procedures are expected to contribute to Ford's efforts to reduce plant costs, helping to make it more competitive with auto production facilities offshore.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committeee consists of: Dennis Puccinelli (Chairman), U.S. Department of Commerce, Washington, D.C. 20230; Ralph C. Muser, Acting Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 99 S.E. 5th Street, Miami, FL 33131; and Colonel Daniel W. Christman, District Engineer, U.S. Army Engineer District Savannah, P.O. Box 889, Savannah, GA 31402.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before July 31, 1984.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 1365 Peachtree St., N.E., Suite 600, Atlanta, GA 30309
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1872, 14th and Pennsylvania, NW., Washington, D.C. 20230

Dated: June 26, 1984.
John J. Da Ponte, Jr.,
Executive Secretary.
[FR Doc. 84-17433 Filed 6-28-84; 8:45 am]
BILLING CODE 3510-25-M

International Trade Administration

[A-588-035]

Cadmium From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On April 5, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on cadmium from Japan. The review covers the seven known exporters of this merchandise to the United States and the period August 1, 1982, through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Edward Haley or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1984, the Department of Commerce ("the Department") published in the Federal Register (49 FR 13563) the preliminary results of its administrative review of the antidumping finding on cadmium from Japan (37 FR 15760, August 4, 1972). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of cadmium, currently classifiable under items 632.1420 and 632.1440 of the Tariff Schedules of the United States Annotated.

The review covers the seven known exporters of Japanese cadmium to the United States and the period August 1, 1982, through July 31, 1983. There were no known shipments of this merchandise to the United States during the period, and there are no known unliquidated entries.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results.

Further, the Department shall not require a cash deposit of estimated antidumping duties, as provide for § 353.48(b) of the Commerce Regulations, on any shipment of Japanese cadmium entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect unitl publication of the final results of the next administrative review. The Department intends to begin immediately the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible after the Department's receipt of the requested information.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C.

1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 18, 1984.

[FR Doc. 84-17342 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-023]

Clear Sheet Glass From Taiwan; Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination To Revoke in Part

AGENCY: International Trade Administration/Import Administration; Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on clear sheet glass from Taiwan. The review covers three time periods. The first involves two of the three known manufacturers and/or exporters and one known third-country reseller of Taiwanese clear sheet glass to the United States for the period July 1, 1976, through July 31, 1980. The second and third cover all four firms generally for consecutive periods from August 1, 1981, through July 31, 1983. We are covering the period July 1, 1976, through July 31, 1980, because of a remand from the Court of International Trade for reconsideration of the results of the first administrative review. The review indicates the existence of dumping margins in particular periods for certain firms.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each firm's sales during the periods.

Where no information was received in response to our questionnaire we have used best information available to determine the assessment and estimated antidumping duties cash deposit rates. The Department has also tentatively determined to revoke the finding with respect to Hsinchu Glass Works, Inc.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke in part.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Susan M. Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255/1130.

SUPPLEMENTARY INFORMATION:

Background

On September 29, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 42769-70) the final results of its last administrative review of the antidumping finding on clear sheet glass from Taiwan (36 FR 16508, August 31, 1971) and announced its intent to conduct the next administrative review. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all entries made prior to January 1, 1980.

On July 21, 1983, the Court of International Trade issued an order in *PPG* v. *United States*, No. 81-8-01273, Slip Op. 83-75, for the Department to reconsider the results of its first administrative review of the finding. The Department published the final results of that review on August 20, 1981 (46 FR 42315), covering the period July 1, 1979, through July 31, 1980. In compliance with the Court's order, we have enlarged the review period to cover the period July 1, 1976, through July 31, 1980.

Scope of the Review

Imports covered by the review are shipments of clear sheet glass, currently classifiable under items 542.3120 through 542.4835 of the Tariff Schedules of the United States Annotated.

The review covers three time periods. The first involves two of the three known manufacturers and/or exporters and one known third-country reseller of Taiwanese clear sheet glass to the United States for the period July 1, 1976, through July 31, 1980. The second and third cover all four firms generally for consecutive periods from August 1, 1981, through July 31, 1983.

One firm, Taiwan Glass Corporation, did not ship Taiwanese sheet glass to the United States in any period. The other two Taiwanese firms, Yotak Trading Co., and Hsinchu Glass Works, Inc., did not ship this merchandise during the periods from August 1, 1981, through July 31, 1983. Yotak Trading was not an exporter in the first period. The cash deposit rate for these firms will be the most recent rate for each firm. The third-country reseller, Israeli International Trade Co., Ltd., failed to respond to our questionnaire for any period. For this non-responsive firm we used the best information available for cash deposit and assessment purposes. The best information available is the fair value rate.

Purchase Price

The Department used purchase price, as defined in section 203 of the 1921 Act. Purchase price was based on the packed f.o.b. price to the unrelated purchasers in the United States with a deduction for foreign inland freight. In accordance with section 203 of the 1921 Act, we accounted for taxes imposed in Taiwan but rebated or not collected by reason of the exportation of the merchandise to the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price, as defined in section 205 of the 1921 Act. Home market price was based on the packed delivered price with adjustments for inland freight, and differences in stamp taxes and packing costs. We denied claims for breakage and differences in credit costs because of the lack of quantification, and for differences in physical characteristics of the merchandise since we determined the merchandise sold to the United States is identical to that sold in the home market. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Tentative Determination to Revoke in Part

As a result of our review, we preliminarily determine that the following margins exist:

	Time period	Margin (percent)
Manufacturer/exporter		
Hsinchu Glass Works, Inc.	7/1/76-7/31/80	14.88
	8/1/81-7/31/82	[1] 14.88
	8/1/82-7/31/83	[1] 14.88
Taiwan Glass Corporation	7/1/76-7/31/80	[1] 1.6
	8/1/81-7/31/82	[1] 1.6
	8/1/82-7/31/83	[1] 1.6
Yotak Trading Company	8/1/81-7/31/82	[1] 7.0
	8/1/82-7/31/83	[1] 7.0
Third-country reseller (country)		
Israeli International Trade Co., Ltd. (Israel)	7/1/76-7/31/80	14.88
	8/1/80-7/31/82	14.88
	8/1/82-7/31/83	14.88

[1] No shipments during the period.

Hsinchu Glass Works, Inc. requested revocation as provided for in § 353.54(e) of the Commerce Regulations. Hsinchu has agreed in writing to an immediate suspension of liquidation and

reinstatement in the finding if circumstances develop which indicate that clear sheet glass manufactured by Hsinchu Glass Works, Inc. and thereafter imported into the United States is being sold by Hsinchu at less than fair value. There have been no shipments of this merchandise by Hsinchu since September 1979, a period of four years.

Therefore, we tentatively determine to revoke the finding on clear sheet glass from Taiwan with regard to Hsinchu Glass Works, Inc. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke in part within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made within 5 days of the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the U.S. Customs Service shall assess, dumping duties on all appropriate entries with purchase dates during the periods. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based upon the above margins shall be required for these firms. For future entries from a new exporter not covered in this or prior reviews, whose first shipments occurred after July 31, 1983, and who is unrelated to any reviewed firm, a cash deposit of 14.88 percent shall be required. These deposit requirements are effective for all shipments of Taiwanese clear sheet glass entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This administrative review, tentative determination to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53 and 353.54).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 19, 1984.

[FR Doc. 84-17343 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-001]

Sorbitol From France; Revocation in Part of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation in part of antidumping duty order.

SUMMARY: The United States Court of International Trade has affirmed the International Trade Commission's negative determination on remand of material injury to a United States industry with respect to imports of liquid sorbitol from France.

As a result, the Department of Commerce is revoking the antidumping duty order on sorbitol from France with respect to liquid sorbitol.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Amy F. Dale or David R. Chapman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-1130/2923.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 15391-2) an antidumping duty order on sorbitol from France.

Imports covered by the order were all shipments of sorbitol. Sorbitol is a polyol produced by the catalytic hydrogenation of sugars (glucose). It is commercially available in two forms: (1) Crystalline sorbitol, used in the production of sugarless gum, candy, groceries, and pharmaceuticals, and (2) liquid sorbitol, used in cosmetics and toiletries (such as toothpaste). Sorbitol is currently classifiable under item 493.8820 of the Tariff Schedules of the United States Annotated.

On May 7, 1982, Roquette Freres initiated a court challenge to the Department's final affirmative determination and the International Trade Commission's ("ITC") final affirmative determination of material injury (47 FR 14981, March 29, 1982). *See Roquette Freres and Roquette Corporation v. United States,* USCIT No. 82-5-00636.

The Court of International Trade ("CIT") granted the government's motion for remand to enable the ITC to consider in full all relevant information then presently before it, or which would be submitted during the remand, to determine whether an industry was materially injured by reason of imports of sorbitol from France being sold at less than fair value.

On remand, the ITC determined that an industry in the United States was materially injured by reason of imports of crystalline sorbitol, and was not being materially injured, or threatened with material injury, by reason of imports of liquid sorbitol.

On March 19, 1984, the CIT affirmed the ITC's remand results.

Revocation in Part of Antidumping Duty Order

The Department, therefore, revokes the antidumping duty order with respect to liquid sorbitol from France. In view of the injunction and the Court's order of March 19, 1984, this revocation in part applies to all unliquidated entries of French liquid sorbitol. The Department will instruct the Customs Service to proceed with liquidation of entries of liquid sorbitol without regard to antidumping duties.

This revocation is in accordance with the order of the CIT, *Roquette Freres and Roquette Corporation v. United States,* Slip. Op. 84-22, March 19, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

June 18, 1984.

[FR Doc. 84-17341 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held July 17, 1984, 3:00 p.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, N.W., Washington, D.C. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of progress on Committee's 1984 annual plan.

4. Report on current work program of the subcommittees:
   a. Foreign Availability,
   b. Hardware, and
   c. Licensing Procedures.
5. New Business.
6. Action items underway.
7 Action items due at next meeting.

Executive Session

8. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202-377-4217 For further information on copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: June 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-17400 Filed 6-28-84; 8:45 am]
BILLING CODE 3510-DT-M

[A-580-011]

Final Determination of Sales at Less Than Fair Value: Carbon Steel Plate from the Republic of Korea

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final determination of sales at less than fair value: Carbon steel plate from the Republic of Korea.

SUMMARY: We have determined that carbon steel plate from the Republic of Korea (Korea) is being, or is 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 we have directed the U.S. Customs Service to continue to suspend the liquidation of all entries of the subject merchandise that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each such entry in an amount equal to 5.0 percent of the f.o.b. value of the merchandise.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; Telephone: (202) 377-5288.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that carbon steel plate from Korea is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have determined the weighted-average margin of sales at less than fair value to be 5.0 percent.

Case History

On October 31, 1983, we received a petition from counsel for Gilmore Steel Corporation on behalf of the domestic carbon steel products industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioner alleged that imports of carbon steel plate from Korea are being, or are likely to be, sold in the United States at less that fair value within the meaning of section 731 of the Act, and that these imports are materially injuring or are threatening to materially injure a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on November 19, 1983 (48 FR 53588). On December 15, 1983, the ITC determined that there is a reasonable indication that imports of carbon steel plate are materially injuring a U.S. industry (48 FR 56450).

On December 7, 1983, we presented an antidumping questionnaire to counsel for the Pohang Iron and Steel Co., Ltd. (POSCO). On January 26, 1984, we received POSCO's response to the questionnaire. From March 5 through March 12, 1984, we verified POSCO's questionnaire response.

On April 9, 1984, we preliminarily determined that carbon steel plate from Korea is being, or is likely to be, sold in the United States at less than fair value (49 FR 14779).

Scope of Investigation

The merchandise covered by this investigation is carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad, 0.1875 inch or more in thickness and over 8 inches in width; and currently provided for in items 607.6620 and 607.6625 of the *Tariff Schedules of the United States Annotated.*

Semifinished products of solid rectangular cross sections with a width at least four times the thickness in the cast condition or processed only through primary mill hot-rolling are not included.

Since we believe that POSCO accounts for well over 95 percent of the exports of this merchandise to the United States, we limited our investigation to this one firm. We investigated all sales of carbon steel plate by POSCO during the period June 1 through November 30, 1983.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by POSCO because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price for each United States sale on the packed, f.o.b. or c. & f. prices to unrelated customers in the United States. We made deductions for trucking and handling charges in Korea and, where appropriate, for ocean freight. We made an addition for duties rebated upon exportation of the merchandise to the United States. We also added the

amount of countervailing duty currently being imposed on POSCO's imports of this merchandise into the United States to offset an export subsidy, pursuant to section 772(d)(1)(D) of the Act.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we calculated foreign market value based on POSCO's home market prices. We used POSCO's home market prices because POSCO made sufficient sales in the Korean home market to form a viable basis for fair value comparisons.

Bethlehem Steel Corp. (Bethlehem), which entered an appearance as a party to this proceeding within the meaning of § 353.12(i) of our regulations (19 CFR 353.12(i)), alleged that POSCO made home market sales at less than the cost of producing this merchandise within the meaning of section 773(b) of the Act. Information that we received form POSCO and verified indicates that all sales prices in the home market were greater than the cost of producing this merchandise.

For POSCO, we calculated home market price on the basis of the packed f.o.b. Pohang or delivered price to unrelated customers in the Korean home market. We made deductions for handling costs and inland freight, where appropriate. We made adjustments for differences in merchandise in accordance with section 773(a)(4)(C) of the Act. Because POSCO was unable to break out the cost of various steel extras that accounted for all differences between the U.S. and home market merchandise, we used our Trigger Price extra amounts announced on November 19, 1981 (47 FR 56841). We determined that the Trigger Price extra amounts were the best available information of POSCO's cost of each extra, because POSCO actually used our Trigger Price extra amounts in pricing all carbon steel plate sold to the United States. We made circumstances of sale adjustments, where appropriate, for differences in credit terms, and for differences in inspection costs. These circumstance of sale adjustments were made in accordance with section 353.15 of our regulations (19 CFR 353.15).

Verification

In accordance with section 776(a) of the Act, we verified all information used in reaching the determination in this investigation by using standard verification procedures, including on-site inspection of the manufacturer's operations and an examination of accounting records and randomly selected documents containing relevant information.

Submitted Comments

The following written comments were submitted by Bethlehem in response to our preliminary determination:

Comment 1

Bethlehem compares POSCO's reported f.o.b. export prices with average, monthly f.o.b. values derived from the Department of Commerce import statistics and claims that POSCO's reported prices are significantly higher. Bethlehem argues that this comparison raises the likelihood either that POSCO has reported inflated U.S. prices, or that the general trading companies through which POSCO exports to the United States are reselling carbon steel plate in the United States for less than the reported prices between POSCO and the trading companies. Bethlehem also cities the indictment of a Korean trading company, Daewoo Industrial Co., Ltd. (Daewoo), on charges of false invoicing (with respect to entries tendered to U.S. Customs) as further evidence of such a likelihood.

DOC Position

We received this allegation after our verification and preliminary determination. Therefore, we subjected the allegation to more rigorous scrutiny than if it had been contained in the petition or raised early in the investigation. Because we have more information against which to test a new allegation, and because of the time factor, we must have a higher threshold of support for allegations made late in an investigation as this was.

Bethlehem's comparisons do not take into account the lag time between the purchase date, the subsequent exportation date of the merchandise, and the date these exports are recorded as import statistics by the Department. This lag time is substantial and has a distorting effect with respect to the comparisons made by Bethlehem. In an effort to make such comparisons more meaningful, the Department realigned its import statistics according to date of purchase and found that POSCO's reported prices were not significantly above the average monthly import values. We found that the average monthly import values were comparable to POSCO's average monthly prices. The reason for this is that the Department's import statistics largely reflect POSCO's prices to general trading companies, as opposed to the prices of general trading companies to their customers.

Also, the Department reviewed actual Customs documentation from which the statistical data were derived and found no evidence that general trading companies were selling at lower prices than those paid to POSCO. Based on a through verification of POSCO's export prices, the Department is satisfied that these prices are not inflated. With respect to the indictment of Daewoo, it is irrelevant to this investigation. The charges stem from alleged activities which took place prior to the period under investigation and do not involve the product under investigation. We have no evidence of any fraudulent practices involving the subject product during the period under investigation.

Comment 2

Bethlehem argues that the Department connot automatically permit adjustments for differences in credit costs absent evidence establishing that such costs are directly related to the sales under consideration. Bethlehem further contends that, absent evidence that differences in price are caused by differences in credit terms, no adjustment should be allowed.

DOC Position

The actual payment terms for each individual transaction sufficiently established a direct relationship for credit costs. Our calculation of the credit costs incurred by POSCO for sales in the home and U.S. markets is based upon verified data from POSCO. For the purposes of this investigation, we have used the short-term borrowing rate to calculate actual credit costs. We do not agree with Bethlehem's agrument that no adjustment should be made absent evidence that the differences in credit costs have affected the price (i.e., the value) of the merchandise. Because POSCO has allowed certain home market customers additional time to pay, POSCO has borne additional costs. The fact that POSCO has not directly linked this cost to price, does not dispose of the fact that POSCO has had differing credit experiences in the two markets. To the contrary, it indicates that POSCO is absorbing its costs in other markets relative to the Korean market, an occurrence which the Act was intended to address. Since use of the cost criterion provides a means by which to redress this situation, we have used the differences in credit costs in the two markets to calculate a circumstance of sale adjustment.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we instructed the United States Customs Service to suspend liquidation of all entries of carbon steel plate from Korea which are entered or withdrawn

from warehouse, for consumption, on or after April 13, 1984 (49 FR 14779). Suspension of liquidation will continue for entries of this merchandise. In addition, as of the date of publication of this notice in the Federal Register, the Customs Service shall require a cash deposit or the posting of a bond equal to the new estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price. This amount is 5.0 percent of the f.o.b. value. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relting to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicy or under an administrative protective order, without the written consent of the Deputy Assistant Secretry for Import Administration.

The ITC will make its determination on whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury does not exist, this proceeding will terminate and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue an antidumping order, directing Customs officers to assess an antidumping duty on carbon steel plate, entered or withdrawn, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value of the merchandise exceeds the U.S. prices.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Dated: June 25, 1984.

Alan F. Holmer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-17398 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held July 18, 1984, 9:30 a.m., Herbert C. Hoover Building, Room 7808, 14th Street and Constitution Avenue NW., Washington, D.C. The Subcommittee meeting will continue to its conclusion on July 19, in Conference Room C, Herbert C. Hoover Building. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor performance tables and further investigations of total systems performance; and (2) investigation of array Processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

A Notice of Determination to close meetings or portions of meetings of the Subcommittee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217.

For further information contact Mrs. Margaret A. Cornejo (202) 377-2583.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-17399 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DT-M

[C-508-401]

Potassium Chloride From Israel; Preliminary Affirmative Countervailing Duty Determination

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

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of potassium chloride, as described in the "Scope of Investigation" section below. The estimated net bounty or grant is 8.71 percent *ad valorem*. Therefore, we are directing the U.S. Customs Service to suspend liquidation of all entries of potassium chloride from Israel which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond on these products in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by September 10, 1984.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: John R. Binkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-4929.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of potassium chloride. For purposes of this investigation, the following programs are preliminarily found to confer bounties or grants:

- Investment Grants under the Encouragement of Capital Investment Law 5719-1959 (ECIL).
- Export Credit Funds.

For this preliminary determination, we have used the unverified information provided in response to our questionnaires. We will verify all information used in our final determination.

The estimated bounty or grant is 8.71 percent *ad valorem*.

Case History

On March 29, 1984, we received a petition filed by AMAX Chemicals Inc., Lakeland, Florida, and Kerr-McGee Chemical Corporation, Oklahoma City, Oklahoma, on behalf of U.S. producers of potassium chloride who represent a major portion of that industry. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of potassium chloride receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Act and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

We found the petition to contain sufficient grounds upon which to initiate a countervailing duty investigation and, on April 18, 1984, we initiated such an investigation (49 FR 18001). We stated that we expected to issue a preliminary determination by June 25, 1984.

Israel is not a "country under the Agreement" within the meaning of section 701(b) of the Act; therefore, section 303 of the Act applies to this investigation. Since this merchandise enters the United States duty-free and since the international obligations of the United States so require, section 303(a)(2) of the Act, provides that an injury determination shall be made by the United States International Trade Commission (ITC).

We presented questionnaires concerning the allegations to the government of Israel and to Dead Sea Works Ltd. (DSW), the only known Israeli producer of potassium chloride, in Washington, D.C., on April 23, 1984, and requested a response by May 23, 1984. In a letter dated May 2, 1984, DSW requested an extension until June 6 to submit its response. We granted an extension until May 29. On that date we received responses from the Israeli government and DSW. On May 17, 1984, we denied a government of Israel request that we consider this case extraordinarily complicated.

Scope of Investigation

The product covered by this investigation is potassium chloride, currently provided for under item 480.5000 of the *Tariff Schedules of the United States Annotated.*

The period for which we are measuring benefits is April 1, 1982, through March 31, 1983. In their responses, the government of Israel and DSW provided data for the applicable period. We are including information in those responses in this preliminary countervailing duty determination.

Analysis of Programs

Based upon our analysis to date of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined to Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to DSW under the following programs:

A. ECIL Investment Grants

The purpose of "The Encouragement of Capital Investments Law, 5719–1959 (ECIL)" is to attract capital to Israel with a view toward developing the productive capacity of the national economy, improving the balance of payments, absorbing immigration, and offsetting the economic disadvantages in Israel's development areas.

Investment grants are given as a percentage of the investment. The percentage varies according to the location of a project. "Approved projects" located in Zone A are entitled to recieve a grant amounting to 30 percent of the total investment in fixed assets; "approved projects" in Zone B are entitled to receive a grant amounting to 15 percent of the total investment; and those in Zone C are not entitled to receive grants. Any company located in Zone A, regardless of the industry, is eligible for grants. Only projects that demonstrate economic viability are approved. The Investment Center approves a project and provides the commercial development banks with the approved funds. The banks then give the grants to the company, upon presentation of a letter of approval of the investment.

The DSW response states that DSW, which is located in Zone A, received various ECIL grants from fiscal years (April 1–March 31) 1977 through 1982 for the purposes of plant enlargement and the construction of dikes and canals used in the production of potassium chloride. The DSW response also claims that DSW received additional ECIL grants from fiscal years 1979 through 1982 for the expansion of potassium chloride production under its Makleff Stage A and Stage B projects, but that the product from these projects cannot be sold to the United States.

Because ECIL investment grants are limited to companies located in specific regions, we preliminarily determine that grants benfitting the production of potassium chloride of the grades marketable by DSW in the United States confer countervailable bounties or grants. We have not included those portions of the grants for the plant expansion, machinery, and equipment received for Stages A and B of the Makleff Project as countervailable benefits since DSW has provided support for its contention that it cannot export potassium chloride produced by its "cold crystallization" process to the U.S. We plan to seek additional information on this matter during verification. However, we have included those portions of the Makleff grants used for the construction of dikes, evaporating ponds and canals since these investments do not exclusively benefit the production of potassium chloride by the Makleff project.

We calculated the countervailable benefit of these grants by using the grant methodology set out in the "Subsidies Appendix," 49 FR 18916 (April 28, 1984). In determining the discount rate, we concluded that suitable company specific borrowing rates were not available. Consequently, we used the national average bond rate and the national average rate of return on equity. These numbers were based on Bank of Israel statistics. We allocated the grants over ten years, the average useful life of depreciable assets used in mining, as determined by Internal Revenue Service tables. We then allocated the benefits during the period of investigation over the total sales (less the sales from the Makleff plant) by DSW during the period of review. We thus determined a bounty or grant in the amount of 1.46 percent *ad valorem* exists.

We have information which states that the ECIL law now contains requirements that a certain percentage of the merchandise produced as a result of the investment must be exported in order for the plant that receives a grant to be considered an "approved project" Thus, grants currently received under the ECIL program would constitute export subsidies. However, this change was not in effect when the grants mentioned above were received.

B. Export Credit Funds.

During the period of review the Bank of Israel provided short-term financing to DSW through three export credit funds: The Export Production Fund (for working capital loans), the Export Shipments Fund (for accounts receivable), and the Imports-for-Exports Fund (to finance imported materials used for export production). We calculated the countervailable benefit of these export credit funds using the short-term loan methodology set out in the "Subsidies Appendix," (49 FR 18016 (April 28, 1984)).

We find short-term export loans (one year or less) to be countervailable to the extent that they are given at rates less than those for comparable commercial loans. To determine the amount of the bounty or grant for short-term loans, we compare the terms of the loan at issue with a benchmark; that is, a comparable commercial loan. Since short-term loans are received and repaid within a year, we allocate any benefits to one year only. For our benchmark, we used the terms and rates of the most appropriate national average commercial method of short-term financing. The benchmark used for each of the export funds is included in our description of each program. We obtained the benchmark interest rates used from official Bank of Israel publications.

1. *Export Production Fund*

Preferential financing is provided in Israeli shekels and in certain foreign currencies to exporters through the Export Production Fund to finance the production process for items to be exported. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters according to the terms established for this fund by the Bank of Israel may receive credit from the Bank of Israel for the financing which they provide.

DSW stated in its response that during the period of review it received Export Production Fund loans only in shekels at an interest rate of 10.5 percent per quarter. As our benchmark interest rate on comparable commercial loans we used the effective interest rate during the period of review for shekel overdraft accounts. Since the Export Production Fund provides loans for export-related purposes at interest rates significantly less than those prevailing for comparable commercially available loans, we preliminarily determine that this program confers a bounty or grant upon the exportation of potassium chloride.

We determined the benefits from these loans based on a comparison of the cost of the Export Production Fund financing and the cost of the comparable commercially available financing. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 4.49 percent *ad valorem.*

2. *Export Shipments Fund*

The preferential financing designed to afford exporters the possibility of extending credit in foreign currency to their customers abroad is provided by the Export Shipments Fund. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters according to the terms established for this fund by the Bank of Israel are discharged from certain payment obligations to the Bank of Israel and are exempt from the credit ceiling fixed by the Bank of Israel.

The government of Israel's response indicates that exporters are required to pay the Euro-currency interest rate plus 1.5 percent on loans obtained through the Export Shipments Fund. Financing is granted after the merchandise is shipped upon the presentation by the exporter of particular export documents. Up to 90 percent of the export value of the merchandise shipped may be financed through this fund for a period not to exceed 6 months. Credit from this fund is provided in the currency indicated on the export documents.

DSW's response to our questionnaire indicates that it was exempt from the surcharge which the government of Israel generally requires borrowers of foreign currency to pay. Such exemptions are granted for foreign currency loans obtained through an export credit fund. Therefore, consistent with the position we have taken in the first and second administrative reviews of *Fresh Cut Roses from Israel* (48 FR 36635 (1983) and 49 FR 924 (1984)), we consider that DSW's exemption from payment of the surcharge on its foreign currency borrowings during the period of review to be a countervailable export subsidy.

To represent the interest rate on comparable United States dollar denominated commercial loans, we used as our benchmark the sum of the applicable surcharge and the interest rate, in dollar terms, available in Israel on non-directed United States dollar credit. We were not able to obtain the interest rates available in Israel on non-directed credit in other foreign currencies. For loans provided to DSW in currencies other than United States dollars, we used as the benchmark interest rates on comparable commercial loans, the interest rates DSW received on foreign currency loans adjusted (on a quarterly basis) by the percentage difference by which the interest rate on the non-directed United States dollar benchmark (surcharge excluded) exceeded the interest rates DSW received on United States dollar loans. The applicable surcharge was then added to the foreign currency benchmark interest rates.

We calculated the benefit of the loans by comparing the appropriate benchmark to the preferential rates of interest obtained by DSW on its Export Shipments Fund loans. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 2.55 percent *ad valorem.*

3. *Imports-for-Exports Fund*

Through the Imports-for-Exports Fund, preferential financing is provided in foreign currency to exporters in order to finance imported material used for export production. The Bank of Israel manages this fund. Financial institutions which offer credit to exporters through this fund may receive credit from the bank of Israel for the financing which they provide. In its response, the government of Israel states that financial institutions grant credit to exporters in foreign currency at a rate of interest equal to 60 percent of the Euro-currency interest rate for the currency in which the loan is given for a period not to exceed 1 year. The Bank of Israel then credits the financial institution's account with an amount equal to the difference between the rate of interest paid by the exporter (60 percent of the Euro-currency rate) and the Euro-currency rate plus 1.

To represent the interest rate on comparable commercial loans, we used as our benchmark the United States dollar and foreign currency benchmarks described in the "Export Shipments Fund" section.

We calculated the benefit of these loans by comparing the appropriate benchmark to the preferential rates of interest obtained by DSW on its Imports-for-Exports Fund loans. This benefit was allocated over the value of DSW's total potassium chloride exports during the review period. On this basis, we calculated a bounty or grant in the amount of 0.21 percent *ad valorem.*

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that boundies or grants are not being provided to DSW under the following programs:

A. Exchange Insurance Scheme.

During the period for which we are measuring bounties or grants, DSW's exports were covered under the "Exchange Rate Risk Insurance Scheme" (EIS) offered by the Government-owned "Israel Foreign Trade Risks Insurance Corporation Ltd." (IFTRIC). EIS, which is optional for all exporters, is a mixture of exchange rate risks, insurance, and cost escalation coverage. It is designed to insure the exporter against decreased payments in its foreign currency receivables resulting from a delay in devaluation of the shekel with respect to a market basket of exchange rates, relative to the appropriation of the consumer price index. Under EIS, if the change in the consumer price index is larger than the changes in the rate of the shekel depreciation, the exporter is indemnified by an amount equal to the difference between the changes multiplied by the "added value" of the exports. When the rate of depreciation is higher than the change in the consumer price index, the exporter compensates IFTRIC.

EIS premiums are the same for all industries and are based on two indicators: (a) The average anticipated inflation rate in the buyers' countries: And (b) the forward relation between currencies which constitute the market

basket of exchange rates. based on these indicators, the weighted premium rates to the United States were higher than to other countries.

While no specific information is available at this time to determine whether the premiums charged by IFTRIC for the EIS program are sufficient to cover its long-term operating expenses, our review of the 1981/82 and 1982/83 annual reports of IFTRIC shows that in each year the company showed an overall profit as well as a profit from its insurance activities. This pattern of operating profits on its overall insurance activities indicates that IFTRIC does charge premiums sufficient to cover long-term operating costs and losses. Therefore, we preliminarily determine that the EIS program does not confer a bounty or a grant.

B. ECIL Partial Non-Payment of Employer's Tax

The petition alleges that DSW benefits from the partial non-payment of the employer's tax which normally amounts to 7 percent of payroll. The extent of non-payment depends on the ratio between "approved" assets and total assets.

The response states that on January 1, 1980, the employer's tax law was amended. Since April 1, 1980, the employer's tax has not been applicable to the productive sectors, including industrial manufacturing firms, agricultural farms, operation of hotels, and the building of housing or civil engineering related to the above activities. As a result, DSW has not paid an employer's tax since 1980.

Consequently, we preliminarily determine this domestic program is not provided by government action to a specific enterprise or industry, or a group of enterprises or industries; thus it does not confer a countervailable benefit.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that the following programs were not used by DSW:

A. ECIL Reduction of Corporate Tax Liability

The petition alleges that DSW's corporate tax liability is limited to 30 percent instead of the normal 60 percent rate and that the benefit lasts 7 years and is prorated according to the ratio between "approved" assets and total assets.

The response states that "approved projects" under ECIL are liable to pay a 30 percent corporate tax on the portion of the "approved" fixed assets, while the regular corporate rate for an industrial corporation is 40 percent, and not 60 percent as alleged. The program is administered by the Investment Center. The response indicates that even though DSW had profits, DSW did not receive benefits from this program during the period of review. Under Israeli tax law, DSW's tax liability is consolidated with its parent, Israel Chemicals Ltd. (ICL). Since ICL had losses, DSW paid no taxes.

B. Property Tax Exemption on Buildings

The petitioner alleges that DSW may continue to benefit from the ECIL provisions that allow eligible enterprises a 5 year exemption from payment of ⅔ of property taxes on building. The petiton states that this program was repealed by Amendment 17 of the ECIL on August 1, 1978.

The response states that the last year that DSW used this program was 1980. The property tax on buildings was abolished for all taxpayers on April 1, 1981.

C. Property Tax Exemption on Equipment

The petition alleges that the government of Isreal provides a 10 year exemption from payment of ⅓ of the property taxes on equipment approved prior to repeal of this program. The petition states the program was repealed by Amendment 17 of ECIL on August 1, 1978. The response states the last year for which DSW used this program was 1980. This program was abolished for all taxpayers as of April 1, 1981.

IV. Programs for Which Additional Information Is Required

We preliminarily determine that additional information is needed on the following programs:

A. Preferential Ocean Freight Rates

The petition alleges that most potassium chloride exported from Israel to the United States (back-haul) is shipped by Zim Navigation, which is 40 percent owned by the government of Israel, at rates which are far lower than the rates it charges on bulk shipments from the United States to Israel (front-haul). Petitioners add that the enormous difference between the front-haul and back-haul rates cannot be accounted for simply as the result of the imbalance in shipments into and out of Israel. They are deliberately structured, at the government of Israel's direction, to cross-subsidize lower freight rates on potassium chloride exports to the United States by higher freight rates on grain imports (by the government of Israel) from the United States.

The responses of DSW and the government of Israel state that Zim Navigation structures its ocean freight rates on a purely commercial basis without government of Israel intervention and that DSW ships most of its potassium chloride to the United States with several private carriers at rates equal to those it is charged by Zim Navigation. Before determining whether DSW has benefited from bounties or grants due to preferential ocean freight rates we will require additional information.

B. Preferential Wharfage Charges

The petition alleges that the Israel Ports Authority (IPA) subsidizes exports by disproportionately raising wharfage revenue from imports while vastly undercharging exports and by basing wharfage charges on value, not volume of shipments, which favors low value exports such as potassium chloride.

IPA was established by statute in 1961 as a state corporation to plan, build, develop, manage, maintain, and operate the ports of Israel as self-supporting enterprises. The Department noted in Certain Steel Products from Belgium (47 FR 39304), that government ownership of separate companies does not necessarily preclude them from conducting transactions on an arm's-length basis and that our examination of such relationships should focus on whether prices actually charged were at prevailing market rates. In this case, DSW alleges that it did not benefit from the alleged bounty or grant during the period of review since it built and operates its own port facilities (wharf, terminal, conveyor and loader) and thus does not incur any wharfage charge by IPA on export shipments. DSW does, however, pay to IPA an annual rent for using the port territory for its terminal as well as general operating charges on a cost plus basis. We will examine the rental arrangement and operating costs paid by DSW to IPA to determine whether or not they were at arm's-length and at prevailing market rates as well the source of financing for the construction of the wharf facilities.

Verification

In accordance with section 776(a) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of potassium chloride from

Israel which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register and to require a cash deposit or bond for each such entry of this merchandise from Israel in the amount of 8.71 percent *ad valorem.*

Public Comment

In accordance with § 355.35 of our regulations, and pursuant to a request by a party to this proceeding, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on July 11, 1984, at the U.S. Department of Commerce, Conference Room A, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in this hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address by July 3, 1984. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Prehearing briefs must be submitted to the Deputy Assistant Secretary by July 5, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Dated: June 25, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-17396 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-009]

Tubes for Tires, Other Than for Bicycle Tires, From the Republic of Korea: Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that tubes for tires, other than for bicycle tires, from the Republic of Korea (Korea) are not being, nor are likely to be, sold in the United States at less than fair value. In addition, since we have determined that inner tubes have not been sold at less than fair value, the issue of "critical circumstances" is moot in this determination. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202 377-1776 or 0161..

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that tubes for tires, other than for bicycle tires (inner tubes) from Korea are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We have found either no margins, or *de minimis* margins, on sales of inner tubes by all of the firms investigated. In addition, since we have determined that inner tubes have not been sold at less than fair value, the issue of "critical circumstances" is moot in this case.

We have found that the foreign market value of inner tubes exceeded the United States price on 0.54 percent of the sales we compared. These margins ranged from 0.12 percent to 20.30 percent. The overall weighted-average margin on all sales compared is 0.02 percent.

Case History

On August 1, 1983, we received a petition filed by counsel for Carlisle Tire & Rubber Company; Cooper Tire & Rubber Company; Cupples Company, Manufacturers; The Firestone Tire & Rubber Company; The B. F. Goodrich Company; The Indianapolis Rubber Company; and the Robbins Tire & Rubber Company, on behalf of the U.S. industry producing inner tubes.

In accordance with the filing requirements of section 353.36 of the Commerce Department Regulations (19 CFR 353.36), the petitioners alleged that inner tubes from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening to materially injure, a U.S. industry. The petitioners also alleged that "critical circumstances" exist in this case.

After reviewing the petition, we determined that it contained sufficient ground upon which to initiate an antidumping investigation. We notified the ITC of our action and inititated such an investigation on August 1, 1983 (48 FR 36637). The ITC subsequently found, on August 25, 1983, that there is a reasonable indication that imports of inner tubes are materially injuring, or are threatening to materially injure, a United States industry.

The petitioner alleged that at least 18 Korean Companies either produce for export, or export, inner tubes to the United States. However, we identified 2 producers whose exports account for approximately 90 percent of the exports of inner tubes to the United States. We presented questionnaires in Korea to these producers and exporters on September 9, 1983. We received responses from Heung-Ah Tire Ind. Co., Ltd. (Heung-Ah) and Dong Ah Tire Ind., Co., Ltd. (Dong Ah) on October 24, 1983. In addition, Shin Hung Rubber Co., Ltd. (Shin Hung) and Hung-A Ind. Co., Ltd. (Hung-A) voluntarily submitted responses to the Department's questionnaire.

On November 18, 1983, we received a letter from counsel for petitioners requesting that the Department postpone its preliminary determination, pursuant to section 733(c)(1)(A); and on November 22, 1983, we postponed our preliminary determination until not later than February 6, 1984 (48 FR 53740).

On November 28, 1983, counsel for petitioners alleged that Heung-Ah and Dong Ah were selling the subject merchandise in the home market at less than the cost of production. On November 29, 1983, we presented cost of production questionnaires to Heung-Ah and Dong Ah and responses to the questionnaires where received on December 27, 1983. Verification of all information submitted to the Department was conducted in Pusan and Seoul, Korea during the period January 5-14, 1984. On February 10, 1984, we published our preliminary determination of sales at not less than fair value (48 FR 5155). The notice stated that, if requested, we would hold a public hearing to afford interested parties an opportunity to comment on the preliminary determination. Neither counsel for petitioners nor respondents requested a hearing. On March 23, 1984, based on a request from counsel for petitioners, we postponed our final determination until not later than June 25, 1984 (48 FR 12733) in accordance with section 735(a)(2)(B) of the Act.

Scope of Investigation

The merchandise covered by this investigation is all tubes of rubber or plastic for tires other than bicycle tires, currently classified, under Items 772.59 and 772.60 of the *Tariff Schedules of the United States* (1983) (TSUS).

We investigated sales of inner tubes by these respondents during the period from February 1, 1983 to July 31, 1983.

Fair Value Comparision

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price for each type of inner tube based on the C&F, CIF, or FOB, packed price to unrelated customers in the United States. We made deductions, where appropriate, for wharfage, brokerage and handling charges, foreign inland freight, marine insurance, U.S. customs duties, and U.S. inland freight. We made an addition for import duties and taxes, assessed upon the importation of materials used in the manufacture of inner tubes, which were later rebated by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales.

Petitioners alleged that sales in the home market by Heung-Ah and Dong Ah were at prices below the cost of production. We examined production costs, which included all appropriate costs for materials, fabrication and general expenses. Sales below the cost of production were found to be made within certain size categories of inner tubes. Where sales within any of the size categories were made over an extended period of time and in substantial quantities, and were at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade, we disregarded these sales in our analysis in accordance with section 773(b) of the Act. Disregarding those sales, we found for certain size categories of inner tubes that sufficient sales of the particular size were made at or above the cost of production in the home market. Therefore, we used those sales to determine foreign market value. If, within a particular size category, insufficient home market sales of such or similar merchandise were made above the cost of production, we used sales of the next most similar home market merchandise made at or above the cost of producton for comparison to United States sales, after making the appropriate adjustments for differences in merchandise.

We calculated the home market prices for each size of inner tube on the basis of delivered packed prices to unrelated purchasers. From these prices we deducted foreign inland freight and unloading charges, where appropriate. We made adjustments, where appropriate, for credit expenses, advertising expenses, sales promotional activities, and warranty/servicing expenses, in accordance with § 353.15 of the Commerce Regulations. We also made adjustments, where appropriate, for the cost of materials, labor and direct factory overhead associated with differences in the merchandise in accordance with § 353.16 of the Commerce Regulations. An adjustment was also made, where appropriate, for the differences between commissons on sales to the United States and indirect selling expenses in the home market used as an offset to U.S. commissions, in accordance with § 353.15(c) of the Commerce Regulations. We also deducted home market packing costs and added packing costs incurred on sales to the United States.

The following claims were disallowed in calculating foreign market value. Heung-Ah claimed a circumstance of sale adjustment for an end-of-year rebate paid to one of its customers in the home market. In our preliminary determination, we allowed this adjustment. Further analysis indicates that during the period of investigation, the rebate had not yet been paid. Since this was the first year that the rebate had been offered by Heung-Ah, there was no history of past payments, nor any evidence that the rebate would be paid. Therefore, the adjustment has been disallowed. In our preliminary determination, we also made adjustments to both Heung-Ah's and Dong Ah's home market prices for costs relating to product liability insurance. Further analysis reveals that these costs are general in nature, and not directly related to specific sales. Therefore, we have not made the adjustments for the final determination. Both Hung-A and Dong Ah requested a circumstance of sale adjustment for sales promotional expenses incurred in the home market. However, we did not make the adjustments because neither company provided sufficient information directly relating these expenses to sales of the products under investigation. Dong Ah also requested a circumstance of sale adjustment for selling expenses incurred in the home market. However, we did not make the adjustment because the company did not provide sufficient information directly relating these expenses to home market sales of the products under investigation.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making this determination by using standard verification procedures. These included on-site inspection of the manufacturers' operations and examination of accounting records and selected documents containing relevant information.

Negative Determination of "Critical Circumstances"

Petitioners alleged that imports of inner tubes present "critical circumstances", as defined by section 733(e) of the Act. Since we have determined that inner tubes have not been sold in the United States at less than fair value, the issue of "critical circumstances" is moot in this determination.

Petitioners' Comments

1. The Department should make a level of trade adjustment with respect to Heung-Ah's home market sales to original equipment manufacturers (OEM's) because petitioners argue that these sales were at a different level of trade than export sales to the United States. In those instances where home market sales of a particular model inner tube were made exclusively to OEM's, the Department should adjust those prices for rebates and/or unloading charges not involved in sales to other customers. For sales of all other model inner tubes, all OEM sales should be disregarded when calculating a weighted-average home market price.

DOC Position

We have examined Heung-Ah's home market sales and have found (1) no correlation between price and class of customer, (2) no evidence indicating that pricing differentials are due to differences in selling costs at different levels of trade, and (3) no significant differences in quantities sold between "OEM's" in the home market and "wholesalers" in the U.S. market. Our verification indicates that Heung-Ah's prices to each of its home market customers were established through negotiation with the customer. Rebates and the payment of unloading charges are not provided to every OEM customer, but only to the one that

happens to be Heung-Ah's largest customer. Petitioners' argument is inconsistent. While they would have us exclude sales to OEM customers, they do not argue that we should exclude sales to Heung-Ah's other customers that are not called wholesalers. Therefore, we have determined that a level of trade adjustment is not warranted, and we have based the weighted-average home market prices on sales to all classes of customers, including OEM's.

2. When determining whether sales in the home market were made at prices less than the cost of production, Commerce erroneously compared Heung-Ah's and Dong Ah's costs of production with the home market prices that included value added tax (VAT). The VAT should be subtracted from the home market prices in order to properly perform the cost/price comparison.

DOC Position

We agree. For purposes of this final determination, we compared the cost of production for each model of inner tube with the home market price of that particular model less VAT.

3. Petitioners' contend that when determining weighted-average home market prices, Commerce should disregard all home market sales of inner tubes sold at prices that were less than COP; and if after disregarding those sales there are no sales of such or similar merchandise made above cost, then the Department should use constructed value.

DOC Position

The statutory requirements of section 773(b) of the Act provide that sales at less than COP shall be disregarded in the determination of foreign market value if (1) the sales at issue were made over an extended period of time and in substantial quantities, and (2) such sales were not at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade. In practice, the Department has generally applied a 10 percent rule—i.e. the Department will not disregard below COP sales if they constitute 10 percent or less of total home market sales of the such or similar category of merchandise. *See, Certain Steel Wire Nails from the Republic of Korea*, 42 FR 27392 (1982). In this case, we have considered all the subject merchandise to be such or similar, within the meaning of section 771(16) of the Act. Moreover, it should be noted that the Court of International Trade specifically rejected an argument similar to the petitioners', in *Southwest Florida Winter Vegetable Growers Association, et. al.* v. *United States*, Slip. Op. 84–23 (March 21, 1984), finding that Commerce had properly included below cost sales (50 percent of home market sales) in its determination of foreign market value.

In this case, we found that for Dong Ah, less than 10 percent of its total home market sales were made at prices that were less than COP. Therefore, for Dong Ah we included all home market sales in our calculation of weighted-average home market prices. With respect to Heung-Ah, more than 10 percent of its home market sales were made at prices that were less than COP. Disregarding those sales, we found for certain sizes of inner tubes that sufficient sales of the particular size were made at or above the cost of production in the home market. Therefore, we used those sales to determine foreign market value. If, within a particular size category, an insufficient number of home market sales were made above the cost of production, we used sales of the next most similar home market merchandise made at or above the cost of production for comparison to United States sales, after making the appropriate adjustments for differences in merchandise.

4. In its calculation of constructed value, the Department should determine the amount of SG&A expenses by reference to home market sales.

DOC Position

The issue is moot. We have found that there were sufficient home market sales of such or similar merchandise on which to base foreign market value, and therefore the use of constructed value was not necessary.

5. Petitioners contend that both Dong Ah and Heung-Ah have understated the rubber part material weight of the inner tubes exported to the United States. They base this contention on a comparison of data contained in the respondents' submissions with information contained in documents purported to be respondents' pricelists—Dong Ah's pricelist indicating the declared Federal Excise Tax (FET) (which is based on weight) and Heung-Ah's pricelist indicating tube weight. Petitioners believe that the information contained in the purported pricelists is more reliable than that reported to the Department by respondents because the pricelist information constitutes admissions against respondents' business interests. Accordingly, the Department should use that information in calculating differences in merchandise adjustments. In addition, petitioners claim that Dong Ah has understated the weights of its smaller radial tubes and wants the Department to reject Dong Ah's claimed weights of radial tire inner tubes with rim sizes less than 20 inches. This claim is based on the following: (a) Petitioners' information indicates that a radial inner tube contains a more costly rubber mix and usually weighs more than a bias tube of comparable size, (b) Dong Ah's radial tubes with rim sizes greater than 20 inches are heavier than bias tubes of similar rim size, but its radial and bias tubes with rim sizes less than 20 inches are reported to weigh the same, and (c) all sizes of Heung-Ah's radial tubes are heavier than its bias tubes of similar rim diameter.

DOC Position

We preface our reply to this comment by pointing out that both Heung-Ah and Dong Ah refute the authenticity of the documents petitioners submitted as pricelists, and each states that it does not issue published pricelists in either the domestic or U.S. markets. They speculate that these pricelists may have been distributed by their unrelated trading companies in the United States and, if that is the case, respondents should not be held accountable for the information contained in those pricelists.

We have no reason to believe that the weights reported by either respondent have been understated. Counsel for Dong Ah claims, and we agree, that even assuming the authenticity of the pricelists and the information contained therein, the weights reported on those pricelists do not represent the same weights reported by respondents. In their responses, Heung-Ah reported the rubber part material weight and Dong Ah reported the valveless tube weight. Petitioners' pricelists indicate *total* tube weight including the weight of the valve. Regarding FET and the weight used as its basis, it is our understanding that when weighing products to determine FET, averaging may be used and therefore variances can be expected. In reply to petitioners' claim that Dong Ah's smaller size radial tubes should weigh more than comparably sized bias tubes, counsel for Dong Ah states that: (a) All of its tubes (both bias and radial) are made with the same rubber compound, and (b) its smaller sized bias and radial tubes do weigh the same. They feel that it is improper to compare the weight of a Dong Ah tube to the weight of a Heung-Ah tube because the two companies employ different manufacturing processes. We have no reason to reject this explanation. Finally, at verification, Commerce officials selected sample tubes and weighed them as a check on the

accuracy of the responses. No significant discrepancies were found.

For the reasons cited above, we reject petitioners' claim and have based difference in merchandise adjustments on the weights reported in the questionnaire responses.

6. The Department's adjustments for differences in merchandise for Heung-Ah and Dong Ah should also include adjustments for the use of dissimilar valves whenever the exported inner tubes involved a non-standard valve. In addition, in the case of Dong Ah, differences in merchandise adjustments should be based on the verified cost of production worksheets.

DOC Position

We agree and have made the appropriate adjustments.

7 The Department should check the accuracy of the computerized data base and correct all data entry errors.

DOC Position

We have checked the data base and have made the appropriate corrections.

8. Petitioners contend that we should further investigate the accuracy of the questionnaire responses submitted by Heung-Ah and Dong Ah because, based on information contained in a market research study conducted by an independent Korean research firm engaged by petitioners, they have reason to believe that these respondents have attempted to conceal or underreport both costs and home market prices by significant amounts.

DOC Position

We have not found any evidence of concealment on the part of the two Korean respondents, nor have petitioners submitted any documentation (e.g., sales invoices, customer receipts, payment records, etc.) to support these allegations. Commerce officials verified the information submitted by Heung-Ah and Dong Ah and were satisfied that the information submitted to the Department by these two respondents was accurate. Accordingly, we determined that no further investigation was warranted.

9. While petitioners agree that Heung-Ah properly allocated mixing stage costs based on inner tube weight, they claim that it was unreasonable for Heung-Ah to allocate certain portions of direct labor and factory overhead strictly according to the time required to vulcanize the various tube sizes. Since the vulcanizing department is only one of several departments involved in the manufacture of the products under investigation, costs could easily be distorted among various tube sizes. Accordingly, petitioners believe that all processing costs excluding those costs associated with the mixing stage should be allocated according to department-specific time records.

DOC Position

After receiving clarification regarding the allocation methodology, we have determined that Heung-Ah did, in fact, allocate labor and overhead expenses according to department-specific time records for each stage of production except for the mixing stage.

10. Petitioners agree that Dong Ah properly allocated direct labor costs for most departments (i.e., extrusion, building-up, valving, vulcanizing and inspection). However, they contend that it was unreasonable for Dong Ah to allocate direct labor costs for the mixing stage according to time, and believe that direct labor costs at this stage should be allocated according to inner tube weight.

DOC Position

It is our opinion that, in this particular case, either weight or time are acceptable methods of allocating direct labor at the mixing stage. Dong Ah's records are maintained on a time basis. There does not appear to be any justification in changing the company's method of allocation for that one particular department since any such adjustments would have an immaterial effect on total cost of production.

11. Petitioners state that it is not reasonable for the Department to allocate world-wide SG&A expenses between home market and export sales on the basis of sales proportionality because, in the cases of both Heung-Ah and Dong Ah, certain home market SG&A expenses were higher as a percentage of home market sales value than export SG&A expenses were as a percentage of export sales value. They submit that the amount of SG&A expenses included in respondent's costs of production should not be a lower percentage of such price which was claimed by respondents to be eligible as adjustments to foreign market value.

DOC Position

After comparing certain cost elements to those claimed as circumstance of sale adjustments, we determined that neither Heung-Ah's nor Dong Ah's methodology sufficiently allocated certain SG&A expenses to home market sales of inner tubes. After adjusting SG&A expenses to reflect the proper allocation of these costs, the amount of SG&A expenses included in respondent's costs of production was reconciled with the expenses claimed as adjustments to foreign market value.

12. Petitioners allege that there are additional costs of material, direct labor, and/or factory overhead incurred in the production of radial tire tubes, as opposed to bias tire tubes; and believe that these differences should be reflected in our difference in merchandise adjustments.

DOC Position

This claim is based solely on the experience of a few domestic inner tube manufacturers. We cannot assess domestic manufacturers' production processes and/or resulting cost changes that are connected to the production of radial vs. bias tire tubes. However, even if a few domestic manufacturers' costs are as stated by petitioners, we have no reason to believe, nor evidence that, respondents' cost experiences should be the same in this particular case. We have made adjustments for differences between radial and bias tire tubes on the basis of tube weight, which we believe adequately reflects any additional differences in costs.

Respondent Dong-Ah's Comments

1. The Department should make a circumstance of sale adjustment for selling and sales promotion expenses incurred in the home market.

DOC Position

As previously stated, we did not make the adjustments because Dong Ah did not provide sufficient information directly relating these expenses to home market sales of the products under investigation.

2. In its response to the Department's questionnaire, Dong Ah provided cost of production information on a quarterly basis. For the preliminary determination, we used the cost of production information for whichever of Dong Ah's two reported quarters was higher in order to determine whether sales were made at prices that were less than the cost of production.

Dong Ah submits that the Department should use the cost of production information for the quarter in which the sale was made, or a weighted-average of the two quarters' costs. In response to Dong Ah's argument, petitioners believe that, given the fact that short-term data were used, the Department was correct in using the higher of the two quarters' cost of production for Dong Ah.

Petitioners further argue that the use of short-term accounting data in our cost of production analyses was contrary to the Department's practice. They believe that since short-term accounting data

does not accurately and completely represent costs and expenses, nor reflect revisions and adjustments, long-term data should have been used in our cost of production analyses.

DOC Position

It has been the Department's practice to use weighted-average costs in a cost of production analyses. Thus, it was not appropriate to use the higher of the two quarters' costs for Dong Ah in the preliminary determination. We have, therefore, corrected our calculation to reflect this practice.

With respect to petitioners' argument concerning the use of long- vs short-term data, the Department normally selects the period it determines is most representative of the costs incurred by a respondent for the period of investigation. In some cases, we have used short-term data in our COP analyses. *See, Hot-Rolled Carbon Steel Plate and Hot-Rolled Carbon Steel Sheet from Brazil,* 49 FR 3102–3107 (1948) and *Lightweight Polyester Filament Fabrics from the Republic of Korea,* 49 FR 49679–49684 (1983). In this particular case, we selected the period January to June, 1983 as being representative because there does not appear to be a cyclical nature to the inner tube industry. Financial statements were not yet available at the time of verification because fiscal year 1983 had not been finalized. Nonetheless, we verified the accuracy of the cost information for the six-month period by reviewing respondents' journals and ledgers.

Respondent Heung-Ah's Comments

1. In calculating financing expenses for the cost of production, Heung-Ah deducted prepaid interest expense as well as the interest associated with an export loan, and submits that the Department should not include these expenses in calculating cost of production.

DOC Position

The Department allocates the cost of all corporate debt to the production of the firm's total output. We consider the total financing costs in the cost of production of the merchandise. Regarding prepaid interest, the expense appears to be a normal business expense of the company; and, being so, we include it in our costs in the year in which the company makes such payments.

Summary of Final Results

The weighted-average margins for the companies investigated are as follows:

Firm	Weighted-average margin percentage
Heung-Ah Tire Ind. Co., Ltd	[illegible]
Dong Ah Tire Ind. Co., Ltd	0.01
Shin Hung Rubber Co., Ltd	0.00
Hung-A Ind. Co., Ltd	0.00
All other producers/manufacturers/or exporters	0.02

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This notice is being published pursuant to section 735(d) of the Act.

Dated: June 25, 1984.

Alan F. Holmer,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-17397 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-403]

Potassium Chloride From Spain: Preliminary Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Preliminary Affirmative Countervailing Duty Determination.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The estimated net subsidy is 7.54 percent *ad valorem.* Therefore, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or bond on this product in the amount equal to the estimated net subsidy. If this investigation proceeds normally, we will make our final determination by September 10, 1984.

EFFECTIVE DATE: June 29, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–0189.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine there is reason to believe or suspect that certain benefits which constitute subsidies within the meaning of section 701 of the act are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The following programs are preliminarily determined to confer subsidies:

- Short-term preferential loans (provided under the Privileged Circuit Exporter Credits Program as working-capital loans and export credits)
- Excessive rebates of indirect taxes on exports under the Desgravacion Fiscal a la Exportacion (DFE)

We estimate the net subsidy to be 7.54 percent *ad valorem.*

Case History

On March 30, 1984, we received a petition from Amax Chemical, Inc. and Kerr-McGee Chemical Corporation filed on behalf of the U.S. industry producing potassium chloride. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Spain of potassium chloride receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 19, 1984, we initiated an investigation (49 FR 18149). We stated that we expected to issue a preliminary determination by June 25, 1984.

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. On May 14, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports are materially injuring, or threatening to materially injure, a U.S. industry (49 FR 21813).

We presented questionnaires concerning the allegations to the government of Spain at its embassy in Washington, D.C. on April 23, 1984. On June 4, 1984, we received a response to the questionnaire from the related exporter, Comercial de Potasas, S.A., on behalf of Minas de Potasa de Suria, S.A., (Suria).

Scope of Investigation

The product covered by this investigation is potassium chloride. For the purpose of this investigation, the term "potassium chloride" covers potassium chloride, otherwise known as muriate of potash, as currently provided for in item 480.50 of the *Tariff Schedules of the United States.*

There is one known firm in Spain which produces potassium chloride for export to the United States. We have received information from Suria, which produced 100 percent of the potassium chloride exported to the United States during the period of investigation, calendar year 1983. Since we have not received a response from the government of Spain, we have used Suria's response for the purposes of this preliminary determination.

Analysis of Programs

Based upon our analysis of the petition and Suria's response to our questionnaire, we have preliminarily determined the following:

I. Programs Preliminarily Determined To Confer Subsidies

We preliminarily determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of potassium chloride under the programs discussed below:

A. Privileged Circuit Exporter Credits Program

Petitioners alleged benefits which constitute subsidies in the form of short-term preferential loans. We requested information on all short-term loans outstanding during the period for which we are measuring subsidization. The only preferential short-term borrowing reported by Suria was that obtained under the Privileged Circuit Exporter Credits Program.

The government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates through a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports. Of the four privileged circuit programs available to companies, we preliminarily determine that the respondent potassium chloride producer benefited from the working-capital loans and short-term export credit programs.

1. *Working Capital Loans.* Under the privileged circuit program, firms may obtain working-capital loans for one year, the total of which is not to exceed a specified percentage of their previous year's exports. During the period of investigation, Suria received three working-capital loans under this program. In 1983, the privileged circuit working-capital loan interest rate ceiling mandated by the government was 10 percent, including fees and commissions.

We chose as our benchmark for 1983 the national average commercial interest rate, which was calculated as the average prime interest rate for one-year loans, 17.15 percent, plus two percentage points (reflecting average borrowing experience). Since the 10 percent working-capital loan interest rate includes fees and commissions, we also made an addition of 0.5 percent to the commercial rate, which by Spanish law is the maximum allowable charge for fees and commissions. Based on this data, we preliminarily determine the national average commercial interest rate to average borrowers to be 19.65 percent for one-year loans, including fees and commissions.

To determine the benefit, we compared the preferential interest rate of 10 percent with the national average commercial interest rate of 19.65 percent. This interest differential of 9.65 percent was multiplied by the total amount of Suria's privileged circuit working-capital loans.

The resulting product was then allocated over the total sales value of all exports of Suria in 1983. We preliminarily determine that the *ad valorem* subsidy for short-term working capital loans to Suria is 0.61 percent.

2. *Short-Term Export Credit.* The short-term export credit program provides loans for up to 90 percent of the value of a company's export shipments at a 10 percent interest rate for a maximum of one year. Suria stated that it obtained 90-day loans under this program in 1983 to finance exports of potassium chloride.

We chose as our 1983 benchmark the average national prime interest rate, which was calculated as the average prime interest rate for loans of 90 days, 16.04 percent, plus two percentage points (reflecting average borrowing experience). As the 10 percent export credit rate includes fees and commissions, we also made an addition of 0.5 percent to the commercial rate, which is the legally established charge for fees and commissions. Based on this data, we preliminarily determine the national average commercial interest rate to average borrowers to be 18.54 percent for 90-day loans, including fees and commissions.

We multiplied the difference between the government-mandated interest rate of 10 percent and the national average commercial interest rate by the amount of privileged circuit export credit loans to determine Suria's interest savings. The interest savings were allocated over the total sales value of all exports of Suria during 1983. We preliminarily determine that the *ad valorem* subsidy for short-term export credit to Suria is 1.09 percent.

B. Desgravacion Fiscal a la Exportacion (DFE)

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Tariff Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes decribed above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

In this case, we preliminarily determine that there are no physically incorported inputs upon which indirect taxes are paid. The rebate of a final stage tax, the tax on freight, is, however, allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE. Based on our analysis, we preliminarily determine that the DFE rebate, less the final stage tax, confers an *ad valorem* subsidy of 5.84 percent.

II. Programs Preliminarily Determined Not To Be Used

We have preliminarily determined that potassium chloride manufacturers, producers, or exporters in Spain do not use the following programs that were identified in the notice of "Initiation of Countervailing Duty Investigation of Potassium Chloride from Spain."

A. Certain Benefits Under the Privileged Circuit Export Credits Program

In our analysis of the Privileged Circuit Export Credits Program earlier in this notice, we found that two programs, short-term working capital loans and short-term export credits, did provide subsidies to the respondent. We preliminarily determine that the two remaining programs identified in our notice of initiation are not used. They are:

(1) Commercial services loans, and
(2) Prefinancing exports

B. Medium- and Long-Term Preferential Loans

Petitioners alleged that producers of potassium chloride are receiving medium- and long-term preferential financing either directly from the government of Spain or from banks instructed by the government of Spain. Suria stated that it had no outstanding medium- or long-term loans during the period of investigation.

C. Government Equity Purchases

Petitioners alleged that producers of potassium chloride benefited from government of Spain purchases of equity on terms inconsistent with commercial considerations. Suria stated that it has not benefited from any government purchase of equity.

Verification

In accordance with section 776(a) of the Act, we will verify information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 7.54 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination of whether these imports are materially injuring, or threatening to materially injure, a U.S. industry before the latter of 120 days after the Department makes its preliminary affirmative determination or 45 days after the Department makes its final affirmative determination.

Public Comment

In accordance with § 355.35 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on August 9, 1984, at the United States Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a written request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submited to the Deputy Assistant Secretary by August 3, 1984. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.34, within 7 days after the hearing date, at the above address and in at least 10 copies.

Dated: June 25, 1984.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-17435 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DS-M

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held July 16, 1984, at 9:30 a.m., Federal Building Room 2007, 450 Golden Gate Avenue, San Francisco, California. The meeting will continue to its conclusion on July 17, 1984, in Room 2007, the Federal Building. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Technical Overview of Magnetic Recording—Dr. G. Bate, Verbatim. This is intended as a general technical overview for all PTAC members and nominees.
4. Overview of the Export Control and the TACs—Jim Hower, Eagle Research. This is intended as a general overview for new and prospective members.
5. Report on the drive for Committee membership.
6. Report by Commerce on the distribution license.
7. Task Group on Arrays of Knowhow, John Jory, Chairman. Work session on the content of the first pass of technical data.
8. Task Group on Foreign Availability, Paul Humphrey, Chairman. Status report by Chairman.
9. New business.
10. Develop agenda for August 7 & 8 meeting.
11. Action items underway.
12. Action items due at next meeting.

Executive Session

13. Discussions of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meeting of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377-4217

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: June 26, 1984.

Milton M. Baltas,

Director of Technical Programs, Office of Export Administration.

[FR Doc. 84-17441 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting to review the effectiveness of the Spiny Lobster Fishery Management Plan (FMP), stock assessment and provisions of the Swordfish FMP and the Council budget. The public meeting will convene on July 18, 1984, at 8:30 a.m., recess at approximately 5 p.m.; reconvene on July 19, 1984, at 8:30 a.m., and adjourn at approximately noon, at the Marriott's Casa Marina Resort, Reynolds Street on the Ocean, Key West, FL. For further information contact the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: June 22, 1984.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 84–17382 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Issuance of Permit

On May 4, 1984, Notice was published in the **Federal Register** (49 FR 19097) that an application had been filed with the National Marine Fisheries Service by the Cascadia Research Collective, Waterstreet Building, Suite 201, 218½ West Fourth Street, Olympia, Washington 98501 to take up to 1,000 harbor seals (*Phoca vitulina*) for scientific research.

Notice is hereby given that on June 22, 1984, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to the Cascadia Research Collective for the above taking subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington D.C.; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E. BIN C15700, Seattle, Washington 98115.

Dated: June 22, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–17384 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–22–M

National Marine Fisheries Service; Modification No. 1 to Permit No. 415

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the Regulations Governing Endangered Species Permits (50 CFR Part 222), Scientific Research Permit No. 415 issued to Mr. Jeffrey D. Goodyear, Moss Landing Marine Laboratories, P.O. Box 223, Moss Landing, California 95039 on May 3, 1983 (48 FR 20784) is modified as follows:

Accordingly, Section A.1 is changed to read:

Up to one hundred eighty (180) humpback whales (*Megaptera novaeangliae*) and ninety (90) fin whales (*Balaenoptera physalus*) may be harassed in the course of skin sampling and radio tagging activities. Of the number of whales authorized, forty-five (45) humpback whales may be radio tagged and 30 skin sampled and twenty (20) fin whales may be radio tagged and skin sampled. Of the number of whales authorized to be taken, fifteen (15) humpback whales and ten (10) fin whales may be approached once to obtain a skin sample. This authorization is over a two (2) year period as described in the application and modification request.

This modification becomes effective upon publication in the **Federal Register.** The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.;

Regional Director, Southwest Region, National Marine Fisheries, Service, 300 South Ferry Street, Terminal Island, California 90731; and

Regional Director, Northeast Region, National Marine Fisheries, Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: June 20, 1984.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 84–17383 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–22–M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to AgBioChem, Inc. of Orinda, California and Cetus Corporation of Emeryville, California a coexclusive right to practice the invention embodied in U.S. Patent Application S.N. 6–436,497, "T–1–R9, A New Strain of *Trichoderma viride.*" The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101–4.1. The proposed licenses may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquires, comments and other materials relating to the proposed license must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 84–17338 Filed 6–28–84; 8:45 am]

BILLING CODE 3510–04–M

Patent and Trademark Office

Current Membership of Performance Review Board

June 25, 1984.

This notice announces the renewal of Richard J. Wieland's appointment for an additional term to expire July 12, 1987, and names a new contact person, Ms. Carolyn P. Acree, to succeed Aaron W. Deitch who has retired.

The current membership of the Board is as follows:

Donald J. Quigg, Chairman, Deputy Commissioner of Patents and Trademarks, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent

Rene D. Tegtmeyer, Member, Assistant Commissioner for Patents, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent

Margaret M. Laurence, Member, Assistant Commissioner for Trademarks, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent

Bradford R. Huther, Member, Assistant Commissioner for Finance and Planning, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent
Theresa A. Brelsford, Member, Assistant Commissioner for Administration, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—permanent
Samuel S. Matthews, Member, Director, Examining Group 250, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—expires January 31, 1986
Richard J. Wieland, (Outside) Member, Assistant General Counsel for Litigation, HQ National Aeronautics and Space Administration, Washington, D.C. 20546. Term—expires July 12, 1987
Samih N. Zaharna, Member, Director, Patent Examing Group 160, U.S. Patent and Trademark Office, Washington, D.C. 20231. Term—expires January 31, 1986

Persons desiring any further information about the membership of the PRB may contact Ms. Carolyn P Acree, Personnel Officer, U.S. Patent and Trademark Office, Washington, D.C. 20231. Telephone (703) 557-2662.

Dated: June 25, 1984.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

[FR Doc. 84-17416 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China

June 25, 1984.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 28, 1984. For further information contact Diana Bass, International Trade Specialist, (202) 377-4212.

Background

On May 30 and 31, 1984, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983 between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of apparel products in Categories 436 (wool dresses) and 369pt. (shop towels in TSUSA number 366.2740), produced or manufactured in China and exported to the United States. Summary market disruption statements concerning each of these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

Anyone wishing to comment or provide data or information regarding the treatment of these categories under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of these products during the indicated ninety-day periods to the following amounts:

Category	90-day level
436	2,227 dozen[1]
369pt	1,283,112 pounds[1]

[1] May 30, 1984-August 27, 1984.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation periods to the following amounts:

Category	12-month level
436	6,320 dozen[1]
369pt	4,296,657 pounds[1]

[1] August 28, 1984-August 27, 1985.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 436, 359pt. and 369pt. exported during the ninety-day period at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the Federal Register.

In the event the limits established for Categories 436 and 369pt. for the ninety-day periods are exceeded, such excess amounts, if allowed to enter at the end of the restraint period shall be charged to the levels (described above) defined in the agreement for the subsequent twelve-month periods.

Supplementary Information: On December 22, 1983 a letter to the Commissioner of Customs was published in the Federal Register (48 FR 56626) from the Chairman of the Committee for the Implementation of Textile Agreements which established levels or restraint for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1984. The notice document which proceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 436 and 369pt. which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile and apparel products in Categories 436, and 369pt., produced or manufactured in the People's Republic of China and exported during the indicated ninety-

day period, in excess of the designated levels.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

China—Market Statement

Category 436—Wool Dresses

May 1984.

U.S. imports of wool dresses, Category 436, from China were 6,362 dozen during the year ending March 1984. This compares with 35 dozen a year earlier. Imports during the first quarter of 1984 were 2,557 dozen (an annual rate of 10,228 dozen); there were no imports during the same period in 1983. China was the second largest, supplier of Category 436 during the first quarter of 1984 when it accounted for 12.5 percent of the total imports. Exports of the largest supplier, Hong Kong, are subject to a specific limit under a bilateral textile agreement.

Domestic production of Category 436 has declined steadily since 1977 and totaled 295,000 dozen in 1982, down 5.1 percent from 1981. Imports totaled ony 33,000 dozen in 1982 but rebounded to 85,000 dozen in 1983. Imports for the year ending March 1984 were 102,000 dozen. During the first quarter of 1984, imports surged to 20,480 dozen, a five-fold increase compared with the first quarter of 1983. Although the import to production ratio was down in 1982, it probably returned to about the 1981 level in 1983.

Eighty-one percent of the Category 436 imports from China are entered under TSUSA No. 383.6330—knit wool dresses. The items being imported from China are being entered at duty-paid values below U.S. producer prices for comparable items.

Category 369pt.—Cotton Shop Towels

U.S. imports of Category 369pt.—Cotton Shop Towels from China were 23.5 million towels during the first quarter of 1984. This was more than double the imports of the fourth quarter of 1983 and five times the amount imported during the second quarter of 1983. During the first quarter of 1984, China was the largest supplier, accounting for 49.6 percent of the total imports.

These imports from China are entered at duty-paid landed values which are below the U.S. producer price for comparable towels. These and other factors lead the United States Government to conclude that imports from China are disrupting the market in the United States for such towels.

Domestic consumption of shop towels has been severely depressed since 1981. Production plus imports of shop towels declined by 19 percent from 1981 to 1983. The number of production workers engaged in the production of shop towels declined 29 percent from 1981 to 1983; man-hours worked declined 34 percent. Capacity utilization in the shop towel industry decreased from 40.8 percent in 1981 to 33.6 percent in 1983. In spite of a two percent increase, domestic production in 1983 was 20 percent below 1981.

Although imports declined during the years 1982 and 1983, due in part to the soft domestic market and the action taken by the United States on antidumping and countervailing duty cases with specific major suppliers of shop towels, imports increased substantially in 1984. Imports during the first three months of 1984 reached 47 million units, up 52 percent from the same period in 1983. Imports during January-March 1984 were higher than in any previous three month period and on an annual basis imports would reach an all time high, 69 percent higher than the 1981 peak import level. The import to production ratio reached 151.6 percent during the first two months of 1984.

The duty-paid value of these imports from China are below the U.S. producer price for comparable towels.

June 25, 1984.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions in Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 28, 1984, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 436 and 369pt.[1, 2], produced or manufactured in the People's Republic of China and exported during the indicated ninety-day periods, in excess of the following levels of restraint:

Category	90-day level[3]
436	2,227 dozen[3]
369pt.[1]	1,283,112 pounds[3]

[1] In Category 369pt., only TSUSA number 369.2740.
[2] The levels of restraint have not been adjusted to reflect any imports exported after May 28 (Cats. 436 and 369pt.[1]).
[3] May 30, 1984–August 27, 1984.

Textile products in Categories 436 and 369pt.[1] which have been exported to the United States prior to the first day of the indicated ninety-day period shall not be subject to this directive.

Textile products in Categories 436 and 369pt.[1] which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924) and December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), and April 4, 1984 (49 FR 13397).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the People's Republic of China and with respect to imports to cotton and wool textile products from China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 84-17432 Filed 6-28-84; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 369pt., only TSUSA number 369.2740.

[2] The levels of restraint have not been adjusted to reflect any imports exported after May 28 (Cats. 436 and 369pt.[1]).

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1984; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Serverly Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1984 services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before August 1, 1984.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Commttee aproves the proposed additions, all entities of the Federal Goverment will be required to procure the sevices listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1984, October 18, 1983 (48 FR 48415):

SIC 7349

Janitorial Service, John E. Moss Federal Building, 650 Capitol Mall, Sacramento, California
Janitorial Service, Federal Building, 51 S.W. First Avenue, Miami, Florida
Janitorial Service, Federal Building and Courthouse, 110 South 4th Street, Minneapolis, Minnesota
Janitorial Service, New Border Station Complex, Administration Building, Champlain, New York
Janitorial Service, United States Mission to the United Nations, 799 United Nations Plaza, New York, New York
Janitorial Service, U.S. Courthouse, Broadway and Maine, Portland, Oregon
Janitorial Service, Jack Brooks Federal Building, Post Office—Courthouse, Willow and Broadway Streets, Beaumont, Texas
Janitorial Service, Federal Building, 431 Crawford Street, Portsmouth, Virginia
Janitorial Service, Richard H. Poff Federal Building, 210 Franklin Road, S.W., Roanoke, Virginia
Janitorial Service, U.S. Courthouse, 1010 Fifth Avenue, Seattle, Washington
Janitorial Service for the following buildings:
Federal Building and Courthouse, Fifth and Ninth Streets
Federal Building, 502 Eighth Street
Hampton Warehouse, 25th and Guyan
O.L. Building/GSA Motor Pool, 720 6th Avenue
Huntington, West Virginia

C. W. Fletcher,

Executive Director.

[FR Doc. 84-17122 Filed 6-28-84; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Strengthening Research Library Resources Program; Application

AGENCY: Department of Education.

ACTION: Application notice.

Applications are invited for new projects under the Strengthening Research Library Resources Program for fiscal year 1985.

Authority for this program is contained in sections 201, 231, and 232 of the Higher Education Act of 1965, as amended by the Education Amendments of 1980. (20 U.S.C. 1021 *et seq*).

The Secretary may award a grant to a public or private nonprofit institution, including the library resources of an institution of higher education, an independent research library, or a State or other public library.

The purpose of the awards is to promote research and education of high quality throughout the United States by providing financial assistance that helps the Nation's major research libraries maintain and strengthen their collections and make their holdings available to other libraries whose users have need for research materials.

Closing date for transmittal of applications: An application for a grant must be mailed or hand delivered on or before November 1, 1984.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.091, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other evidence of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: Hand-delivered applications must be taken to the U.S. Department of Education, Application Control Center, (Room 5673, Regional Office Building 3), 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program information: Evaluation criteria and eligibility requirements for the Strengthening Research Library Resources Program appear in the Code of Federal Regulations at 34 CFR Part 778.

Intergovernmental Review

On June 24, 1983, the Secretary published in the Federal Register final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372 entitled "Intergovernmental Review of Federal Programs." The regulations took effect September 30, 1983.

This program is subject to the requirements of the Executive Order and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance,
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated, and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is the current list of States that have established a process, designated a single point of contact, and have selected this program for review:

State	
Alabama	Nevada
Arkansas	New Hampshire
California	New Jersey
Connecticut	New Mexico
Delaware	New York
Florida	North Dakota
Georgia	Ohio
Hawaii	Oklahoma
Indiana	Oregon
Kansas	Pennsylvania
Kentucky	South Carolina
Louisiana	South Dakota
Maine	Tennessee
Massachusetts	Vermont
Michigan	Virginia
Mississippi	Washington
Missouri	Wisconsin
Montana	Wyoming
Nebraska	Guam

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate

State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicant's proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States not listed above, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by January 3, 1985, to the following address:

The Secretary, U.S. Department of Education, Room 4181, 84.003R, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone Number (202) 245-7913. (Proof of mailing will be determined on the same basis as applications.)

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Available funds: For fiscal year 1985, the Department of Education has not requested funds for the Strengthening Research Library Resources Program. However, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year in the event that funds are appropriated for the program. At the present time there are no multi-year projects under this program.

In fiscal year 1984, 53 grants were awarded to major research libraries either directly or through joint applications. With a fiscal year 1984 appropriation of $6,000,000 each institution received an average of $113,000. However, the U.S. Department of Education is not bound to a specific number of grants or to the amount of any grant unless that number is specified by statute or regulations.

Application forms: Application forms and program information packages are expected to be ready for mailing by July 25, 1984, They must be obtained by writing to the Library Education, Research and Resources Branch, Attn: HEA II-C, U.S. Department of Education (Room 613, Brown Building), 400 Maryland Avenue, SW., Washington, D.C. 20202.

An application must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying in for assistance. Nothing in the package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulating governing this program. The Secretary urges that applicants not submit information that is not requested. (Approved OMB #1850-0054).

Applicable regulations: Regulations applicable to this program include the following:

(a) Regulations governing the strengthening Research Library Resources Program (34 CFR Part 778).

(b) Eduation Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. Frank A. Stevens or Ms. Louise Sutherland, Library Education, Research and Resources Branch, Division of Library Programs, Center for Libraries and Education Improvement, U.S. Department of Education (Room 613, Brown Building), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 254-5090.

(20 U.S.C. 1021 *et seq.*)

(Catalog of Federal Domestic Assistance Program No. 84.091, Strengthening Research Library Resources Program)

Dated: June 26, 1984.

Donald J. Senese,

Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 84-17412 Filed 6-28-84; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Bilingual Education; Meeting

AGENCY: Department of Education.

ACTION: Notice of planning meeting—Ad Hoc Subcommittee for Policies and Procedures.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is to notify the general public of their opportunity to attend.

DATES: July 27 and 28, 1984—Planning Meeting—9:00 a.m.-4:30 p.m., Planning Meeting will be held at: The U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, Room 421 Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202. Also, on August 17 and 18, 1984—Planning Meeting—will be held at the same place and time as above.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue SW., Washington, D.C. 20202 (202-245-2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 3242). The Council is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

The July 27 and 28, 1984, meeting will be held in order that the Ad Hoc Subcommittee for Policies and Procedures can develop an integrated first draft of the National Advisory Council on Bilingual Education Policies and Procedures Handbook.

The August 17 and 18, 1984, meeting agenda will consist of two tasks:

(1) Finalizing the proposed Policies and Procedures Handbook.

(2) Preparing a sample calendar and agenda for Council meetings.

Records are kept of all council proceedings, and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Room 421, Reporter s Building, 400 Maryland Avenue SW., Washington, D.C. 20202 from 9 a.m. to 5:30 p.m.

Dated: June 22, 1984.

Jesse M. Sonano,

Director, Office of Bilingual Education, and Minority Languages Affairs.

[FR Doc. 84-17417 Filed 6-28-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP76-91-018 and TC84-6-001]

Montana-Dakota Utilities Co., Filing

June 26, 1984.

Take notice that on June 22, 1984, in Docket Nos. RP76-91-018 and TC84-6-001 pursuant to Part 154 of the Commission's Regulations, Montana Dakota Utilities Co. (MDU), 400 North Fourth Street, Bismarck, North Dakota 58501, tendered for filing Seventh Revised Sheet No. 110 to its FERC Gas Tariff, First Revised Volume No. 1, all as more fully set forth in the filing which is on file with the Commission and open to public inspection.

On May 25, 1984, MDU pursuant to the Commission's Order Approving Settlement issued November 30, 1979, in Docket No. RP76-91-000 and pursuant to Part 154 of the Commission's Regulations under the Natural Gas Act filed revised tariff sheets for filing and inclusion in MDU's FERC Gas Tariff, First Revised Volume No. 1. Included in that filing was a sheet entitled "Sixth Revised Sheet No. 110." MDU states that the sheet was erroneously labeled and should have been entitled "Seventh Revised Sheet No. 110" The instant filing submits "Seventh Revised Sheet No. 110" as a supplement to the May 25, 1984, filing and requests that this sheet be substituted for the sheet previously submitted. MDU states that there are no other changes on the tariff sheet and the proposed effective date is July 1, 1984.

MDU submits that copies of the filing have been submitted to all customers and persons listed on the official service list.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before June 29, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-15924 Filed 6-28-84; 8:45 am]

BILLING CODE 6717-01-M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (SEPA).

ACTION: Notice of approval on an interim basis of Cumberland Basin Projects' rates.

SUMMARY: On June 21, 1984, the Deputy Secretary confirmed and approved, on an interim basis, seven rate schedules, CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A and CTV-1-A, for Cumberland Basin Projects' power. The rates were approved on an interim basis through June 30, 1984, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on July 1, 1984.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued October 26, 1983, in Docket No. EF83-3021 confirmed and approved Wholesale Power Rate Schedules CR-1-E and CR-2-E and CR-2-E through June 30, 1984. On August 31, 1983, the Federal Energy Regulatory Commission confirmed and approved Wholesale Rate Schedule LP-1-A through June 30, 1984. Rate Schedules CBR-1-A, CEK-1-A, CSI-1-A, and CTV-1-A replace CR-1-E, CR-2-E and LP-1-A.

Issued in Washington, D.C., June 21, 1984.

Danny J. Boggs,

Deputy Secretary.

In the matter of: Southeastern Power Administration—Cumberland Basin Projects' Power Rates, Order Confirming and Approving Power Rates on an Interim Basis; Rate Order No. SEPA-19.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective December 14, 1983, 48 FR 55664 (December 14, 1983), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Deputy Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued pursuant to the delegation to the Deputy Secretary.

Background

Power from the Cumberland Basin Projects is presently sold under Wholesale Power Rate Schedules CR-1-E and CR-2-E confirmed and approved through June 30, 1984. These rate schedules were approved by the Federal Energy Regulatory Commission by order issued October 26, 1983, for a period beginning July 1, 1983, and ending June 30, 1984.

Power from the Laurel Project is presently sold under Wholesale Power Rate Schedule LP-1-A confirmed and approved through June 30, 1984. This rate schedule was approved by the Federal Energy Regulatory Commission by Order issued August 31, 1983, for a period beginning July 1, 1983, and ending June 30, 1984.

Public Notice and Comment

Opportunities for public review and comment on revised Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A, and CTV-1-A, proposed for use during the period July 1, 1984, through June 30, 1989, were announced by Notice published in the Federal Register on March 12, 1984, and all customers were notified by mail. A Public Information and Comment Forum was held in Nashville, Tennessee, on April 18, 1984, and written comments were invited by the Notice through May 11, 1984. Oral comments were presented at the forum and written comments were received prior to May 12, 1984. Exhibit A-4 is a transcript of the hearing which includes the oral comments. Exhibit A-5 includes the written comments and a review of all of the comments.

Discussion

System Repayment

An examination of SEPA's system power repayment study, prepared in

April 1984, for the Cumberland Basin Projects, reveals that with an annual revenue increase of $7,670,000 over the current revenues shown in a previous March 1984 SEPA repayment study, all system power costs are paid within their repayment life. Additionally, it appears that Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A, and CTV-1-A, are designed so as to produce revenue adequate to recover on a timely basis all system power costs. The Administrator of SEPA has certified that the rates are consistent with the applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Rate Design

The rate schedules were designed after giving careful consideration to five major areas. These areas are the allocation of revenues between capacity and energy, the Barkley-Kentucky Canal situation, wheeling, capacity reduction beyond the Administrator's control, and losses. A detailed revenue recovery study is shown as Exhibit C-11.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samual Elbert Building, Elberton, Georgia 30635, and in the Office of the Executive Assistant to Deputy Secretary, Forrestal Building, Washington, D.C.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning July 1, 1984, and ending no later than June 30, 1989.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective July 1, 1984, attached Wholesale Power Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CC-1-A, CM-1-A, CK-1-A, and CTV-1-A. The rate schedules shall remain in effect on an interim basis through June 30, 1989, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued in Washington, D.C., this 21st day of June 1984.

Danny J. Boggs,

Deputy Secretary.

Wholesale Power Rate Schedule CBR-1-A

Availability

This rate schedule shall be available to Big Rivers Electric Corporation and includes the city of Henderson, Kentucky, (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of the Customer.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereinafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of the customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged

for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CSI–1–A

Availability

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission systems of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220

July 1, 1984.

Wholesale Power Rate Schedule CEK–1–A

Availability

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and power available from the Laurel Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule from the Cumberland Projects shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy To Be Furnished by the Government

The Government shall make available each contract year to the customer from the Projects through the customer's interconnections with TVA and the customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for

each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the customer's contract demand. The customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the customer's contract demand; provided, that the combined schedule of all SEPA customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these customers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator s system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CM–1–A

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association and Municipal Energy Agency of Mississippi (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,00 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer s contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Service Interruption

When delivery of capacity is interrupted or reduced due to conditions on the Administrator's system beyond his control, the Administrator will continue to make available the portion of his declaration of energy that can be generated with the capacity available.

For such interruption or reduction due to conditions on the Administrator s system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

$$\text{Number of kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{number of days in billing month}} \times \frac{\text{Contract demand}}{\text{880,000 kilowatts}}$$

July 1, 1984.

Wholesale Power Rate Schedule CC–1–A

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & LIght Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to initial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Wholesale Power Rate Schedule CK–1–A

Availability

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects begin hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery

The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $1.50 per kilowatt of total contract demand.

Energy charge: 5.4 mills per kilowatt-hour.

Energy to be Furnished by the Government

The Government shall make available each contract year to the Customer from the Projects through the Customer's interconnections with TVA and the Customer will schedule and accept an allocation of 1,500 kilowatt-hours of energy delivered at the TVA border for each kilowatt of contract demand. A contract year is defined as the 12 months beginning July 1 and ending at midnight June 30 of the following calendar year. The energy made available for a contract year shall be scheduled monthly such that the maximum amount scheduled in any month shall not exceed 220 hours per kilowatt of the Customer's contract demand and the minimum amount scheduled in any month shall not be less than 60 hours per kilowatt of the Customer's contract demand. The Customer may request and the Government may approve energy scheduled for a month greater than 220 hours per kilowatt of the Customer's contract demand; provided, that the combined schedule of all SEPA Customers outside TVA and served by TVA does not exceed 220 hours per kilowatt of the total contract demands of these Customers.

In the event that any portion of the capacity allocated to the Customers is not initially delivered to the Customers as of the beginning of a full contract year, the 1500 kilowatt hours shall be reduced 1/12 for each month of that year prior to intitial delivery of such capacity.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Wholesale Power Rate Schedule CTV–1–A

Availability

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the "Cumberland Projects") and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand charge: $.96 per kilowatt of total demand as determined by the agreement between the Department of Energy and TVA.

Energy charge: 5.3 mils per kilowatt-hour.

Energy to be Made Available

The Department of Energy shall determine the energy that is available from the projects for declaration in the billing month.

To meet the energy requirements of the Department of Energy's customers outside the TVA area (hereinafter called Other Customers), 749,400 megawatt-hours of net energy shall be available annually (including 36,900 megawatt-hours of annual net energy to supplement energy available at Laurel Project) provided, that if additional energy is required to make a marketing arrangement viable for other customers which do not own generating facilities and which are within service areas of Kentucky Utilities Company and Carolina Power & Light Company, Western Division, such additional energy required shall be made available from the Cumberland Projects and shall not exceed 300 kilowatt-hours per kilowatt per year. The energy requirement of the Other Customers shall be available annually, divided monthly such that the maximum available in any month shall not exceed 220 hours per kilowatt of total Other Customers contract demand, and the minimum amount available in any month shall not be less than 60 hours per kilowatt of total Other Customers demand.

In the event that any portion of the capacity allocated to Other Customers is not initially delivered to the Other Customers as of the beginning of a full contract year (July through June), the 1500 hours, plus any such additional energy required as discussed above, shall be reduce 1/12 for each month of that year prior to initial delivery of such capacity.

The energy scheduled by TVA for use within the TVA System in any billing month shall be the total energy delivered to TVA less (1) an adjustment for fast or slow meters, if any, (2) an adjustment for Barkley-Kentucky Canel of 15,000 megawatt-hours of energy each month which is delivered to TVA under the agreement from the Cumberland Projects without charge to TVA, (3) the energy scheduled by the Department of Energy in said month for the Other Customers plus losses of two (2) percent, and (4) station service energy furnished by TVA.

For all such energy and for other benefits TVA realizes from the agreement, TVA shall pay the Department of Energy.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Service Interruption

When delivery of capacity to TVA is interrupted or reduced due to conditions on the Department of Energy's system which are beyond its control, the Department of Energy will continue to make available the portion of its declaration of energy that can be generated with the capacity available.

For such interruption or reduction (exclusive of any restrictions provided in the agreement) due to conditions on the Department of Energy's system which have not been arranged for and agreed to in advance, the demand charge for scheduled capacity made available to TVA will be reduced as to the kilowatts of such scheduled capacity which have been so interrupted or reduced for each day in accordance with the following formula;

$$\text{Number of Kilowatts unavailable for at least 12 hours in any calendar day} \times \frac{\text{Monthly capacity charge}}{\text{Number of days in billing month}} \times \frac{\text{Agreement Capacity}}{\text{830,000 kilowatts}}$$

The agreement capacity related to the 76,000 kilowatts of capacity allocated to the Other Customers in the Carolina Power & Light Company and Kentucky Utilities service areas shall, irrespective of sale to Other Customers, remain in effect in the formula throughout the term of this rate schedule.

Power Factor

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

July 1, 1984.

[FR Doc. 84-17005 Filed 6-28-84; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Pick-Sloan Missouri Basin Program; Proposed Power Rate Adjustment

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of Proposed Power Rate Adjustment—Pick-Sloan Missouri Basin Program.

SUMMARY: The power repayment study for the Pick-Sloan Missouri Basin Program (P-SMBP), based on historical data through FY 1982, shows that existing power rates are not adequate to meet repayment requirements. To meet those requirements, the rates for firm power, peaking power, and Western Division transmission service are proposed to be increased as follows:

Class of power	Present rate	Proposed rate
	Eastern Division	
Firm capacity (kW)	$1.35/kW—month	$1.65/kW—month.
Firm energy (kWh) up to and including 60-percent monthly load factor.	3.62 mills/kWh	4.41 mills/kWh.
Above 60-percent monthly load factor	7.00 mills/kWh	7.79 mills/kWh.
Peaking capacity (kW)	$8.10/kW—season	$9,90/kW—season.
Peaking energy (kWh)	3.62 mills/kWh	4.41 mills/kWh.
Seasonal firm	Same as firm power rate	
	Western Division	
Firm power (kW)	$1.43/kW—month	$1.65/kW—month.
Firm energy (kWh)	4.3 mills/kWh	5.1 mills/kWh.
Peaking capacity (kW)	$1.43/kW—month	$1.65/kW—month.
Transmission charge	1.1 mills/kWh or $9.60/kW-year	1.3 mills/kWh or $11.40/kW—year.

Eastern Division

The wide diversity of types of load in the service area results in customers having widely divergent load factors and patterns. A split reasonably close to a 50/50 division between the demand component and the energy component of the rate is as equitable an arrangement for all customers as can be provided. The existing rate is based on such a split, and so the proposed monthly demand charge was proportioned in accordance with the overall ratio of increase and rounded to an even $1.65/kW. The energy component was assigned the balance of the required increase.

An analysis was made to identify the energy that must be purchased to meet firm load and assign those associated costs to the higher portion of the energy rate. The analysis indicates that both the monthly load factors on our system and the cost of energy in this area have remained relatively stable over the past 2 years and that we have no reason to expect a significant change in the near future. Therefore, at this time there is no need to increase that part of the energy rate required for purchasing energy to meet firm load, and the differential between the charge for 60-percent load factor energy and the charge for that above 60-percent load factor has not changed.

Western Division

Firm Power

Based upon the load characteristics of the Western Division's firm power obligation, a monthly capacity charge of $1.65 per kW, together with an energy charge of $.0051 per kWh, will yield the revenue required.

Peaking Power

An increase from $1.43/kW-month to $1.65/kW-month is proposed for the new peaking power schedule.

Transmission Service

Using the ratio of increase in the firm service from 7.2 mills/kWh to 8.54 mills/kWh with the present transmission service rate, and rounding to the nearest ten-thousandth of a dollar, a new transmission service rate is obtained:

$0.0011×8.54/7.2=$0.001304=$0.0013/kWh

To develop a capacity charge commensurate to the $0.0013/kWh considering the reservation of capacity for a year's time; and rounding to the nearest hundredth of a dollar, the following was done:

$0.0013/kWh×8760 hours=$11.388/kW-year ($11.388/kW-year)/(12 Months/year)=$0.949/kW-month=$0.95/kW-month

or

$0.95/W-month×12 months/year=$11.40/kW-year

A brochure explaining the need for a rate increase will be distributed to all P-SMBP customers and other interested parties; and public information and public comment forums will be held in accordance with current procedures for public participation in general rate adjustments. After public discussion and review of public comments, the Western Area Power Administration (Western) will finalize the proposed rates and submit them to the Deputy Secretary to be placed into effect on an interim basis pending final approval by the Federal Energy Regulatory Commission.

DATES: The consultation and comment period will begin with the publication of this notice in the Federal Register and will end not less than 90 days thereafter. The proposed rates are expected to go into effect on an interim basis with the beginning of the January 1985 billing period.

Public information forums during which Western will explain the need for an increase and answer questions will be held at the following places and times:

July 16, 1984—10 a.m.—The Holiday Inn, Thornton, Colorado

July 17, 1984—9 a.m.—The City Centre Holiday, Sioux Falls, South Dakota

July 18, 1984—9 a.m.—The Doublewood Inn, Fargo, North Dakota

July 19, 1984—9 a.m.—The Northern Hotel, Billings, Montana

Public comment forums, during which comments for the record concerning the proposed rate increase will be accepted, will be conducted at the following times and places:

August 20, 1984—10 a.m.—The Holiday Inn, Thronton, Colorado

August 21, 1984—9 a.m.—The City Centre Holiday, Sioux Falls, South Dakota

August 22, 1984—9 a.m.—The Holiday Inn, Fargo, North Dakota

August 23, 1984—9 a.m.—The Northern Hotel, Billings, Montana

Persons planning to speak at any of the August comment forums should send their names and organization affiliation to the address noted below to arrive by August 1, 1984, so that a speaker list can be developed. Other persons will also be allowed to comment as time permits. Written comments may be submitted to the following address throughout the entire consultation and comment period: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings MT 59101, Telephone: (406) 657-6532.

Data, studies, reports, and other documents used in developing the proposed rates will be available for inspection and copying in the Billings Area Office.

SUPPLEMENTARY INFORMATION: Power rates for the P-SMBP are established pursuant to the Department of Energy Organization Act of August 4, 1977 (42 U.S.C. 7101, et seq.); the Reclamation Act of 1902 (43 U.S.C. 372, et seq.), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the acts specifically applicable to the project system involved.

A new Delegation Order No. 0204-108 was issued on December 14, 1983 (48 FR 55664, December 14, 1983). The order contains several provisions including

delegating to the Administrator, on a nonexclusive basis, the authority to develop power and transmission rates, and delegating to the Deputy Secretary, on a nonexclusive basis, the authority to confirm, approve, and place in effect on an interim basis power and transmission rates. Rate adjustments for P-SMBP are conducted consistent with procedural rules applicable to Western. Procedures for public participation in rate adjustments for power marketed by Western are at 10 CFR Part 903. The procedures were published prior to issuance of Delegation Order No. 0204-108, and will be departed from as necessary as a result of the order.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) and Department of Energy (DOE) Regulations published in the Federal Register on March 28, 1980 (45 FR 20694-20701), as amended, Western normally prepares environmental assessment for proposed rate adjustments which exceed the rate of inflation in the period since the last adjustment.

Western will make a determination of the size of the rate increase. If an environmental assessment is required, Western will complete an environmental assessment of the proposed rate increase prior to its implementation. If the environmental assessment indicates the rate increase could result in significant impacts on the human environment, an environmental impact statement will be prepared.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) each agency, when required by 5 U.S.C. 553 to publish a proposed rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the rate adjustment for P-SMBP relates to nonregulatory services provided by Western at a particular rate. Under 5 U.S.C. 601(2), rates of service of particular applicability are not considered "rules" within the meaning of the Act. Since the rate for P-SMBP power is of limited applicability and is being set in accordance with specific regulations and legislation under particular circumstances, Western believes that no flexibility analysis is required.

Determination Under Executive Order 12291

The DOE has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Issued at Golden, Colorado, June 20, 1984.

Robert L. McPhail,

Administrator.

[FR Doc. 84-17334 Filed 6-28-84; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59157A/158A]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of six applications for test marketing exemptions (TMEs) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-84-49, TME-84-50, TME-84-51, TME-84-52, TME-84-53 and TME-84-54. The test marketing conditions are described below.

EFFECTIVE DATE: June 20, 1984.

FOR FURTHER INFORMATION CONTACT: Joe B. Boyd, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-202, 401 M St., SW., Washington, DC 20460, (202-382-3739).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-84-49, TME-84-50, TME-84-51, TME-84-52, TME-84-53, and TME-84-54. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time periods and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volumes, numbers of workers exposed to the new chemicals, and the levels and durations of exposure must not exceed those specified in the applications. All other conditions and restrictions described in the applications and this notice must be met.

TME 84-49

Date of Receipt: May 8, 1984.

Notice of Receipt: May 18, 1984 (49 FR 21112).

Applicant: Confidential.

Chemical: (G) Modified, maleated metal resinate.

Use: (S) Industrial publication gravure printing inks.

Production Volume: Confidential.

Number of Customers: 1.

Worker Exposure: Manufacturer: dermal, a total of 6 workers, up to 2 days/year.

Test Marketing Period: 8 months.

Commencing on: June 20, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84-50

Date of Receipt: May 9, 1984.

Notice of Receipt: May 18, 1984 (49 FR 21112).

Applicant: Confidential.

Chemical: (G) Dithiocarbamate salt.

Use: (G) Water treatment chemical.

Product Volume: Confidential.

Number of Customers: 1.

Worker Exposure: Confidential.

Test Marketing Period: 2 months.

Commencing on: June 20, 1984.

Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.

Public Comments: None.

TME 84-51

Date of Receipt: May 10, 1984.

Notice of Receipt: May 8, 1984 (49 FR 21112).

Applicant: Hercules Incorporated.
Chemical: (G) Organometallic polymer.
Use: (S) Liquid or gas purifier for use in the manufacture of silicon and microelectronic components for the electronics industry, in the purification of feedstreams for polyolefin manufacture, and as a carrier gas purifier for analytical instrumentation.
Production Volume: 1,999 kg.
Number of Customers: 12.
Workers Exposure: Confidential.
Testing Marketing Period: 1 year.
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-52

Date of Receipt: May 11, 1984.
Notice of Receipt: May 25, 1984 (49 FR 21132).
Applicant: Texaco Chemical Company.
Chemical: (G) Mixed glycol oligoesters of a dicarboxylic acid.
Use: (G) For production of rigid polyurethane foams and polyisocyanurate foams.
Production Volume: 1,000,000 lbs.
Number of Customers: 10.
Workers Exposure: Manufacture, processing and use: dermal, up to 79 workers.
Testing Marketing Period: 18 months.
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-53

Date of Receipt: May 11, 1984.
Notice of Receipt: May 25, 1984 (49 FR 21132).
Applicant: Confidential.
Chemical: (G) Vinly acetate-acrylant-copolymer.
Use: (S) Polymer base for water-borne caulks and carpet tile adhesives; an adhesive for pressure sensitive tapes, decal stock and automobile headliners.
Production Volume: Confidential.
Number of Customers: 10.
Workers Exposure: Processing: dermal, a total of 2,550 workers for up to 250 days/year.
Testing Marketing Period: 2 to 12 months (depending on specific use).
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

TME 84-54

Date of Receipt: May 15, 1984.
Notice of Receipt: May 25, 1984 (49 FR 21132).
Applicant: Confidential.
Chemical: (G) Substituted benzocyazoleydine.
Use: (G) Industrial coating component.
Production Volume: Confidential.
Number of Customers: Confidential.
Workers Exposure: Manufacture and processing: up to 10 workers.
Testing Marketing Period: 6 months.
Commencing on: June 20, 1984.
Risk Assessment: No significant health or environmental concerns were identified. The estimated worker exposure and environmental release of the test market substance are expected to be low. The test market substance will not pose any unreasonable risk of injury to health or the environment.
Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restricitons of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: June 20, 1984.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 84-17373 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-51525; TSH-FRL-2618-4]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

PMN 84-851, 84-852, 84-853, 84-854, 84-855, 84-856, 84-857 and 84-858—September 12, 1984
PMN 84-859 September 15, 1984
PMN 84-860, 84-861, 84-862, and 84-863—September 16, 1984
PMN 84-864, 84-865, 84-866, 84-867, and 84-868—September 17, 1984
PMN 84-869, 84-870, and 84-871—September 18, 1984

Written comments by:

PMN 84-851, 84-852, 84-853, 84-854, 84-855, 84-856, 84-857 and 84-858—August 13, 1984
PMN 84-859—August 16, 1984
PMN 84-860, 84-861, 84-862 and 84-863—August 17, 1984
PMN 84-864, 84-865, 84-866, 84-867 and 84-868—August 18, 1984
PMN 84-869, 84-870, and 84-871—August 19, 1984

ADDRESS: Written comments, identified by the document control number "[OPTS-51525]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M St., SW., Washington, DC 20460, (202-382-3729).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

PMN 84-851

Manufacturer. Confidential.
Chemical. (G) Alkyl phosphate amine salts.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 84-852

Manufacturer. Confidential.

Chemical. (G) Functional polymer of mixed acrylate and methacrylate based monomers.

Use/Production. (G) Industrial coatings with an open use. Prod. range: 250,000-500,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 93 workers, up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 1-50 kg/batch released to land. Disposal by publicly owned treatment works (POTW) and incineration.

PMN 84-853

Manufacturer. Confidential.

Chemical. (G) Aromatic sulfonate of substituted phenylazo substituted heteromonocycle.

Use/Production. (G) Industrial textile dye. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

PMN 84-854

Importer. Confidential.

Chemical. (S) (1,1':3,1''-terphenyl)-2'-ol,5'-(octadecyloxy), 4-n-octadecyloxy-2,6-diphenylphenol.

Use/Import. (S) Industrial processing and end-use stabilizer for polyolefins (polypropylene and polyethylene). Import range: Confidential.

Toxicity Data. Acute oral: Males and females—> 5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Use: dermal and inhalation, a total of 50-100 workers, up to 1-2 hrs/da, up to 200 da/yr.

Environmental Release/Disposal. Less than 100 kg/yr released to air.

PMN 84-855

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Intermediate for electrical insulation. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-856

Manufacturer. Confidential.

Chemical. (G) Blocked isocyanate.

Use/Production. (G) Intermediate for electrical insulation. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-857

Manufacturer. Confidential.

Chemical. (S) Polymer of: epichlorohydrin-bisphenol-A polymer, bisphenol-A, ethyltriphenylphosphonium iodine, formaldehyde, n-butyl alcohol, triethyl amine and phthalic anhydride.

Use/Production. (S) Industrial baking enamel (protective coating). Prod. range: 28,338-35,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 6 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. Less than 5 kg/batch released to land. Disposal by landfill.

PMN 84-858

Manufacturer. Morton Thiokol Inc.

Chemical. (G) Polyalkylene glycol ether acrylate.

Use/Production. (S) Industrial diluent in printing ink, coatings and adhesives. Prod. range: 50,000-150,000 kg/yr.

Toxicity Data. Acute oral: Males—>5.0g/kg, Females—<5.0; Acute dermal: > 2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Slight.

Exposure. Manufacture: dermal, a total of 6 workers, up to 8 hrs/da, up to 30 da/yr.

Environmental Release/Disposal. 105-962 kg/batch released to air, with 962-4,200 kg/batch and 15,229 kg/campaign to water, and 7-111 kg/batch to land. Disposal by on-site landfill and on-site deep well injection.

PMN 84-859

Importer. Confidential.

Chemical. (G) Halophthalimide.

Use/Production. (S) Industrial flame retardant additive for plastics. Prod. range: 2,270-4,540 kg/yr.

Toxicity Data. No data submitted.

Exposure. Use: inhalation, a total of 4 workers, up to 1 hr/da, up to 30 da/yr.

Environmental Release/Disposal. 0.1 kg/batch released to water. Disposal by POTW, biological treatment system and navigable waterway.

PMN 84-860

Manufacturer. Confidential.

Chemical. (G) Disubstituted nitrobenzene.

Use/Production. (G) Chemical intermediate. Prod. range: 4,500-8,500 kg/yr.

Toxicity Data. Acute oral: Males and females—>3,200 mg/kg; Acute dermal: >1 g/kg; Irritation: Eye—Slight; Skin sensitization: Normal.

Exposure. Manufacture and use: a total of 13 workers, up to 1.5 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. No release. Less than 0.5 to 3 kg/batch incinerated.

PMN 84-861

Manufacturer. American Hoechst Corporation.

Chemical. (S) 2[(2-hydroxyl-1 1-bis(hydroxymethyl)ethyl)-aminol-ethansulfonic acid, sodium salt (1:1).

Use/Production. (S) industrial and commercial buffer for reagents. Prod. range: Confidential.

Toxicity Data. Acute oral: Males and females—>5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; DOC: 280 mg c/g; COD: 730 mg O_2/g; BOD: <10 mg O_2/g; EC_0 24 hrs (Daphnes): >2,000 mg/l; EC_{50} 24 hrs (Daphnes): >2,500 mg/l; LC_{50} 48 and 96 hrs. (Zebra fish): >500 mg/l.

Exposure. Manufacture: dermal and inhalation, a total of 9 workers, up to 10 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 84-862

Manufacturer. American Hoechst Corporation.

Chemical. (S) 4-(2-hydroxyethyl)piperazine-1-ethanesulfonic acid, sodium salt (1:1).

Use/Production. (S) Buffer for reagents. Prod. range: Confidential.

Toxicity Data. Acute Oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 48 and 97 hrs (Zebra fish): 500 mg/l.

Exposure. Manufacture: dermal and inhalation, a total of 9 workers, up to 10 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. No release. Disposal by incineration.

PMN 84-863

Manufacturer. Confidential.

Chemical. (G) Protein crosslinked by a poly(aliphatic) isocyanate.

Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

PMN 84-864

Importer. Confidential.

Chemical. (G) Vinyl acetate—acrylate copolymer..

Use/Import. (G) Emulsion pressure sensitive adhesive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Use: a total of 2–8 persons/shift, 1–3 shifts/day, up to 365 da/yr.

Environmental Release/Disposal. No release. Disposal by landfilled.

PMN 84–865

Importer. Confidential.

Chemical. (G) ((Alkyl)(alkyl)amino)polyakoxy ether sulfate halfester.

Use/Import. (S) Industrial textile auxiliary. Import range: Confidential.

Toxicity Data. Acute oral: >15.0 ml/kg; Irritation: Skin—Slight, Eye—Non-irritant; IC 14 Hrs (Leviscus idus): 20 mg/l; IC 3 days (Leviscus idus): 10 mg/l.

Exposure. Processing: dermal, a total of 1 person/shift, less than 5 min/weighing.

Environmental Release/Disposal. No release to air, water and land. Disposal by POTW and wastewater treatment facility.

PMN 84–866

Importer. Albright and Wilson Inc.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import (S) Viscosity index improver for lubricating oils for industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. Acute oral: >5 to 15 g/kg; Acute dermal: >4 g/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Import and use: a total of 5 to 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Negligible release to air with residual product to water. Disposal by incineration and approved landfill.

PMN 84–867

Importer. Albright and Wilson Inc.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import. (S) A pour point depressant for lubricants in industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. Acute oral: >5 to 15 g/kg; Acute dermal: >4 g/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Import and use: a total of 5 to 50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Negligible release to air with residual product to water. Disposal by incineration and approved landfill.

PMN 84–868

Importer. Albright and Wilson Inc.

Chemical. (G) Alkyl methacrylate polymer.

Use/Import. (S) Viscosity index improver for lubricating oils in industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. Actue oral: Male and female—>15 ml/kg; Irritation: Skin—Mild, Eye—Irritant.

Exposure. Import: dermal, a total of 1–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. Negligible release to air with residual product to water. Disposal by incineration and approved landfill.

PMN 84–869

Manufacturer. Confidential.

Chemical. (S) 4-(Acetylamino)-3-nitrobenzoic acid.

Use/Production. (G) Chemical intermediate. Prod. range: 1,600–2,900 kg/yr.

Toxicity Data. Acute oral: Males—2,540 mg/kg, females—2,263 mg/kg; Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal.

Exposure. Manufactures and use: dermal and inhalation, a total of 30 workers, up to 0.8 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. Less than 0.01 kg/batch released to air with 0–4 kg/batch to water. Less than 8 kg/batch disposed of by biological treatment system with less than 80 kg/batch incinerated.

PMN 84–870

Manufacturer. Confidential

Chemical. (G) Disubstituted nitrobenzoic acid.

Use/Production. (G) Chemical intermediate. Prod. range: 1,500–2,600 kg/yr.

Toxicity Data. Acute oral: Males and females—>3,200 mg/kg; Acute dermal: >1 g/kg; Irritation: Skin—Slight, Eye—Slight; Skin sensitization: Normal.

Exposure. Manufactures and use: dermal and inhalation, a total of 18 workers, up to 0.5 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. 0–0.5 kg/batch released to water. Disposed of by navigable waterway with less than 1 kg/batch disposed of by biological treatment system with less than 10 kg/batch incinerated.

PMN 84–871

Manufacturer. Confidential

Chemical. (G) Disubstituted benzotriazole.

Use/Production. (G) Chemical intermediate. Prod. range: 1,300–2,300 kg/yr.

Toxicity Data. No. data on the PMN substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 10 workers, up to 0.5 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Less than 4 kg/batch disposed of by biological treatment system.

Dated: June 25, 1984.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 84-17372 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

[PP 4G2977/T451; PH-FRL 2610-1]

E.I. du Pont de Nemours and Co., Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the herbicide DPX-Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxolin-2-yl oxy) phenoxy] propanic acid in or on the raw agricultural commodity cotton. This temporary tolerance was requested by E.I. du Pont de Nemours and Co.

DATE: This temporary tolerance expires December 31, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1800).

SUPPLEMENTARY INFORMATION: E. I. Dupont de Nemours and Co., Wilmington, DE 19898, has requested, in pesticide petition PP 4G2977 the establishment of a temporary tolerance for the combined residues of the herbicide DPX-Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxolin-2-yl oxy) phenoxy] propanic acid in or the raw agricultural commodity cotton at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352-EUP-114 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the

public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. DuPont must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 22, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-17368 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 4G2978/T450; PH-FRL 2618-3]

E. I. du Pont de Nemours and Co., Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the herbicide DPX-Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanic acid in or on the raw agricultural commodity soybeans. This temporary tolerance was requested by E. I. du Pont de Nemours and Co.

DATE: This temporary tolerance expires December 31, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1800).

SUPPLEMENTARY INFORMATION: E. I. du Pont de Nemours and Co., Wilmington, DE 19898, has requested, in pesticide petition PP 4G2978 the establishment of a temporary tolerance for the combined residues of the herbicide DPX-Y6202 (ethyl 2[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanoate and its metabolite 2-[4-(6-chloroquinoxlin-2-yl oxy) phenoxy] propanic acid in or on the raw agricultural commodity soybeans at 0.05 part per million (ppm).

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 352-EUP-115 which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishemnt of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be use must not exceed the quantity authorized by the experimental use permit.

2. DuPont must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires December 31, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950.)

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 21, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-17369 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[PP 8G2079/T449; PH-FRL 2618-2]

EM Industries, Inc.; Renewal of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed a temporary tolerance for residues of the growth regulator methyl 2-chloro-9-hydroxyfluorene-9-carboxylate, methyl 9-hydroxyfluorene-9-carboxylate, and methyl 2,7-dichloro-9-hydroxyfluorene-9-carboxylate in or on the raw agricultural commodity cucumbers.

DATE: This temporary tolerance expires May 8, 1985.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245 CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of May 25, 1983 (48 FR 23476), stating that a temporary tolerance had been extended for residues of the growth regulator methyl 2-chloro-9-hydroxyfluorene-9-carboxylate, methyl 9-hydroxyfluorene-9-carboxylate, and methyl 2,7-dichloro-9-hydroxyfluorene-9-carboxylate in or on the raw agricultural commodity cucumbers at 0.1 part per million (ppm).

This tolerance was renewed in response to pesticide petition PP 8G2079, submitted by EM Industries, Inc., Plant Protection Division, 5 Skyline Drive, Hawthorne, NY 10532.

The company has requested a 1-year renewal of the temporary tolerance to permit the continued marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 21137–EUP–3, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. EM Industries, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires May 8, 1985. Residues not in excess of this amount remaining in or on the above raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: June 21, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–17367 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50617; PH–FRL 2616–6]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241-EUP-104. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08540. This experimental use permit allows the use of 1,220 pounds of the herbicide pendimethalin on dry bulb onions and garlic to evaluate the control of various grasses and broadleaf weed species. A total of 1,210 acres are involved; the program is authorized only in the States of Arizona, California, Colorado, Nebraska, New Mexico, Oregon, Texas, and Washington. The experimental use permit is effective from May 1, 1984 to May 1, 1985. Temporary tolerances for residues of the active ingredient in or on bulb onions and garlic have been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800).)

100–EUP–83. Issuance. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 3,750 pounds of the insecticide chlordimeform in a tank mix with synthetic pyrethroid and vegetable oil on cotton to evaluate the control of bollworms and tobacco budworm eggs and larvae. A total of 5,000 acres are involved; the program is authorized only in the States of Mississippi and Texas. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386).)

100–EUP–84. Issuance. Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419. This experimental use permit allows the use of 1,250 pounds of the insecticide chlordimeform in a tank mix with synthetic pyrethoid and vegetable oil on cotton to evaluate the control of bollworms and tobacco budworm eggs and larvae. A total of 5,000 acres are involved; the program is authorized only in the States of Mississippi and Texas. This permit and the one above are effective from May 17, 1984 to May 17, 1985. The permits will use the same active ingredient but different formulations. (Jay Ellenberger, PM 21, Rm. 229, CM #2, (703–557–2386).)

1471–EUP–75. Amendment. Elanco Products Company, 740 S. Alabama St., Indianapolis, IN 46285. A notice was published in the Federal Register of July 27, 1983 (48 FR 34115) pertaining to the amendment of an experimental use permit, 1471–EUP–75, issued to Elanco Products Company. At the request of the company, the permit has been amended to add 11 States, and to reduce the acreage and the amount of the active ingredient. This experimental use permit now allows the use of 320 pounds of the fungicide fenarimol on apples and grapes to evaluate the control of cedar rust, powdery mildew, and scab. A total of 720 acres are involved; 480 acres of apples to be treated and 240 acres of grapes to be treated. The program is authorized in the States of California, Connecticut, Georgia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, North Carolina, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Virginia, Vermont, and West Virginia for apples and California,

Michigan, New York, Ohio, Oregon, and Washington for grapes. The experimental use permit is effective from April 18, 1984 to March 19, 1985. Temporary tolerances for residues of the active ingredient in or on apples and grapes have been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900).)

618–EUP–10. Extension. Merck and Company, Inc., P.O. Box 2000, Rahway, New Jersey 07065. This experimental use permit allows the use of 250 grams of the insecticide Avermectin B_1 on non-cropland and pastures to evaluate the control of the imported fire ant. A total of 5,000 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from March 23, 1984 to March 23, 1985. This permit is issued with the limitation that cattle will not be allowed on treated pastures within seven days of application. (George T. LaRocca, PM 15, Rm. 204, CM#2, (703–557–2400).)

748–EUP–18. Extension. PPG Industries, Inc., P.O. Box 31, Barberton, OH 44203. This experimental use permit allows the use of 2,526 pounds of the herbicide 1-(carboethoxy)ethyl 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoate on soybeans to evaluate the control of various weeds. A total of 12,630 acres are involved; the program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from April 22, 1984 to April 30, 1985. This permit is issued with the limitation that treated plants are not used for feed or forage. A temporary tolerance for residues of the active ingredient in or on soybeans has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95–396; 92 Stat. 828 (7 U.S.C. 136(c))

Dated: June 22, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84–17371 Filed 6–28–84; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50619; PH–FRL–2616–8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471–EUP–67 Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 8,700 pounds of the herbicide fluridone on aquatic plant management systems to evaluate the control of various weeds. A total of 4,350 acres are involved; the program is authorized in the States of Alabama, Arkansas, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from June 1, 1984 to June 1, 1985. A temporary tolerance for residues of the active ingredient in or on fish has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703–557–1830).)

3125–EUP–168. Extension. Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 402.5 pounds of the fungicide beta-([1,1'-biphenyl]-4-yloxy)-Alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on apples to evaluate the control of various apple diseases. A total of 115 acres are involved; the program is authorized only in the States of Georgia, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia. The experimental use permit is effective from June 1, 1984 to December 31, 1984. A temporary tolerance for residues of the active ingredient in or on apples has been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900).)

3125–EUP–181. Extension. Mobay Chemical Corporation, P.O. Box 4913, Kansas City, MO 64120. This experimental use permit allows the use of 3,187.5 pounds of the fungicide beta-([1,1'-biphenyl]-4-gloxy)-Alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol on apricots, nectarines, peaches, and plums to evaluate the control of various diseases of stone fruit. A total of 425 acres are involved (150 acres to be treated in 1984 and 275 acres to be treated in 1985); the program is authorized only in the States of California, Georgia, Michigan, New Jersey, North Carolina, Oregon, Pennsylvania, South Carolina, Virginia, Washington, and West Virginia. Temporary tolerances for residues of the active ingredient in or on apricots, nectarines, peaches, and plums have been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900).)

45639–EUP–20. Issuance. NOR–AM Chemical Company, 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 5,000 pounds of the insecticide chlordimeform in a tank mix with vegetable oil on cotton to evaluate the control of bollworms, larvae, and tobacco budworm eggs. A total of 5,000 acres are involved; the program is authorized only in the States of Mississippi and Texas. The experimental use permit is effective from June 7, 1984 to June 7, 1985. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.295). (Jay Ellenberger, PM 12, Rm. 202, CM# 2, (703–557–2386).)

876–EUP–43. Issuance. Velsicol Chemical Corporation, 341 East Ohio St., Chicago IL 60611. This experimental use permit allows the use of 150 pounds of the herbicide prodiamine on nonbearing almonds, grapes, walnuts, and woody

ornamental nursery stock to evaluate the control of annual grasses and broadleaf weeds. A total of 125 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Michigan, New York, Pennsylvania, and Washington. The experimental use permit is effective from September 1, 1984 to September 1, 1985. This permit is issued with the limitation that treated crops will bear fruit within one year after application. (Richard Mountfort, PM 23, Rm. 253, CM# 2, (703-557-1830).)

2724-EUP-19. Issuance. Zoecon Industries, 12200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 50,000 pounds of the insecticide dioxathion in ear tags on beef cattle to evaluate the control of Gulf Coast ticks, face flies, horn flies, spinose ear ticks, and stable flies. A total of 500 head of cattles are involved; the program is authorized only in the States of California, Florida, Indiana, Kentucky, Mississippi, New Mexico, Oklahoma, Pennsylvania, and Texas. The experimental use permit is effective from May 25, 1984 to May 25, 1986. A permanent tolerance for residues of the active ingredient in or on cattle has been established (40 CFR 180.171)). (George LaRocca, PM 15, Rm. 204, CM# 2, (703-5777-2400).)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, Pub. L. 95-396; 92 Stat. 828 (7 U.S.C. 136c))

Dated: June 21, 1984.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 84-17370 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

[OPP-180652; PH-FRL 2616-7]

Montana; Specific Exemption for Use of Dyed Compound 1080-Treated Grain Bait To Control The Columbian Ground Squirrel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted a specific exemption to the Montana Department of Agriculture for use of dyed Compound 1080-treated grain bait to control the Columbian ground squirrel. This specific exemption was issued pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA).

DATES: This specific exemption is effective from April 20, 1984, through August 31, 1984.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: EPA has granted a specific exemption for the use of the pesticide chemical sodium fluoroacetate (Compound 1080) in dyed grain baits to control the Columbian ground squirrel on crop and improved pastureland.

After reviewing the application and other available information EPA has determined that:

1. Columbian ground squirrels, if not controlled, will cause significant damage to western Montana's staple crops, small grains, and hay crops. Damage from this pest could result in an economic loss of up to $13 per acre. This represents a loss of up to $582,000 for the acreage involved.

2. Monitoring of past emergency exemptions indicates there has been minimal adverse effects to nontarget species.

Accordingly, Montana has been granted a specific exemption to use the pesticide noted above until August 31, 1984. The specific exemption is also subject to the following conditions:

1. The Montana Department of Agriculture is responsible for ensuring that all provisions of this specific exemption are met. It is also responsible for providing information in accordance with 40 CFR 166.5. This information must be submitted to EPA Headquarters through the EPA Regional Office.

2. Up to 17,910 pounds of 0.05 percent bait (159 ounces of technical grade Compound 1080, 90 percent pure), prepared in accordance with the formula proposed in Appendix B of Montana's application, are authorized.

3. Labeling accepted under Montana's 1981 exemption for this use must be used.

4. Under the specific exemption, the Compound 1080 grain bait shall be used only to control the Columbian ground squirrel (*Spermophilus columbianus*) in crop and improved pastureland areas. No more than 23,622 acres of hay and small grains and 21,153 acres of improved pasture may be treated in the following 16 counties: Beaverhead, Broadwater, Deer Lodge, Flathead, Granite, Jefferson, Lake, Lewis and Clark, Lincoln, Madison, Mineral, Missoula, Powell, Ravalli, Sanders, and Silver Bow. This acreage includes a 250-yard peripheral treatment around small grains, improved pasture and hayfields.

5. The Compound 1080 bait is to be scattered, not piled or placed in holes, along active burrow entrances at a rate of no more than 0.16 ounce bait/active entrance using a calibrated dipper. Each active burrow is to be treated no more than once per year.

Cropland or improved pastureland which has been treated with Compound 1080 shall not be grazed for a period of 14 days with the exception of cattle which may be grazed after a period of 7 days.

6. Compound 1080 grain shall be used only under the on-site supervision of certified government pesticide applicators trained by the Montana Department of agriculture. Each applicator shall be trained in:

a. The biology and ecology of the Columbian ground squirrel.

b. Safe handling of the toxic grain baits to include bandaging of open wounds and washing hands after bait application before eating or smoking.

c. Proper placement of the bait.

d. Consideration of environmental conditions before baiting is begun.

e. Necessary recordkeeping.

f. Other competency standards, including first-aid training for Compound 1080 poisoning, toxicology of Compound 1080, and chemistry of Compound 1080.

7 Each certified government pesticide applicator shall keep records dealing with the placement of Compound 1080 grain bait. Such records shall include but not be limited to:

a. The approximate number of acres upon which bait is applied.

b. The amount of bait applied.

c. The date of each application.

d. All accidents or injuries to humans, domestic animals, or nontarget species.

e. Names of certified government applicator and crew members making each application.

f. Approximate location of each treated field and the owner of treated acreage.

8. All persons authorized to possess and use Compound 1080 and grain bait treated with this toxicant shall keep such toxicant and treated bait in locked containers during storage and transport.

a. All preparation of baits must be done at a central formulation site; persons preparing the formulation from the dry concentrates must wear gloves and an appropriate respirator.

b. Equipment used to handle and mix Compound 1080 must be identified and used only for this purpose.

c. All containers of Compound 1080 or Compound 1080-treated baits must be clearly labeled. Baits must not take the form of any food normally consumed by humans.

9. All bait removed from locked containers for use shall be carried only in zippered canvas pouches marked in red letters "Poison Grain." The bag shall remain closed at all times except when bait is actually being applied.

10. Bait acceptance trials will be conducted before treatment to determine whether Columbian ground squirrels are accepting grain baits.

11. Both Montana Fish and Game personnel and regional U.S. Fish and Wildlife Endangered Species personnel will be consulted to insure that areas where treatment is proposed are not occupied by threatened or endangerd species.

12. White gloves shall be worn by all persons handling Compound 1080 grain bait as indicators of dermal exposure.

13. Washing facilities shall be made readily available by the supervising certified government pesticide applicator.

14. Compound 1080 grain bait shall be applied only during seasons when Columbian ground squirrels are accepting grain and the majority of the population is active above ground. The seasons shall be determined locally by the certified government pesticide applicator in consultation with the Department of Agriculture's verterbrate pest control biologists.

15. Compound 1080 grain bait shall not be used in situations where threatened endangered species (bald eagle, grizzly bear, Northern Rocky Mountain wolf) may be adversely affected. Compound 1080 grain is not to be applied in prairie dog towns or in areas where the blackfooted ferret or their signs have been sighted.

16. Compound 1080 bait is not to be applied in areas frequented by children.

17 The general public will be informed of the areas to be treated via the most appropriate means of communication for announcements. These announcements will provide specific telephone numbers where individuals can obtain exact information on areas that are being treated, and also medical assistance for cases of Compound 1080 poisoning. A county or city-county official will be assigned the responsibility for the Compound 1080 program in each county and will be available for communication with the general public and the Montana Department of Agriculture.

18. Treatment crews will post warning signs at the main entrance to fields immediately following treatment.

19. The government pesticide applicators will instruct each landowner, administrator, or lessee, whose land is to be treated, that he must notify his adjacent neighbors before the actual treatment occurs. The landowner, administrator, or lessee should instruct his neighbors: (1) To keep their dogs confined for a minimum of 10 days, (2) to keep cattle out of treated areas for 7 days and keep all other domestic livestock out of treated areas for 14 days, and (3) that, if any of their exposed domestic animals become sick or begin acting strangely, they should contact their local veterinarian, Department of Agriculture, or Department of Livestock.

20. It is recommended that landowners create periodic nightly disturbances near treated field for several days following treatment. The purpose is to keep nontarget species such as coyotes, domestic dogs, and others out of the treated areas during immediate post-treatment period. These disturbances could be created by the use of loud radios, firecracker ropes, or firing of rifles, etc. Such disturbances should ot be carried out to extremes (i.e., use of acetylene guns).

21. Any suspected or reported nontarget species problem reported to, or discovered by, an applicator shall be immediately reported to the Montana Department of Agriculture in Helena.

22. No lands will be treated within one mile of incorporated or unincorporated cities and towns except those areas approved for treatment by the county commission or city-county commission in consultation with the Montana Department of Agriculture.

23. The Montana Department of Agriculture is responsible for insuring that all of the provisions of this specific exemption are adhered to, records of applicators will be checked, and a reasonable number of applications checked.

24. The EPA Montana Office shall be immediately informed of any adverse effects resulting from the use of Compound 1080 under this specific exemption.

25. Crew supervisors will instruct landowners that all animal carcasses found above ground must be placed individually down burrows and covered with dirt or buried individually. Alternatively, carcasses may be burned.

26. Federal land must not be treated with Compound 1080.

27. A final report must be submitted to the EPA by the end of December 1984.

Dated: June 21, 1984.

Douglas D. Campt,

Acting Director, Office of Pesticide Programs.

[FR Doc. 84-17203 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-2617-1]

National Air Pollution Control Techniques Advisory Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Air Pollution Control Techniques Advisory Committee will be held on August 29 and 30, 1984, at the Sheraton University Center, Greenbriar Ballroom (2nd Floor), 2800 Middleton Avenue at Morreene Road and 15-501, Durham, North Carolina 27705. The Commercial telephone number is (919) 383-8575.

The tentative agenda for the meeting is as follows:

August 29 (Wednesday)—9:00 a.m.

Petroleum Refinery Wastewater Systems, New Source Performance Standards (Section 111 of the Clean Air Act)

Magnetic Tape, New Source Performance Standards (Section 111 of the Clean Air Act)

Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes, New Source Performance Standards (Section 111 of the Clean Air Act)

Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF) Area Source Air Emissions Program, Status Report to the Committee

August 30 (Thurday)—9:00 a.m.

Continuation of August 29—As Required

Portland Cement Plants, Review of Standards of Performance for New Stationary Sources (Section 111 of the Clean Air Act)

Vinyl Chloride, Revision of National Emission Standards for Hazardous Air Pollutants (Section 112 of the Clean Air Act)

All meetings are open to the public. Anyone wishing to make a presentation should contact Ms. Mary Jane Clark at the Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, by August 20, 1984. The commercial telephone number is (919) 541-5571, and the FTS number is 629-5571.

The dockets containing material relevant to petroleum refinery wastewater systems (A–83–07), magnetic tape (A–82–45), SOCMI reactor processes (A–83–29), portland cement plants (A–84–08), and vinyl chloride (81–21) are located in the U.S. Environmental Protection Agency, Central Docket Section, West Tower Lobby-Gallery 1, 401 M Street, S.W., Washington, D.C. 20460. The dockets may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Joseph A. Cannon,

Assistant Administrator for Air and Radiation.

[FR Doc. 84-17381 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2617-7]

Science Advisory Board; Clean Air Scientific Advisory Committee Open Meeting—July 19–20, 1984

Under Pub. L. 92–463, notice is hereby given of a meeting of the Clean Air Scientific Advisory Committee (CASAC) of the Science Advisory Board. The meeting will be held July 19–20 in Room 1112, U.S. Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia. The meeting will begin at 1:30 p.m. on July 19 and the estimated time of adjournment is 12:00 noon on July 20.

The purpose of the meeting is to allow CASAC to review and provide its advice to the EPA on the Agency's proposed rule to reaffirm the National Ambient Air Quality Standards (NAAQS) for Nitrogen Dioxide (NO_2). The proposed rule was published in the Federal Register on February 23, 1984 (49 FR 6866).

Individuals wishing background information may order the revised Criteria Document, "Air Quality Criteria for Oxides of Nitrogen" (EPA–600/8–82–026F, December 1982; PB–83–16337, $53.50 paper copy), and the final revised OAQPS Staff Paper, "Review of the National Ambient Air Quality Standards for Nitrogen Oxides: Assessment of Scientific and Technical Information" (EPA–450/5–82–002, August 1982; PB 83–132829, $13.00 paper copy and $4.00 microfiche), which are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

The agenda for this meeting will include: (a) briefing on comments submitted by the public in response to the proposed rulemaking; (b) review of new studies published since CASAC's previous review of the scientific evidence for nitrogen dioxide in 1982.

The Committee will also discuss exposure assessment information needs for use in setting ambient standards.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Mr. Robert Flaak, Executive Secretary, or Ms. Carolyn Osborne, Secretary, Clean Air Scientific Advisory Committee, Science Advisory Board (A–101F), U.S.. EPA, 401 M Street, S.W., Washington, D.C. 20460, [202) 382–2552 by close of business July 16, 1984.

Dated: June 22, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84-17380 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2618-7]

Science Advisory Board SAB, Executive Committee, Open Meeting—July 18–19, 1984

Under Pub. L. 92–463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board. The meeting will be held July 18–19 in room 1101 West Tower, EPA Headquarters, 401 M Street, SW, Washington, D.C. The meeting will begin at approximately 9:15 on July 18 and will adjourn at approximately noon of July 19.

The major purpose of the meeting is to enable the Executive Committee to review and decide whether to transmit to the Administrator several reports of SAB subcommittees. These include a draft report of the Subcommittee on Risk Assessment for Radionuclides which reviewed the scientific basis of EPA's proposed standards for airborne radionuclides; and a draft report of the Office of Research and Development's Research Centers' Program by the Subcommittee on Strategic and Long-Term Research. The Committee will also receive a briefing on the status of EPA activities in biotechnology in addition to planning future SAB review activities.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board, (202) 382–4126 before close of business July 11, 1984.

Dated: June 25, 1984.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 84-17379 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2618-6]

Science Advisory Board Environmental Health Committee; Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Environmental Health Committee (EHC) of the Science Advisory Board will be held on July 24–25, 1984, in Conference Room 3906–3908, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:15 a.m. on July 24, 1984, and adjourn not later than 4:30 p.m. on July 25, 1984.

The principal purposes of the meeting will be first on July 24, 1984 (1) to update the EHC on a draft paper, prepared by EPA's Office of Toxic Substances, describing design options for a retrospective validation study of PMN health hazard assessments; (2) to review and comment on the scientific adequacy of a draft Asbestos Health Assessment Update prepared by the Office of Health and Environmental Assessment (OHEA) of EPA's Office of Research and Development (ORD). The HAD is dated February 1984 (EPA–600/8–84–003A); and (3) to discuss the EHC views regarding generic issues in the draft Health Assessment Documents (HADs) for vinylidene chloride, trichloroethylene, and perchloroethylene in line with earlier EHC reviews. Second, on July 25, 1984 (4) to reviews a jointly prepared OHEA-Office of Air Quality Planning and Standards staff paper on "Estimation of the Public Health Risk from Exposure to Gasoline Vapor via the Gasoline Marketing System;" (5) to receive briefings from the Ad-Hoc Subcommittees for New Business and for Improving the Quality of HAD reviews; and (6) to discuss upcoming issues and to receive brief reports and informational items of current interest to the Members.

For information on how to obtain copies of the draft HADs or the asbestos update please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684–7562. For copies of the staff paper on gasoline vapor, please write the ORD Librarian (MD–35), Research Triangle Park, North Carolina 27711 or call (919) 541–2777

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contact Dr. Daniel Byrd, Executive Secretary to the EHC, or Mrs. Patti Howard, by telephone at (202) 382–

2552 or by mail at: Science Advisory Board (A-101), U.S. Environmental Protection Agency, 401 M Street, S.W. Washington, D.C. 20460 before c.o.b. July 16, 1984.

Dated: June 25, 1984.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 84-17378 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2616-1]

Availability of Environmental Impact Statements Filed June 18 Through June 22, 1984, Pursuant to 40 CFR 1506.9

Responsible Agency: Office of Federal Activities, General Information (202) 382-0-5073 or (202) 382-5075.

EIS No. 840273, Final, FHW, OR, US 20/ Corvallis-Newport Highway, Reconstruction, Benton and Lincoln Counties, Due: July 30, 1984, Contact: Martin Convisser (202) 462-4357

EIS No. 840274, Draft, FHW, AK, Raspberry Road Reconstruction, between Jewel Lake Road and Minnesota Drive, Due: August 13, 1984, Contact: Keith Morberg (907) 266-1502.

EIS No. 840275, Final, FHW, NY, NY-394 Upgrading, NY-474 to Prendergast Avenue, Chautauqua County, Due: July 30, 1984, Contact: V. E. Taylor (518) 472-3616.

EIS No. 840276, Draft, COE, MI, Great Lakes Connecting Channels and Harbors Study, Due: August 13, 1984, Contact: Jim Galloway (313) 226-7590.

EIS No. 840278, Draft, SFW, MT, Charles M. Russell National Wildlife Refuge, Due: August 13, 1984, Contact: Bruce Blanchard (202) 343-3891.

EIS No. 840279, Draft, EPA, REG, Benzene Emissions from Coke By-Product Recovery Plants, Due: August 13, 1984, Contact: Gilbert Wood (919) 541-5578.

EIS No. 840280, Final, EPA, WI, Geneva Lake Area WWT Facilities (Regional Management Plan) Construction/ Upgrading/Expansion, Grant, Walworth County, Due: July 30, 1984, Contact; William Spaulding (312) 886-0215.

EIS No. 840281, Draft, NOA, MXG, SATL, Coastal Migratory Pelagic Resources (Mackerel) Fishery Management Plant, Amendment, Due: August 13, 1984, Contact: Jack Brawner (813) 893-3141.

EIS No. 840282, DSuppl, BLM, NV, Lahontan Resource Area, Resource Management Plan, Churchill, Lyon, Mineral, Nye and Storey Counties, Due: August 29, 1984, Contact: Bruce Blanchard (202) 343-3891.

EIS No. 840283, Final, FHW, IL, Elgin North End Bridge Project, Construction, Big Timber Road at State Street (IL-31) to Summit Street at Dundee Avenue, (IL-58), Kane County, Due: July 30, 1984, Contact: Jay Miller (217) 492-4600.

EIS No. 840284, Draft, FHW, PA, Newtown Bypass Extension, Completion, Newtown Pike to I-95 Interchange, Bucks County, Due: August 14, 1984, Contact: Louis Papet (717) 782-2222.

Amended Notices:

EIS No. 840245, Draft, OSM, MT, Westmoreland Resources/Absaloka Mine Operation, Permit, Big Horn County, Due: August 3, 1984, Published FR 6/15/84—Review extended.

EIS No. 840265, Final, EPA, MO, Greene County Wastewater Treatment Facilities Plan, Approval, Grant, Due: July 23, 1984, Published FR 6/22/84—Incorrect State.

Dated: June 26, 1984.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 84-17403 Filed 6-28-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Statement of Policy Regarding the Availability and Use of Financial and Other Information by Depositors and Other Creditors of Banks and Thrifts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Proposed issuance of statement of policy.

SUMMARY: The FDIC has a vital interest in minimizing the level of risk to the deposit insurance fund and in promoting the discipline of the marketplace to achieve this objective. Therefore, this statement of policy is being issued to notify depositors and creditors of insured banks and thrifts of information that is publicly available and to encourage the public to use that information when making decisions regarding the placement of their funds. The statement of policy also sets forth certain types of information which the FDIC believes would be relevant to these customers in their evaluation of bank or thrift condition and performance.

DATE: Comments on the proposal must be received by July 30, 1984.

ADDRESS: Comments regarding the proposed statement of policy should be submitted to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 or delivered to Room 6108 at the same address between the hours of 9:00 a.m. and 5:00 p.m. on business days. Comments may also be inspected in Room 6108 between 9:00 a.m. and 5:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Examination Specialists Robert F. Storch or Stephen G. Pfeifer, Planning and Program Development Branch, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone 202/389-4761.

SUPPLEMENTARY INFORMATION: In our 1983 study of the current system of deposit insurance, *Deposit Insurance in a Changing Environment*, as well as in many other forums, the FDIC has endorsed the continuation of deregulation of the banking industry. Given this posture, the FDIC has implemented or recommended several approaches to expand the role of the marketplace in imposing discipline on the industry to limit destructive competition and excessive risk-taking. Motivation for expanded market discipline flows from depositors and other creditors being at risk in their dealings with insured banks and thrifts. To accomplish this, the FDIC has introduced modified payoff procedures and has limited the insurance coverage of brokered deposits. Additionally, the FDIC has prepared a legislative proposal that would allow us to exclude financial institutions and governmental agencies from deposit insurance coverage. These actions are designed to encourage funds flows to the fast majority of insured institutions that are prudently run instead of to the small percentage of institutions that are marginal and engage in destructive competition or abusive practices.

Critical to the process of increasing marketplace discipline is an informed public. In order to work toward this objective, the FDIC proposes to issue a statement of policy that encourages depositors and other creditors to periodically request information that would facilitate prudent judgments in evaluating the financial condition of depository institutions. The policy statement describes the minimum information that the FDIC believes relevant to the decisions of depositors and other creditors regarding the placement of their funds.

The text of the proposed statement of policy follows:

Statement of Policy Regarding the Availability and Use of Financial and Other Information by Depositors and Other Creditors of Banks and Thrifts

Deregulation of the financial services industry is removing deposit interest rate controls and other restrictions that previously constrained the actions of many institutions. Because of the greater freedom within which financial institutions can operate, the FDIC believes the supervisory efforts of the regulatory agencies must be supplemented by market discipline to promote sound bank and thrift management. Critical to the process of increasing marketplace discipline is an informed public. Market participants must seek adequate and relevant information if they are to make informed judgments concerning the lending or deposit of funds to or with a particular banking or thrift organization. A well-informed public is the best protection for well-run banks and thrifts and is essential to the maintenance of a strong, stable financial system in a deregulated environment. At issue, therefore, is the nature and extent of information needed by the marketplace to facilitate rational financial decisions.

Banks and thrifts report a considerable amount of financial and managerial information for regulatory and financial reporting purposes. Additionally, there is other financial information that a depositor or creditor can request and disclosure of which is not prohibited by federal law.

This information can be useful in evaluating a bank's or thrift's operations and financial condition and in assisting depositors and other creditors in their financial decision regarding the placement of their funds with a particular organization. Others may also have an interest in the continued viability of an institution when establishing customer relationships. The purpose of this policy statement is to inform depositors and creditors of some of the information that is relevant to their decisionmaking regarding the placement of their funds.

The credit evaluation process depends upon the availability of relevant information. Such information may be in the public domain or may be requested by the depositor or creditor. Depositors and other creditors should not feel inhibited from requesting relevant information regarding a bank's or thrift's condition and these institutions should not feel inhibited from supplying the appropriate information.

The FDIC is not prescribing a uniform document or format for depositors and other creditors to use when seeking information on the financial condition of banks and thrifts. Rather, depositors and other creditors should have the flexibility to determine the nature and method of dissemination of information appropriate for the bank's or thrift's size and operations. The adequacy of the information received from each institution will then be judged by its users. Nevertheless, the FDIC believes that it is appropriate for depositors and other creditors to periodically seek relevant information, including the information discussed below:

I. *Financial statements* that are available upon request from the FDIC, the Federal Reserve Board, or the Office of the Comptroller of the Currency, but which may also be voluntarily furnished by the bank or thrift, including:

A. *Reports of Condition and Income,* including all publicly available schedules and sections, filed with the bank's or thrift's federal regulatory agency. These financial statements are commonly referred to as Call Reports and are filed quarterly. The Report of Condition contains "balance sheet" data regarding the bank's assets, liabilities, and capital accounts as of the specified report date, as well as selected information concerning the volume of lending to certain related parties of the bank or thrift. The Report of Income presents "income statement" information, including the institution's revenue, expenses, net income, and other changes in capital that have occurred over a specified period of time ending with the report date. Additionally, the bank or thrift or its parent holding company may have prepared financial statements in connection with filings required by federal securities laws which are in many ways comparable with the Reports of Condition and Income. These reports would also include informative disclosures in footnotes to financial statements and generally contain a narrative discussion of the results of operations. Such financial statements, which accompanied with an independent opinion by a certified public accountant, may also prove to be of value.

B. The most recent *Uniform Bank Performance Report* for commercial banks and *Savings Bank Performance Report* for savings banks that have been furnished by the bank's or thrift's federal regulatory agency. These reports, commonly referred to as UBPRs, contain financial data in both dollar amount and ratio formats. The information, most of which has been generated from data appearing on the institution's Reports of Condition and Income, provides a comparison of the bank's or thrift's financial condition and performance over the past five years to that of other banks operating under similar conditions. The federal bank regulatory agencies have also prepared a User's Guide to the UBPR to aid in the understanding of these reports.

C. *A Country Exposure Information Report* which is available from a small number of banks with large dollar amounts of loans to foreign borrowers. This report is prepared quarterly and was first available as of March 31, 1984.

II. A factual discussion of the bank's or thrift's financial condition, including information regarding significant problems or weaknesses and such other material factors of which a prudent depositor or other creditor ought reasonably to be informed before placing funds in the institution.

A. The publicly available reports mentioned in Part I normally do not contain narrative discussions of the reported data. The discussion of the institution's financial condition, as suggested in this section of the policy statement, provides depositors and creditors with information on the salient aspects of this data.

General topics that would be of interest to depositors and creditors may include, but are not limited to, a factual discussion of capital adequacy, asset quality, earnings, liquidity, concentrations of risk, interest rate sensitivity, and foreign lending exposure. However, FDIC regulations prohibit disclosure of the content of Reports of Examination.

B. Information on any final formal *administrative enforcement action* or informal *supervisory action* that has been imposed by the institution's state or federal regulatory is also important to an informed depositor or creditor. An example of a formal administrative action is a cease-and-desist order issued against a bank or thrift due to the existence of unsafe or unsound practices or violations of laws and regulations. Such an order is normally issued when the continuance of the existing practices or violations would pose an excessive degree of financial risk exposure to the federal deposit insurance fund. An example of an informal supervisory action is the implementation of a memorandum of understanding between the institution and its state or federal regulator. These informal supervisory actions are entered into when the bank's or thrift's condition warrants more than normal supervisory concern but has not deteriorated to the point where a formal cease-and-desist order is necessary.

In either the formal or informal proceeding, the final document signed

by the bank or thrift sets forth certain provisions that are geared toward the remedy of the deficiencies.

(It should be noted that the great majority of banks and thrifts are managed in such a manner that the implementation of these types of actions is unnecessary.) Thus, whenever any final action has been imposed on a bank or thrift, whether it be a formal administrative enforcement action or an informal supervisory action, a description of the action is appropriate.

C. A discussion of financial transactions between the insured bank or thrift and its related parties is essential to a creditor's overall analysis of the institution's condition and performance.

Discussion of related party transactions should include information on outstanding extensions of credit to directors, principal shareholders, executive officers and affiliates. This information should include loans to these related parties that are carried on a nonaccrual basis, are past due 90 days or more, or have been charged off by the institution within the last 24 months.

Under existing federal bank regulations, institutions are required to make available to the public certain disclosures upon written request as of the end of the previous quarter. These regulations require disclosure of the names of any executive officers or principal shareholders whose outstanding extensions of credit, when combined with those of related interests, equal or exceed the lesser of $500,000 or five percent of the institution's capital stock and unimpaired surplus.

The federal regulatory agencies will neither approve nor disapprove the disclosures; nor will the agencies pass upon the accuracy or adequacy of the information requested or received. Bank and thrift depositors and other creditors are encouraged to request and review the aforementioned information from the banks and thrifts in which they intend to deposit or loan funds. In this regard, the information should be requested as frequently as circumstances dictate, but probably at least on an annual basis. The FDIC encourages depositors and other creditors to place their funds only in banks and thrifts that are willing to furnish the information necessary for a complete evaluation of their condition.

The FDIC recognizes that some depositors and other creditors may wish to request and some banks and thrifts may wish to provide additional data about the institution. This statement of policy encourages depositors and other creditors to seek whatever additional information may be considered relevant for their assessment of the financial condition of banks and thrifts (with the exception of confidential customer information, examination reports, and ratings by supervisory agencies).

In addition to the information needed for evaluating an institution's condition, the FDIC recommends that depositors and other creditors request information about policies bearing on other aspects of their actual or expected customer relationships with the bank or thrift. Depositors and other creditors should inquire about the bank's or thrift's policies on funds availability (*i.e.*, the availability for withdrawal of funds deposited by check) and on service charges (*i.e.*, the charges imposed on deposit accounts and the fees for other services offered by the institution).

By order of the Board of Directors, June 25, 1984.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Deputy Executive Secretary.

[FR Doc. 84-17352 Filed 6-28-84; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

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, D.C. 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, D.C. 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. 212-009848-012.

Title: U.S. Gulf—Brazil Pooling Agreement.

Parties:

Delta Steamship Lines, Inc.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants and quotas, cargo subject to the pool, the calculation of the revenues from pooled cargo, pool accounting and settlement, cancellation, of the agreement, pool committee consultation, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-009873-005.

Title: U.S. Pacific—Brazil Pooling Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Delta Steamship Lines, Inc.

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants cargo subject to the pool, the calculation of the revenues from pooled cargo, pool accounting and settlement, cancellation, of the agreement, pool committee, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-010320-007.

Title: Brazil—U.S. Gulf Pooling Agreement.

Parties:

Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Delta Steamship Lines, Inc.
Empresa Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I. e I.
Transportacion Maritima Mexicana S.A.
Cylanco S.A.
A/S Ivarans Reder

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants, cargo subject to the pool, minimum sailings and cargo capacity, the calculation of the revenues from pooled cargo, pool accounting and settlement, cancellation and withdrawal, pool committee consultation, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-010330-003.

Title: Brazil-U.S. Pacific Pooling Agreement.

Parties:

Delta Steamship Lines, Inc.
Companhia de Navegacao Lloyd Brasileiro

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or

additions to those provisions relating to cargo subject to the pool, minimum sailings and cargo capacity, the calculation of revenues from pooled cargo, pool accounting and settlement, cancellation of the agreement, pool committee consultation, effectiveness and extension, initiation of the agreement and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-010382-005.

Title: Argentina-U.S. Gulf Pooling Agreement.

Parties:

A. Bottacchi S.A. de Navegacion C.F.I.I.
Companhia de Navegacao Lloyd Brasileiro
Companhia Maritima Nacional
Delta Steamship Lines, Inc.
Empresas Lineas Maritimas Argentinas S.A.
Reefer Express Lines Pty., Ltd.
Transportacion Maritima Mexicana S.A.
Cylanco S.A.

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants, cargo subject to the pool, minimum sailings and cargo capacity, the calculation of revenues from pooled cargo, pool accounting and settlement, cancellation of the agreement, vessel operating and scheduling, successors, notification, pool committee, effectiveness and extension, initiation of the agreement, amendments and the delegation of authority; and restates the agreement in its entirety.

Agreement No. 212-010389-002.

Title: U.S. Gulf-Argentina Pooling Agreement.

Parties:

Delta Steamship Lines, Inc.
Empresas Lineas Maritimas Argentinas S.A.
A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment extends the agreement indefinitely; makes changes, deletions and/or additions to those provisions relating to participants, cargo subject to the pool, minimum sailings and cargo capacity, the calculation of revenues from pooled cargo, pool accounting and settlement, cancellation of the agreement, pool committee, effectiveness and extension, initiation of the agreement, amendments and the delegation of authority; and restates the agreement in its entirety.

By order of the Federal Maritime Commission.

Dated: June 26, 1984.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 84-17426 Filed 6-28-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Henderson Financial Corporation, 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 (U.S.C. 1842) and § 225.14 of the Board's Regulation Y (49 FR 794) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of the 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 July 20, 1984.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Henderson Financial Corporation,* Henderson, Kentucky; to become a bank holding company by acquiring 80 percent or more of the voting shares of Henderson County States Banks, Corydon, Kentucky.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Prairie Bancorporation, Inc.,* Walnut Grove, Minnesota; to become a bank holding company by acquiring 77.85 percent of the voting shares of Citizens States Bank of Walnut Grove, Walnut Grove, Minnesota.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 Sount Akard Street, Dallas, Texas 75222:

1. *Shreveport Banchares, Inc.,* Shreveport, Louisana; to become a bank holding company by acquiring 100 percent of the voting shares of Shreveport Bank & Trust Company, Shreveport, Louisiana.

Board of Governors of the Federal Reserve System, June 25, 1984

James McAfee,

Associate Secretary of the Boards.

[FR Doc. 84-17335 Filed 6-28-84; 8:45 am]

BILLING CODE 6210-01-M

Maryland National Corp., Application To Engage de Novo in Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(3) of the Board's Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794), to engage *de novo* through a national bank subsidiary in deposit-taking, including the taking of demand deposits, and other activities specified below. The proposed subsidiary will not engage in commercial lending transactions as defined in Regulation Y. The Board has determined by order that such activities are closely related to banking. *U.S. Trust Company* (70 Federal Reserve Bulletin 371 (1984)). Although the Board is publishing notice of this application, under established Board policy the record of the application will not be regarded as complete and the Board will not act on the application unless and until a preliminary charter for the proposed national bank subsidiary has been submitted to the Board.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Federal Reserve Bank or the offices of the Board of Governors not later than July 20, 1984.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Maryland National Corporation,* Baltimore, Maryland; to engage through a national bank subsidiary, Maryland National Bank/Virginia, Fairfax County, Virginia, in deposit-taking, consumer lending, and other banking services. These activities would be conducted in Fairfax County, and surrounding area.

Board of Governors of the Federal Reserve System, June 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17338 Filed 6-28-84; 8:45 a.m.]

BILLING CODE 6210-01-M

National Bankshares of LaJolla; 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 (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 19, 1984.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *National Bankshares of LaJolla,* LaJolla, California; to engage *de novo* through its subsidiary, National Bankshares Mortgage, Inc., San Diego, California, in mortgage banking activities including originations, servicing, and secondary marketing. These activities would be conducted in the state of California.

Board of Governors of the Federal Reserve System, June 25, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-17337 Filed 6-28-84; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Office of Policy and Management System, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) plans to request the Office of Management and Budget (OMB) to review and approve an existing information collection.

ADDRESSES: Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ethel Theis, Information Security Oversight Office (202-535-7251).

SUPPLEMENTARY INFORMATION:.

a. *Purpose* The form serves as a contractual agreement between the U.S. Government and cleared employees and helps to prevent the disclosure of classified information to unauthorized persons.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 5200, hours 433.

c. *Obtaining copies of proposal.* Requestors may obtain copies of the proposal from the Directives and Reports Management Branch (ATRAI), Room 3007, GS Building, Wahsington, DC 20405, telephone (202-566-0666).

Dated: June 22, 1984.

William W. Hiebert,

Acting Director, Information Management Division.

[FR Doc. 84-17434 Filed 6-28-84; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on June 22.

Public Health Service

Centers for Disease Control

Subject: Case Control Study of End Stage Renal Disease and Occupational Exposure—New
Respondents: Individuals
Subject: Laryngeal Cancer Incidence in Workers Exposed to Sulfuric Acid—New
Respondents: Individuals

Office of the Assistant Secretary for Health

Subject: Evaluation of the Data Provided for the National Vital Statistics Program (0937-0114)—Revision
Respondents: State Vital registration and statistics persons, State health officers, users of vital statistics data
Subject: Monthly Vital Statistics Report Forms (0937-0002; 0937-0007)—Extension/No Change
Respondents: State and local vital statistics officials
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Applications and Discontinuances for Aid to Families with Dependent Children (AFDC) and

Medicaid SSA-3800 (0960-0148)—Extension/No Change
Respondents: State and local governments
OMB Desk Officer: Milo Sunderhauf.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Dated: June 22, 1984.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 84-17231 Filed 6-28-84; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 84G-0218]

American Feed Manufacturers Association, Inc.; Selenium; filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the American Feed Manufacturers Association, Inc., has filed a petition proposing affirmation that selenium is generally recognized as safe (GRAS) when added to animal feeds as a nutritional supplement.

DATE: Comments by August 28, 1984.

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

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5362.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 570.35 (21 CFR 570.35), notice is given that a petition (GRASP MF3891) has been filed by American Feed Manufacturers Association, Inc., 1701 North Fort Myer Dr., Arlington, VA 22209, proposing (1) affirmation that selenium (as sodium selenite or selenate) is GRAS when used in animal feeds as a nutritional supplement in accordance with current good manufacturing and feeding practices and (2) removal of the selenium food additive regulations at 21 CFR 573.920.

Any petition that meets the format requirements outlined in § 570.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as preliminary indication of suitability for affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c) (proposed December 11, 1979; 44 FR 71742).

Interested persons may, on or before August 28, 1984 review the petition and/or file comments (two copies, except that individuals may submit single copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 19, 1984

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-17322 Filed 6-28-84; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 83A-0339]

Enforcement Action Under the New Drug Provisions of the Federal Food, Drug, and Cosmetic Act; Certain OTC Drug Products; Advisory Opinion; Amendment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending its advisory opinion announced in the November 18, 1983 Federal Register. This Action is necessary to end an exception to enforcement actions for certain over-the-counter (OTC) drug products containing caffeine in combination with phenylpropanolamine. The intended effect of this action is to ensure that the product combination, like the other products subject to the November 18, 1983 advisory opinion, is indeed no longer available for sale.

EFFECTIVE DATES: Effective on June 29, 1984 for amendment; effective on October 29, 1984 for the end of the exception to enforcement actions.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Center for Drugs and Biologics (HFN-384), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION:

A Introduction

In the Federal Register of November 18, 1983 (48 FR 52513), FDA announced an advisory opinion about certain OTC drug products. The November 18 advisory opinion states that the agency is prepared to take immediate enforcement action under the new drug provisions of the Federal Food, Drug, and Cosmetic Act (the act) against certain OTC drug products to eliminate their widespread abuse and misuse. There are two basic groups of OTC drug products covered by the November 18 advisory opinion.

The first group consists of OTC drug products labeled as stimulants and containing any ingredients other than caffeine as the active ingredient. The second group consists of OTC drug products labeled for any purpose and containing as their sole active ingredient any of the following combinations of ingredients (including the salts of these ingredients): (1) Caffeine in combination with ephedrine or pseudoephedrine, (2) phenylpropanolamine and combination with ephedrine or pseudoephedrine, (3) phenylpropanolamine in combination with caffeine.

The November 18 advisory opinion also states that the agency is prepared to establish in court the new drug status of the OTC drug products referred to.

B. Background

The November 18 advisory opinion contains an exception to the announced immediate enforcement action for certain caffeine plus phenylpropanolamine combinations. The November 18 advisory opinion states that the agency would not commence enforcement action with respect to the sale of products meeting all of the following four factors: (1) The products contain caffeine and phenylpropanolamine as their sole active ingredients; (2) the products are

labeled solely as appetite suppressants, diet aids, or diet aid/stimulants; (3) the products were manufactured before November 18, 1983, or as part of a batch of products actually in process on November 18, 1983, provided that manufacturers or other holders of those drugs provide FDA sufficient information to allow it to determine the date of manufacture of such products encountered on the market; and (4) the products have never been labeled for any purposes other than as an appetite suppressant, diet aid, or diet aid/stimulant.

The November 18 advisory opinion also states that the agency would monitor the market for these excepted caffeine plus phenylpropanolamine combinations to determine whether to set a final date after which the sale of these products would no longer be allowed.

C. Establishment of Cut-off Date

The agency has monitored the market for the excepted caffeine plus phenylpropanolamine combinations and has determined that it is in the public interest to establish a final cut-off date after which the sale of these products would no longer be allowed. The agency will then initiate enforcement action against these products to ensure that they, like the others covered by the November 18 advisory opinion, are no longer available on the market.

In the November 18 advisory opinion the agency stated that any cut-off date that is set will extend at least 4 months after the announcement of such a date. Consistent with that statement, therefore, on October 29, 1984, the agency will be prepared to take immediate enforcement action against all OTC drug products labeled for any purpose and containing as their sole active ingredients, including their salts, the combination of caffeine and phenylpropanolamine.

D. Statement of Facts and Conclusions

This notice is an amendment to the advisory opinion announced by FDA in the Federal Register of November 18, 1983 (48 FR 52513). This notice is also an advisory opinion by the agency under 21 CFR 10.85. Any statement by the agency, in its Compliance Policy Guide or otherwise, that suggests in any way that enforecement actions will not be taken against products referred to in this notice is revoked to the extent that statement applies to such products.

The agency has concluded that, with respect to all products covered by this notice, substantial public interest considerations preclude continued acceptance of any action in alleged conformity with previously articulated agency policy (see 21 CFR 10.85(h)) beyond the cut-off day noted above.

The agency has considered whether there is a need to undertake notice and comment rulemaking to state its position on these drug products in the Federal Register and has concluded that no such requirement exists. This statement, which is arguably a revocation of a prior advisory opinion, is in accordance with FDA's regulations that do not require notice and comment rulemaking for publication of such revocation (see 21 CFR 10.85(g)). In addition, this statement of agency policy with respect to these drugs is not a substantive rule because it does not have, in and of itself, the force and effect of law. *Cf. Burroughs Wellcome Co.* v. *Schweiker*, 649 F.2d 221, 225 (4th Cir. 1981).

This statement is not a "declaration" that a drug is a new drug made after appropriate administrative proceedings. Rather, it is a statement of the official position of FDA and an announcement that the agency is prepared to initiate enforcement actions in which the government would, if called upon to do so, establish in court the new drug status of the products referred to.

E. Summary of Status of Drugs Subject to this Notice

1. This notice ends, effective October 29, 1984, the previously allowed exception as announced in the November 18 advisory opinion for the sale of certain caffeine plus phenylpropanolamine combination drug products discussed above under "B. Background."

2. This notice does not affect the status as announced in the November 18 advisory opinion of any of the other OTC drug products subject to that advisory opinion. That is, this notice reaffirms the November 18 advisory opinion for those other products.

3. In summary, as amended by this notice, the FDA advisory opinion on this subject is as follows: FDA is prepared to take enforcement action under the new drug provisions of the act against OTC drug products (a) labeled as stimulants and containing anything other than caffeine as the active ingredient and (b) labeled for any purpose and containing as their sole active ingredients any of the following combinations of ingredients (including the salts of those ingredients): Caffeine in combination with ephedrine or pseudoephedrine, phenylpropanolamine in combination with ephedrine or pseudoephedrine, and (after October 29, 1984) phenylpropanolamine in combination with caffeine.

Dated: June 22, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-17321 Filed 6-22-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new Privacy Act system of records: 09-20-0162, "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CEH." We are also proposing routine uses for this system.

The Center for Environmental Health (CEH), Centers for Desease Control (CDC), will use this system of records to support studies of the health effects of human exposure to the herbicide Agent Orange and to other environmental factors associated with service in Vietnam, and to assess the risks for selected cancers among Vietnam veterans.

PHS invites interested persons to submit comments on the proposed routine uses on or before July 30, 1984.

DATE: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on June 21, 1984. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the CDC Privacy Act Officer at the address listed below. Comments received will be available for inspection between 9 a.m. to 3 p.m. Monday through Friday, in Room B-68, at that address.

FOR FURTHER INFORMATION CONTACT: Sara S. Owens, Privacy Act Officer, Centers for Disease Control, 1600 Clifton Road, NE, Room B-68, Atlanta, Georgia 30333 or call (404) 329-3121. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: CDC proposes to establish a new system of records: 09-20-0162 "Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers

Studies, HHS/CDC/CEH." This proposed system of records will comprise records generated in research projects supported by CDC in fulfilling the legislated responsibility for conducting epidemiologic studies of the health of Vietnam veterans. The research will include:

a. A cohort [1] study to determine long-term health effects of exposure to Agent Orange in Vietnam (Agent Orange Study).

b. A cohort study to determine the long-term health effects of military service in Vietnam (Vietnam Experience Study).

c. A case-control to determine the risks for selected cancers among Vietnam veterans (Seleacted Cancers Study).

Data from death certificates will also be assessed for possible relationship of the cause of death to herbicide exposure or Vietnam service status. Since the specific cohort or exposure status of the deceased veteran, as for all living veterans, will be known, analysis of mortality data will be related to that exposure or service status.

Data that will enable the study veterans to be selected and located will be provided by the Department of Defense. The Army and Joint Services Environmental Support Group will provide CDC with lists of names, social security numbers or military service numbers, and selected demographic data needed to locate the 43,000 study veterans meeting eligibility requirements for being included in the Agent Orange and Vietnam Experience Studies. Other Federal agencies (such as the Social Security Administration, Veterans Administration, Internal Revenue Service) will be used to supplement locating data furnished by the Defense Department because in many cases, this information, based on discharge data, is outdated. This coordination will be done so that the greatest number of eligible veterans can participate in the study and will better ensure that valid conclusions can be drawn from the study results. Surveillance, Epidemiology, and End Results Centers and the random digit dialing method will provide the cases and controls respectively for the Selected Cancers Study.

Such research will involve scientists on the staff of CDC and other researches working under contracts awarded by CDC. These contracts will include: (1) Locating and interviewing of veterans with varying exposure to Agent Orange and with service in Vietnam other countries; (2) comprehensive medical examinations of a subset of the veterans interviewed; and (3) a case-control study determining if men who served in Vietnam are at increased risk or developing selected cancers (specifically, lymphomas, soft tissue sarcomas, nasal and nasopharyngeal, and primary liver).

CDC will collect all data under an Assurance of Confidentiality authorized by Section 308(d) of the Public Health Service Act. The records in this system will be safeguarded in accordance with the requirements of this confidentiality statute. When data are entered into te computer, separate files will be set up for identifying information (i.e., names of veterans, social security number or military service number, etc.) and for epidemiologic data (i.e., questionnaire responses, medical information, pathology results, etc.). The epidemiologic file indexed only by code number will be the file used in data analysis. The epidemiologic file will be linked with individually identified data only in rare instances such as followup interviews. Both files will remain under CDC control, and only designated employees of CDC or its authorized contractors will have access to the individually identified information.

CDC will require that confidentiality and Privacy Act provisions appear in these data collection contracts. Such contracts will contain stipulations to assure confidentiality and physical security of the information, to specify the appropriate safeguards to be employed in the performance of the contract, and to assure that the contractor's employees abide by the stipulations.

Whenever CDC or its authorized contractors collect information under an Assurance of Confidentiality, the person supplying the data will be advised of the uses to be made of such information and that CDC or its authorized contractors will not otherwise release individually identifiable information without the advance, explicit approval of the person supplying the information.

The identifiable data will be given security priority to avoid inadvertent disclosure. Such information, in whatever form (medical records, questionnaire data, keypunch cards, magnetic tapes, computer printouts), will be clearly labeled and subject to security procedures that include password access, and storage in locked filing cabinets within a locked room with access limited only to authorized personnel. Employees will receive special orientation and supervision to assure their awareness of and compliance with security requirements. Such appropriate storage and security provisions will apply throughout these studies. By a specified date, which may be no later than the date of completion of the contract, the contractor shall return all study data to CDC or destroy all such data, as specified in the particular contract. The CDC Project Director, project officers and contract officers oversee compliance with these requirements.

CDC has examined a number of alternative means of accomplishing the program requirements, including the option to maintain no Privacy Act system of records. Considering the large number of subjects necessary for comprehensive assessment of the health concerns of Vietnam veterans and the need for followup interviews, CDC has concluded that it would be impossible to carry out the required activities without collecting individual indentifiers.

Name, social security number (supplied voluntarily), and military service number will be some of the indices used to retrieve records from the system. Other retrieval methods may be utilzied as individual research dictates.

The proposed routine use which permits disclosures of portions of records to other Federal agencies is intended only to aid in locating veterans because in many cases Defense Department information, based on discharge data, is outdated. This disclosure is compatible with the system's purposes in that the greater the number of eligible veterans who participate in the study, the greater the validity of the results.

The proposed routine use which permits disclosure of information to contractors to enable them to locate, interview, and medically examine individuals will ensure a more adequate assessment of the health of Vietnam veterans as compared with men of similar age.

Therefore, these routine uses will increase CDC's efficiency and effectiveness in carrying out the legislative mandate of Pub. L. 96-151 "Veterans Health Programs Extension and Impovements Act of 1979" (38 U.S.C. 219 note) and Pub. L. 97-72 "Veterans' Health Care, Training, and Small Business Loan Act of 1981" (38 U.S.C. 219 note), and are, therefore, considered compatible with the system's purposes.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish

[1] *cohort* is defined as a group of individuals having a statistical factor in common in a demographic study (i.e., exposure to herbicides, geographic area of military service).

the notice after the system has become effective.

Dated: June 22, 1984.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-20-0162

SYSTEM NAME:

Records of Subjects in Agent Orange, Vietnam Experience, and Selected Cancers Studies, HHS/CDC/CEH.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Chamblee Building 5–A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Federal Records Center, 1557 St. Joseph Avenue, East Point, Georgia 30344.

Data are located at contractor sites as data are collected. A list of contractor sites where individually identified data currently located is available upon request to the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected male U.S. Army veterans at grade E–5 or below who enlisted or were drafted for one tour of duty in Vietnam or other countries during 1966–1972; males with birthdates 1929–1953 who have cases of selected cancers (specifically, lymphomas, soft tissue sarcomas, nasal and nasopharyngeal, and primary liver) diagnosed between July 1, 1984 to June 30, 1988; also included are control group participants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the participants (such as name, address, social security number, military service number, telephone number, date of birth), interview questionnaire responses, medical, laboratory, and psychological test result data, and records on biological specimens (e.g. blood, tumor, urine, etc.).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 96–151, "Veterans Health Programs Extension and Improvement Act of 1979" (38 U.S.C. 219 note); Pub. L. 97–72, "Veterans' Health Care, Training, and Small Business Loan Act of 1981" (38 U.S.C. 219 note); Public Health Service Act, Sections 304, 306, and 308(d), (42 U.S.C. 242b, 242k, and 242m(d)).

PURPOSE(S):

Records in this system are used to support studies to assess the health of Vietnam veterans relative to the health of other men of similar age. Specifically this information should enable the Centers for Disease Control (CDC) to:

1. Evaluate the relationship of documented exposure to herbicides used in Vietnam (primarily Agent Orange) to possible adverse health consequences. Such possible effects to be evaluated include dermatologic, neurological, psychological, immunological, carcinogenic, reproductive, gastrointestinal, and others.

2. Assess the health effects of service in Vietnam (including factors other than herbicide exposure) as opposed to the experiences of veterans who served in other countries.

3. Evaluate the risk of selected cancers among Vietnam veterans in contrast to men of similar age who did not serve in Vietnam.

Portions of records (i.e., name, social security number or military service number, date of birth) may be disclosed to the National Center for Health Statistics for obtaining a determination of vital status. Death certificates stating the cause of death will then be obtained from the appropriate Federal, State, or local agency to enable CDC to evaluate whether excess mortality is occurring among Vietnam veterans. Portions may also be disclosed to the Social Security Administration who will provide additional sources of information for locating veterans involved in the study.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records may be disclosed to Department of Health and Human Services contractors to locate veterans, cancer cases and controls, conduct interviews, perform medical examinations, analyze pathology specimens, and similar medical services, so that the research purposes for which the records are collected may be accomplished. The contractor must comply with the requirements of the Privacy Act with respect to such records.

Portions of records (i.e., name, social security number or military service number) may be disclosed to other Federal agencies such as the Veterans Administration and Internal Revenue Service only to obtain information to aid in locating veterans involved in the study. These disclosures will be made to update locating information provided by the Army and Joint Services Environmental Support Group.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, microfilm, computer tapes, disks, and punch cards.

RETRIEVABILITY:

By name, social security number or military service number (when supplied voluntarily or contained in existing records used in studies under this system), or other identifying number.

SAFEGUARDS:

Records in this system are collected under an Assurance of Confidentiality authorized by section 308(d) of the Public Health Service Act. To comply with this Assurance, the following special safeguards are necessary:

A. *Authorized users:* Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff of CDC or its contractors, as authorized by the Project Director to accomplish the stated purposes for which the data in this system has been collected.

B. *Physical safeguards:* Questionnaires and other source data are maintained in locked fire-resistant cabinets in locked rooms. When entered into the computer, individually identified information is kept separate from data used for analysis. Tape data are stored in fire-resistant safes.

C. *Technical safeguards:* Protection for computerized records includes card-access control equipment at the computer room, programmed verification of valid user identification code, account code and password prior to acceptance of a terminal session or job submission. Names and others details necessary to identify individuals are not included in data files used for analysis. These files are indexed by code numbers which are linked with complete identifiers only if there is a specific need such as data verification or followup interviews. Keys which link identification numbers to names are stored separately with access limited to CDC project officers and authorized staff.

CDC and contractor employees who maintain records are instructed in specific rules of conduct to protect the security and confidentiality of records in accordance with section 308(d) of the Public Health Service Act. When individually identified records are being used in a room at a contractor site, admittance to the room is restricted to employees pledged to confidentiality under this statute. All data will be either

returned to CDC or destroyed, as specified by the contract.

Appropriate Privacy Act provisions and confidentiality provisions under section 308(d) of the Public Health Service Act are included in contracts. The CDC Project Director, contract officers, and project officers oversee compliance with these requirements.

The particular safeguards outlined above are developed in accordance with Chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, ADP Systems Security, of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

CDC retains research records in accordance with the CDC Records Control Schedule Item 37, which allows the system manager to keep the records for 20 years unless needed for future reference. Because five-year mortality updates are planned until the study population expires, and health information from the questionnaire will be correlated with the mortality data, the computerized records to which questionnaire data will be converted may be kept as long as research needs dictate. Contractors will retain the records only as long as necessary to complete data collection and verify CDC's receipt of the data in usable form.

Records may be transferred to a Federal Records Center for storage when no longer needed for evaluation or analysis and will be retained there subject to statutory confidentiality requirements. Disposal methods include the paper recycling process, shredding hardcopy records, and erasing computer tapes and disks.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Agent Orange Projects, Chronic Diseases Division, Center for Environmental Health, Centers for Disease Control, Chamblee Building 5–A, Atlanta, Georgia 30333.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself by contacting the System Manager at the address above. Persons who knowingly and willfully request or acquire a record pertaining to an individual under false pretenses are subject to a $5,000 fine for this criminal offense. Requesters in person must provide photo identification (such as driver's license) or other positive identification (i.e., place of birth, etc.) that would authenticate the identity of the individual making the request. Individuals who do not appear in person must submit a notarized request to verify their identity. A guardian who requests notification of, or access to, a mentally incompetent or severely physically impaired person's record must provide a birth certificate (or notarized copy), court order, or other competent evidence of guardianship. An individual who requests notification of, or access to, a medical record shall at the time the request is made, designate in writing a responsible representative (who may be a physician, other health professional, or other responsible individual) who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

In addition, the following information must be provided when requesting notification: (1) Full name and social security or military service number; (2) nature of the study in which the requester participated.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individuals, Department of Defense (Army and Joint Services Environmental Support Group), Surveillance, Epidemiology, and End Results Centers (cancer registries). Records are derived from U.S. Army system of records: A0708.02aDAPC, "Official Military Personnel File."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 84–17332 Filed 6–28–84; 8:45 am]
BILLING CODE 4160–19–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–84–1401; FR–2006]

Housing Development Grant Program

Correction

In FR Doc. 84–16471, beginning on page 25396, in the issue of Wednesday, June 20, 1984, make the following corrections:

1. On page 25396, in the third column, in the second line from the bottom, "to advanced" should read "to advance a particular neighborhood preservation purpose that cannot be advanced".

2. On page 25400, in the third column, the FR Doc. number should read "84–16471"

BILLING CODE 1505–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of the Supplement to the Draft Resource Management Plan/ Environmental Impact Statement for the Lahontan Resource Area, Nevada

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Supplement to the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Lahontan Resource Area, Carson City District, Nevada.

SUMMARY: The BLM Carson City District has prepared a supplement to the RMP/EIS for the Lahontan Resource Area in Neveda, pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and Section 202 of the Federal Land Policy and Management Act of 1976.

SUPPLEMENTARY INFORMATION: The Draft Lahontan RMP/EIS is a comprehensive land use planning document which establishes management actions and objectives for resource condition and use levels, the standards for monitoring and evaluating the plan's effectiveness, and the need for more detailed management plan(s) and support actions. It also is an environmental impact statement which analyzes the effects of implementing a multiple use resource management plan on 2.4 million acres of public land in the east half of the Carson City District in Nevada.

The Supplement to the Draft Lahontan RMP/EIS additionally documents consideration of designating right-of-way corridors and designing Soda Lake an Area of Critical Environmental Concern.

FOR FURTHER INFORMATION CONTACT: Tom Owen, District Manager, Attn.: RMP/EIS Team Leader, Carson City District Office, 1050 E. William St., Ste. 335, Carson City, NV 89701 (702) 882–1631.

Copies of the Supplement are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, Washington, D.C. 20240
Bureau of Land Management, Nevada State Office, 300 Booth Street, P.O. Box 12000, Reno, Nevada 89520, (702) 784–5448
Bureau of Land Management, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada 89102, (702) 385–6403
Bureau of Land Management, Winnemucca District Office, 705, East 4th Street, Winnemucca, Nevada 89445, (702) 623–3676
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, Nevada 89801
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301 (702) 289–4865
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Carson City, Nevada 89701, (702) 635–5181
Bureau of Land Management, Battle Mountain District Office, North 2nd and Scott Streets, Battle Mountain, Nevada 89820, (702) 635–5181.

Also, copies are available for review at the following public libraries.

Carson City Library, 900 N. Roop St., Carson City, Nevada 89701
Churchill County Library, 553 South Maine Street, Fallon, Nevada 89406
Government Publications Dept., University of Nevada, Reno, Reno Library, Reno, Nevada 89557
Nevada State Library, Library Building, Carson City, Nevada 89710
Lyon County Library, Yerington, Nevada
University of Nevada, Reno, Getchall Library, Reno, Nevada 89507
University of Nevada, Las Vegas, James R. Dickinson Library, 4505 Maryland Parkway, Las Vegas, Nevada 89154
Mineral County Library, 1st and D Streets, Hawthorne, Nevada 89415
Nye County Library, Tonopah, Nevada 89049
Washoe County Library, 1301 South Center Street, Reno, Nevada 89505.

A copy of the Supplement will be sent to all individuals, agencies, and groups who have expressed interest in the Lahontan Resource Area planning process, and limited copies are available upon request to the District Manager at the above address.

Dates: Written comments concerning issues pertinent to the Lahontan Resource Area RMP/EIS will be accepted until August 29, 1984.

Dated: June 20, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84-17003 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-HC-M

District Advisory Councils; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations for district advisory councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils. Each council has three such positions to fill, except the California Desert District Advisory Council, which has five such positions to fill.

Each affected council comprises 10 members, except the California Desert District Advisory Council, which comprises 15 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1982, the terms of five members on the California Desert District Advisory Council and the terms of three members on each of the remaining 51 councils will expire on December 31, 1984. Current council members may be reappointed or new members may be appointed. Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1987

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following:

Elected General Purpose Government
Environmental Protection
Recreation
Renewable Resources (livestock, forestry, agriculture)
Non-Renewable Resources (mining, oil and gas, extractive industries)
Transportation/Rights-of-Way
Wildlife
Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on a district advisory council should contact the appropriate District Manager of the Bureau of Land Management to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by July 31, 1984.

ADDRESSES: The mailing address of each Bureau District Manager is as follows:

Alaska

Anchorage District Office, 4700 East 72nd Avenue, Anchorage, Alaska 99507
Fairbanks District Office, North Post of Fort Wainwright, P.O. Box 1150, Fairbanks, Alaska 99707

Arizona

Arizona Strip District Office, 196 East Tabernacle, St. George, Utah 84770
Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027
Safford District Office, 425 East 4th Street, Safford, Arizona 85546
Yuma District Office, 2450 Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364

California

Bakersfield District Office, 800 Truxton Avenue, Room 302, Bakersfield, California 93301
California Desert District Office, 1695 Spruce Street, Riverside, California 92507
Susanville District Office, 705 Hall Stret, P.O. Box 1090, Susanville, California 96130
Ukiah District Office, 555 Leslie Street, Ukiah, California 95482

Colorado

Canon City District Office, 3080 East Main Street, Canon City, Colorado 81212
Craig District Office, 455 Emerson Street, P.O. Box 248, Craig, Colorado 81625
Grand Junction District Office, 764 Horizon Drive, Grand Junction, Colorado 81501
Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401

Idaho

Boise District Office, 3948 Development Avenue, Boise, Idaho 83705 Burley District Office, Route 3, Box 1, Burley, Idaho 83318
Coeur d'Alene District Office, 1808 North Third Street, Coeur d'Alene, Idaho 83814
Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401 Salmon District Office, P.O. Box 430, Salmon, Idaho 83467

Shoshone District Office, 400 West F Street, P.O. Box 2B, Shoshone, Idaho 83352

Montana

Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702
Dickinson District Office, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58601
Lewistown District Office, Airport Road, Lewistown, Montana 59457
Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301

Nevada

Battle Mountain District Office, P.O. Box 1420, Battle Mountain, Nevada 89820
Carson City District Office, 1050 East Williams Street, Suite 335, Carson City, Nevada 89701
Elko District Office, P.O. Box 831, Elko, Nevada 89801
Ely District Office, Star Route 5, Box 1, Ely Nevada 89301.
Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126
Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445

New Mexico

Albuquerque District Office, 3550 Pan American Freeway, N.E., P.O. Box 6770, Albuquerque, New Mexico 87194
Las Cruces District Office, 317 North Main, P.O. Box 1420, Las Cruces, New Mexico 88004
Roswell District Office, 1717 West Second Street, Featherstone Farms building, P.O. Box 1397, Roswell, New Mexico 88201

Oregon

Burns District Office, 74 South Alvord Street, Burns, Oregon 97720 Coos Bay District Office, 333 South 4th Street, Coos Bay, Oregon 97420
Eugene District Office, 1255 Pearl Street, P.O. Box 10226, Eugene, Oregon 97440
Lakeview District Office, 1000 South 9th, P.O. Box 151, Lakeview, Oregon 97630
Medford District Office, 3040 Biddle Road, Medford, Oregon 97501
Prineville District Office, 185 East 4th Street, P.O. Box 550, Prineville, Oregon 97754
Roseburg District Office, 777 N.W. Garden Valley Boulevard, Roseburg, Oregon 97470
Salem District Office, 1717 Fabry Road, S.E., P.O. Box 3227, Salem, Oregon 97302
Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202
Vale District Office, 100 East Oregon Street, P.O. Box 700, Vale, Oregon 97918

Utah

Cedar City District Office, 1579 North Main Street, P.O. Box 724, Cedar City, Utah 84720
Moab District Office, 125 West 2nd South, P.O. Box 970, Moab, Utah 84532
Richfield District Office, 150 East 900 North, Richfield, Utah 84701
Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119
Vernal District Office, 170 South 500 East, Vernal, Utah 84078

Wyoming

Casper District Office, 951 Ranch road, Casper, Wyoming 82601
Rawlins District Office, 1300 3rd Street, P.O. Box 670, Rawlins, Wyoming 82301
Rock Springs District Office, Highway 187 North, P.O. Box 1869, Rock Springs, Wyoming 82901
Worland District Office, 1700 Robertson Avenue, P.O. Box 119, Worland, Wyoming 82401.

FOR FURTHER INFORMATION CONTACT: The respective District Managers.

Dated: June 12, 1984.

Robert F. Burford,

Director.

[FR Doc. 84-17259 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Alaska, National Wildlife Refuges in Alaska; Description of Boundaries; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice will correct an omission in the boundary description for the Koyukuk National Wildlife Refuge in the FR notice of February 24, 1983.

EFFECTIVE DATE: December 2, 1980.

FOR FURTHER INFORMATION CONTACT: William Mattice, Alaska Regional Office, at 907-786-3498.

Correction: Section 103(b) of the Alaska National Interest Lands Conservation Act required publication of legal descriptions of the boundaries of national wildlife refuge established by that Act. Such a description for the Koyukuk National Wildlife Refuge was published in the Federal Register February 24, 1983 (48 FR 7969-7975). The following paragraph was omitted from the description:

On page 7973, first column, insert a new third paragraph, reading: "Thence on an approximate forward bearing of S 35° E., approximately 5285 feet to the section corner of sections 5, 6, 31 and 32, Tps. 2 and 3 S., R. 16 E., Kateel River Meridian;"

Dated: June 26, 1984.

F. Eugene Hester,

Acting Director.

[FR Doc. 84-17314 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice is to remind Federal agencies, State and local governments, private organizations, and the public of the need to test the adequacy of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation,* published in the Federal Register on September 29, 1983. The *Standards and Guidelines* provide performance standards and technical advice about archeological and historic preservation activities and methods. Users and other interested parties are encouraged to test and evaluate the *Standards and Guidelines* and to submit written suggestions to the National Park Service about improvements.

DATE: Comments should be submitted by September 29, 1984.

ADDRESS: Comments should be submitted to the Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240 (202-343-9500).

FOR FURTHER INFORMATION CONTACT: Stephen M. Sheffield, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, DC 20240 (202-343-9500).

SUPPLEMENTARY INFORMATION: The Department of the Interior suggests that the *Standards and Guidelines* be used by:

(1) Federal, State and local agencies responsible for preparation of historic and archeological preservation plans;

(2) Agencies responsible for the review of preservation plans;

(3) Agencies involved in the identification, evaluation, registration, documentation and treatment of historic and archeological properties;

(4) Public and private agencies, organizations, and individuals acquiring, protecting, stabilizing, preserving, restoring, or reconstructing historic properties. (Comments on the *Secretary of the Interior's Standards and Guidelines for Rehabilitation* are not being sought because these have undergone extensive evaluation in recent years);

(5) Federal and State agencies for dissemination to prospective users, particularly local governments and preservation commissions;

(6) Agencies and organizations providing preservation information in response to requests from individuals involved with or interested in preservation;

(7) Agencies and organizations providing training in preservation activities;

(8) Those preparing preservation documents, including professional publications, technical manuals, regulations and procedures. (Such documents should reference the *Standards and Guidelines* and/or include them as supporting materials); and,

(9) agencies preparing environmental impact statements and environmental assessments in the preparation of such documents.

Early in fiscal year 1985 the National Park Service will thoroughly review the results of the first full year of use of the *Standards and Guidelines,* evaluate comments received and make any necessary modifications to the *Standards and Guidelines.*

Dated: June 21, 1984.

Mary Lou Grier,

Director, National Park Service.

[FR Doc. 84-17323 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-70-M

Intention To Renew Concession Contract

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 696; 16 U.S.C. 20), public notice is hereby given that sixty (60) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with Anacostia Marina, Inc., authorizing it to continue to provide marina services which include boat repair, wet and dry storage facilities and services for the public at Anacostia Park, Washington, D.C., for a period not to exceed fifteen (15) years from September 30, 1984.

"An assessment of the environmental impact of this proposed action has been made and it has been determined that it is not a major Federal action having significant impact on the quality of the human environment, and that no detailed statement pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 is required. The environmental assessment and finding of no significant impact may be reviewed in the Office of the Superintendent, National Capital Parks-East, 1900 Anacostia Drive, S.E., Washington, D.C. 20020."

The foregoing concessioner is performing its obligations to the satisfaction of the Secretary under an existing contract which expires by limitation of time on September 30, 1984, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preference in the renewal of the contract. This provision, in effect, grants Anacostia Marina, Inc., the opportunity to meet the terms and conditions of any other proposal submitted in response to this Notice which the Secretary may consider better than the proposal submitted by Anacostia Marina, Inc. If Anacostia Marina, Inc., amends its proposal and the amended proposal is substantially equal to the better offer, then the proposed renewal of the contract will be negotiated with Anacostia Marina, Inc.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Interested parties should contact the Superintendent, National Capital Parks-East, 1900 Anacostia Drive, S.E., Washington, D.C. 20020, for information as to the requirements of the proposed contract.

Dated: June 21, 1984.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 84-17324 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-70-M

Gateway National Recreation Area; Advisory Commission Meeting

AGENCY: National Park Service—Gateway Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 14, 1984, commencing at 3 p.m.

ADDRESS: Gateway National Recreation Area, Sandy Hook Unit, Highlands, New Jersey 07732.

FOR FURTHER INFORMATION CONTACT: Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (212) 338-3578.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by Public Law 92-592, to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include: (1) Request to extend landfill permit at Fountain Avenue; (2) Overview of Sandy Hook Unit.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services for the deaf or hearing impaired will be needed, they should be requested within five working days before the meeting. Facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recration Area, Buliding No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: June 21, 1984.

Robert W. McIntosh, Jr.,

Superintendent, Gateway National Recreation Area.

[FR Doc. 84-17415 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44) U.S.C. Chapter 35) is being 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, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: New
Bureau/Office: Office of Managing Director
Title of Form: Solicitation for Unique Services and Supplies
OMB Form No.. NA
Agency Form No.. NA
Frequency: On Occasion
Respondents: Business or Non-profit Institutions
No. of Respondents: 21

Total Burden Hrs: 105

James H. Bayne,

Secretary.

[FR Doc. 84-17414 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-204X)]

Burlington Northern Railroad Company—Abandonment and Discontinuance of Trackage Rights—Exemption

Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt abandonments and discontinuances of service and trackage rights,*[1] for (1) the abandonment of its line of railroad between milepost 122.00, near Mertz and milepost 124.02, near Mulberry, a total distance of 2.02 miles in Crawford County, KS, and (2) the discontinuance of its trackage rights over a line of railroad owned by the Kansas City Southern Railway Company between BN milepost 124.02, near Mulberry and BN milepost 136.7, at Pittsburg, a total distance of 12.68 miles[2] in Crawford County, KS.

BN has certified (1) that no local or overhead traffic has moved over the lines for at least 2 years and (2) that no formal complaint filed by a user of rail service on the lines or a state or local governmental entity acting on behalf of a user, regarding cessation of service over the lines, either is pending with the Commission or has been decided in favor of a complainant within the 2-year period preceding this notice. The Public Service Commission (or equivalent agency) in Kansas has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance of trackage rights shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 366 I.C.C. 91 (1979).

The exemption will be effective on July 29, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by July 9, 1984, and petitions for reconsideration, including environmental, energy and public use concerns, must be filed by July 19, 1984, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent BN's representative:

Douglas J. Bab, 176 East Fifth Street, St. Paul, MN 55101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be used if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 20, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-17406 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-6 (Sub-205X]

Burlington Northern Railroad Company—Abandonment—in Okmulgee County, OK; Exemption

The Burlington Northern Railroad Company (BN) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* The line to be abandoned is between milepost 468.0 near Okmulgee, and milepost 470.9, near Okmulgee, a distance of 2.9 miles in Okmulgee County, OK.

BN has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, (2) that no formal complaint filed by a user or rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2-year period. The Public Service Commission (or equivalent agency) in Oklahoma has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to the use of this exemption, any employees affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonmnent—Goshem.* 360 I.C.C. 91 (1979).

The exemption will be effective on July 29, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by July 9, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 19, 1984, with:

Office of the Secertary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any petition filed with the Commission should be sent to applicant's representative:

Mr. Douglas J. Babb, 176 East Fifth Street, St Paul, MN 55101

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: June 20, 1984.

By the Commission, Heber P Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-17408 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-36 (Sub-20)]

Oregon Short Line Railroad Company and Union Pacific Railroad Company—Discontinuance of Trackage Rights—in Silver Bow County, MT; Findings

The Commission has issued a certificate authorizing Oregon Short Line Railroad Company and Union Pacific Railroad Company to discontinue trackage rights over a 7.55-mile rail line between Silver Bow (milepost 390.02), and Butte (milepost 397.57) in Silver Bow County, MT. The discontinuance certificate will become effective 30 days after this publication.

James H. Bayne,

Secretary.

[FR Doc. 84-17403 Filed 6-28-84; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-108)]

Seaboard System Railroad, Inc.—Abandonment—in DeSoto and Hardee Counties, FL, Findings

The Commission has issued a certificate authorizing the Seaboard System Railroad, Inc. to abandon its 21.54-mile rail line between milepost AX 892.00 near Wauchula and milepost AX 913.54 near Arcadia in DeSoto and Hardee Counties, FL. The abandonment certificate will become effective 30 days after this publication unless the

---

[1] Service and trackage rights discontinuances were added to the exemption provisions of 49 CFR Part 1152 Subpart F by Ex Parte No. 274 (Sub-No. 8A), *Exemption of Out of Service Lines (Discontinuance of Service and Trackage Rights)* (not printed), served April 20, 1984. A petition for reconsideration of that decision was filed May 10, 1984, and is pending.

[2] BN incorrectly computed the distance to be 12.48 miles.

Commission also finds that (1) financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27

James H. Bayne,

Secretary.

[FR Doc. 84–17410 Filed 6–28–84; 8:45 am]

BILLING CODE 7035–01–M

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: The Signal Companies, Inc., 11255 North Torrey Pines Road, La Jolla, CA 92037

Wholly-owned subsidiaries which will participate in the operations and State of incorporation:

2. Subsidiaries and State of Incorporation:

Ampex Corporation, Post Office Box 190, Opelika, AL 36803–0190—Alabama

Neptune Water Meter Co., Highway Number 229, Tallassee, AL 36078—Alabama

1. Parent Corporation and Address of Principal Office: Wykstra Oil Company, 917 East Allegan Street, Martin, Michigan 49070.

2. Wholly owned subsidiary which will participate in the operations and State of incorporation: Dwar Oil Company, a Michigan corporation, 3910 South Division Avenue, Grand Rapids, Michigan 49508.

James H. Bayne,

Secretary.

[FR Doc. 84–17405 Filed 6–28–84; 8:45 am]

BILLING CODE 7035–01–M

[I.C.C. Order No. P–75]

Union Pacific Railroad Co.; Passenger Train Operation

June 27, 1984.

It appearing, that the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Seattle, Washington, and Los Angeles, California. The operation of these trains requires the use of the tracks and other facilities of Southern Pacific Transportation Company (SP). A portion of the SP tracks at Dunsmuir, California, are temporarily out of service because of a derailment. An alternate route is available via the Union Pacific Railroad Company between Bieber, and Sacramento, California.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein 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 the authority vested in me by order of the Commission decided April 29, 1982, 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)), the Union Pacific Railroad Company (UP), is directed to operate trains of the National Railroad Passenger Corporation (Amtrak) between Bieber, California, and a connection with Southern Pacific Transportation Company (SP) at Sacramento, California.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. 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 the 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 1:20 a.m., EDT, June 17, 1984.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., EDT, June 18, 1984, unless otherwise modified, amended, or vacated by order of this Commission.

This order shall be served upon Union Pacific Railroad Company and upon National Railroad Passenger Corporation (Amtrak), and a copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., June 17, 1984.

Interstate Commerce Commission.

John H. O'Brien,

Agent.

[FR Doc. 84–17411 Filed 6–28–84; 8:45 am]

BILLING CODE 7035–10–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Order No. 1060–84]

1984 Merger Guidelines

AGENCY: Attorney General Office, Justice.

ACTION: Notice.

SUMMARY: This notice announces the release of the Department's 1984 antitrust Merger Guidelines, replacing Guidelines issued by the Department on June 14, 1982 (published in the Federal Register June 30, 1982 (47 FR 28492)). The Guidelines have been revised to clarify the Department's enforcement policy. The Guidelines will be used by attorneys in the Antitrust Division in deciding whether particular mergers violate Section 7 of the Clayton Act or Section 1 of the Sherman Act. Publication of the Guidelines is intended to assist businesses in complying with the applicable antitrust laws.

DATE: Issued: June 14, 1984.

ADDRESS: 10th & Constitution Avenue, NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Charles F. Rule, Deputy Assistant Attorney General, U.S. Department of Justice, Antitrust Division, Room 3113, Washington, D.C. 20530, (202) 633–2411, or Deborah A. Garza, Special Assistant to the Assistant Attorney General, Antitrust Division, U.S. Department of Justice, Room 3113, Washington, D.C. 20530, (202) 633–1157

Dated: June 22, 1984.
William French Smith,
Attorney General.

U.S. DEPARTMENT OF JUSTICE

Statement Accompanying Release of Revised Merger Guidelines

June 14, 1984.

The U.S. Department of Justice ("Department") today issued revisions to its 1982 Merger Guidelines. The revisions reflect the Department's experience in applying the 1982 Guidelines during the past two years and, in addition, incorporate numerous suggestions made by various knowledgeable observers, both inside and outside the government. Although the revisions make some important refinements and clarifications, the Department believes that the 1982 Merger Guidelines provide a sound framework for applying the antitrust laws to mergers and do not require extensive modification.

During the 14 years following the original publication of the Merger Guidelines in 1968, antitrust enforcers and the courts made great strides in improving and refining the way they analyzed mergers. Over time, the Department's merger policy changed so much that there was little similarity between that policy and the policy described in 1968 Guidelines. The 1982 revisions eliminated the resulting confusion by accurately describing the Department's actual merger enforcement policy.

The 1982 Guidelines did not simply clarify the Department's merger policy, however; they also represented an important advance in merger analysis. The 1982 Guidelines recognized that most mergers do not threaten competition and that many are in fact procompetitive and benefit consumers. Moreover, the 1982 Guidelines reflected for the first time the important role that foreign competition plays in the Department's merger analysis. They thus provided a flexible analysis that proscribed only those mergers that—on the basis of sound economic and legal analysis—threaten competition. At the same time, the Guidelines set out clear standards enabling businesses to avoid antitrust problems when planning mergers.

The Department's experience in applying the Guidelines during the last two years has reaffirmed the soundness of their underlying principles. Nevertheless, the Department recognizes that unless its analysis is as dynamic and vital as the economy to which it is applied, that analysis may unnecessarily impede the efficiency of the economy, restrict the efforts of American businesses to compete internationally, and, thus, reduce the well-being of American consumers. Thus, over the past two year, the Department has continued to refine its merger analysis to incorporate new insights and to ensure the continued relevance of that analysis to a changing economic environment. The Department also has discovered that certain aspects of the 1982 Guidelines either are ambiguous or have been interpreted by observers in ways that are not fully consistent with the Department's actual policy. With today's revisions, the Department intends to refine further its merger analysis at the same time it clears up any misunderstanding about those aspects that remain unchanged.

Today's revisions principally address five key areas: (1) Market definition and measurement; (2) factors that may affect the significance of concentration and market share data in evaluating horizontal mergers; (3) the treatment of foreign competition; (4) the treatment of efficiencies; and (5) the treatment of failing divisions of healthy firms. Generally, the revisions are intended to correct any misperception that the Guidelines are a set of rigid mathematical formulas that ignore market realities and rely solely on a static view of the marketplace. The revisions also make a number of stylistic and technical changes. Many important points have been moved from footnotes to the text to emphasize their importance, and other footnotes have been deleted because they were redundant or potentially confusing. However, no change in policy should be inferred from the deletion of a footnote.

The following is an explanation of the revisions made in the five key areas listed above.

1. Market Definition and Measurement

Perhaps the single most important contribution of the 1982 Guidelines was the development of a clear, economically sound framework for defining markets within which to analyze mergers. Market definition has historically played a crucial role in merger analysis; however, before the 1982 Guidelines, markets often were defined largely on an *ad hoc* basis. The 1982 Guidelines developed a general framework for market definition that can be objectively applied to a myriad of factual circumstances.

The Guidelines define a market as a group of products and a geographic area such that a hypothetical firm that is the only present and future seller of those products in that area would possess market power—the power profitably to restrict output and to raise prices. A firm that is the only present seller of those products in that area would not be able to exercise market power, if its attempt to impose a small but significant and nontransitory price increase would cause buyers to switch to other products or to products in other areas or would induce other firms to begin selling the particular products. Firms that sell products to which consumers would switch and that would begin selling the particular products would prevent the exercise of market power and should be included in the market.

The Guidelines translate these principles of market power into a market-definition standard that has become known as the "five-percent test" Markets are delineated by postulating a "small but significant and nontransitory" price increase—generally an increase of five percent for one year—for each product of each merging firm at that firm's location and examining the likely responses of buyers, sellers of other products, and sellers in other areas. If these competitive responses would cause the price increase to be unprofitable, then the area and group of products are expanded to include additional products and areas until the price increase would be profitable to impose. At that point—when it would be profitable for a hypothetical firm that was the only seller of the products in that area to impose a "small but significant and nontransitory" increase in price—the group of products and the area are considered to be a market.

Many apparently have attributed an unwarranted rigidity to the "five-percent test." Today's revisions clarify that the "five-percent test" is not an inflexible standard that will be used regardless of the circumstances of a given case. Rather, it is an analytical tool with which to analyze traditional types of probative evidence, such as those listed in the Guidelines. In addition, although in most contexts it will be appropriate to use five percent as a "small but significant" increase in price, in other contexts using five percent may result in markets that are defined either too narrowly or too broadly for the purpose of evaluating the potential exercise of market power. Therefore, the Department may at times postulate a price increase that is much larger or smaller than five percent, depending on the nature of the industry involved. (See Guidelines Section 2.11)

The 1982 Guidelines did not define the "price" for which an increase would be postulated. Today's revisions clearly state that the Department will consider

the relevant price to be whatever is considered to be the price of the product at the stage of the industry being examined. For example, the relevant price at the retailing stage of an industry is generally the retail price. On the other hand, in certain transportation industries in which products are transported for a fee, the price is the price of the transportation services sold, or the tariff.

The Guidelines also clarify a number of other points relating to market definition:

—The Department generally will consider the relevant market to be the smallest group of products and geographic area that could be subjected to the exercise of market power. (See Guidelines Section 2.11)

—In defining markets the Department generally will use prevailing prices. However, likely future prices may be used instead of prevailing prices when changes in the prevailing price can be predicted with reasonable reliability. (See Guidelines Sections 2.12, 2.32)

—If all the necessary data were available, evidence of similarities or differences in price movements would be the best evidence that products are good substitutes for one another. However, similarities in price movements often occur for reasons that do not reflect substitutability. Therefore, the Department will deem relevant only those similarities in price movements that are not explainable by common or parallel changes in factors such as costs of common inputs, income, or other variables. (See Guidelines Section 2.11)

—The best base for measuring market shares often will depend on the availability of data. Assuming the relevant data are available, the Department generally will prefer to use dollar sales or shipments if branded or relatively differentiated products are involved and physical capacity, reserves, or dollar production if relatively homogeneous, undifferentiated products are involved. This rule-of-thumb reflects the fact that, if a product is relatively homogeneous and undifferenciated, the capacity to produce and distribute the product generally provides the best indication of a firm's likely supply response. On the other hand, if the relevant product is branded or differentiated, the firm's supply response will depend of factors other than capacity. For example, even if other perfume manufacturers raised their prices, a manufacturer of a different brand of perfume with a great deal of excess capacity may nevertheless be unable to utilize that capacity because it cannot sell the addition output of perfume. (See Guidelines Section 2.4)

—The period for determining whether production substitution by other firms is likely to occur in response to a "small but significant and nontransitory" increase in price has been changed from six months to one year to conform with the time period that is used to identify firms that are in the relevant geographic market. (See Guidelines Sections 2.2, 2.3)

2. Factors Affecting the Significants of Concentration and Market Share Data

Several revisions have been made in the Guidelines' discussion of horizontal mergers to clarify the degree to which factors other than simple concentration and market share data influence the Department's consideration of mergers. The 1982 Guidelines may have created the perception that they were a set of strict mathematical rules—that the Department collects historical data, plugs this data into a series of formulas, and then slavishly adheres to resulting answers without regard to qualitative factors that may affect the significants of the concentration and market share data. The following changes were made to correct any such misperception.

First, the discussion of the HHI thresholds has been modified to clarify that the Department will not challenge mergers solely on the basis of concentration and market share data without considering other relevant factors. The revisions make it clear that the Department will not challenge mergers with a post-merger HHI of less than 1000 points, except in extraordinary circumstances.

For mergers resulting in an HHI of between 1000 to 1800, the Department is unlikely to sue if the increase in the HHI is less than 100 points. The Department is likely to challenge mergers in this region that product an increase in the HHI of more than 100 points, unless the Department concludes on the basis of the post-merger HHI, the increase in the HHI, and the presence on absence of the factors discussed in Section 3.2, 3.3, 3.4, and 3.5 of the Guidelines that the merger is not likely substantially to lessen competition.

For mergers resulting in an HHI of more than 1800, the Department is unlikely to sue if the increase in the HHI is less than 50 points. The Department is likely to challenge mergers in this region that product an increase in the HHI of more than 50 points, unless the Department concludes, on the basis of the post-merger HHI, the increase in the HHI, and the presence or absence of the factors discussed in Section 3.2, 3.3, 3.4, and 3.5 that the merger is not likely substantially to lessen competition. However, if the increase in the HHI exceeds 100 and the post-merger HHI substantially exceeds 1800, only in extraordinary cases will such factors establish that the merger is not likely substantially to lessen competition. Despite this fact, the Department will never ignore other factors when they are relevant. (See Guidelines Section 3.11)

Second, a new section has been added that discusses several factors that will be taken into account in interpreting concentration and market share data. The new subsection indicates that the Department will consider a number of factors that may indicate that a firm's current market share either understates or overstates it future competitive significance. One such factor is a recent or ongoing change in market conditions. For example, if a new technology that it important to long-term competitive viability is not available ot a particular firm, the Department may conclude that the historical market share of that firm overstates its future competitive significance. The Department will consider the reasonably predictable effects of such recent or ongoing changes in market conditions in interpreting market concentration and market share data. (See Guidelines Section 3.2)

Another consideration is the financial condition of a merging firm or any firm in the relevant market, to the extent that the firm's financial condition reflects underlying structural weaknesses of the firm and is not explainable as a phenomenon of, for example, the business cycle. In such a case, the firm's chronic financial weakness may indicate that its current market share overstates its future competitive significance. The 1982 Guidelines indicated in footnote 54 that the Department would consider the financial condition of a firm to the extent it was relevant to the competitive analysis. The revisions explain in greater detail the circumstances under which the Department will consider the financial condition of a firm to be a reliable indicator of that firm's future competitive significant. (See Guidelines Section 3.22) It is important to distinguish consideration of a firm's financial condition under Section 3.22 from the Guidelines' treatment of failing firms and failing divisions, however. Those doctrines will continue to be interpreted very strictly.

A third consideration is factors that may affect the competitive importance of foreign firms. These factors are discussed below in connection with the

general discussion of foreign competition.

The revisions also add a new "other factor" to Section 3.4 relating to the ability of small or fringe firms to increase sales in response to a "small but significant and nontransitory" increase in price. (See Guidelines Section 3.43) The ability of fringe firms with excess capacity to expand output quickly and easily can substantially reduce the likelihood of collusion. Therefore, the Department is less likely to challenge a merger if small or fringe firms are currently able to expand significant their sales at incremental costs that are approximately equal to their incremental costs at current levels of output.

Finally, the section on ease of entry has been revised to clarify how the Department considers this factor. For example, the revisions recognize that "entry" may occur as firms outside the market enter or as fringe firms currently in the market significant expand their current capacity. (See Guidelines Section 3.3)

3. Treatment of Foreign Competition

One of the important advances of the 1982 Guidelines was their explicit recognition of foreign competition and world markets. The presence of foreign firms frequently makes it impossible for American firms to collude because any attempt to fix prices will attract increased imports. Although the 1982 Guidelines recognized the importance of foreign competition, they were somewhat unclear as to how imports and foreign capacity would actually be treated in specific circumstances.

Today's revisions clarify that, in general, the Guidelines' standards relating to the definition of markets and the calculation of market shares will apply equally to foreign and domestic firms. Moreover, no foreign firm will be excluded from the market solely because its sales in the United States are subject to import quotas. This is due to the fact that it is generally difficult to assess the effectiveness and longevity of a particular quota or to measure the likely offsetting supply response from firms in countries that are not subject to a quota. A quota that applies to only some countries and not others may have only a limited effect on the foreign competition that domestic firms face, because a country subject to a quota may divert its exports to a country that is not subject to the quota and that country in turn may divert an equivalent quantity of the product to the United States. Given the limitations on available data, the problems associated with trying to quantify the effects of such trade restraints often are insuperable.

To the extent permitted by available data, market shares generally will be assigned to foreign firms in the same way they are assigned to domestic firms. When dollar sales or shipments are used to measure the shares of domestic firms, the market shares of foreign firms will be measured using dollar sales in, or shipments to, the relevant market. If physical capacity, reserves, or dollar production is used for domestic firms, the market shares of foreign firms will be measured in terms of the capacity, reserves, or production that is likely to be devoted to the relevant United States market in response to a "small but significant and nontransitory" increase in price. If a quota would prevent a foreign competitor from increasing the amount of its shipments to the United States in response to such a price increase, the market shares assigned to the foreign competitor will not exceed the amount of imports permitted to be shipped to the United States under the quota. Although shares ordinarily will be assigned on a firm-by-firm basis, a single market share may be assigned to a country or to a group of countries if firms in the country or group of countries act in coordination, or if necessitated by the lack of relevant data. (See Guidelines Section 2.4)

Because of limitations on data, market shares of foreign firms may inaccurately reflect the firms' competitive significance. As noted above, foreign firms may be included in the market even though their U.S. imports are subject to quotas. In such cases, as well as others, the resulting market shares may overstate the competitive significance of the firms. Conversely, the Department may use shipment data because it may be impossible to measure foreign capacity that would be devoted to the United States in response to a "small but significant and nontransitory" increase in price. In such cases, the foreign firm's market share may understate its competitive significance. In general then, the Department will consider, where appropriate, qualitative evidence relating to the competitive significance of foreign firms in interpreting market share and concentration data. (See Guidelines Section 3.23)

4. Efficiencies

One of the important advances of the 1982 Guidelines was the increased freedom they gave to American industries to enhance efficiency through mergers. Implicit throughout the Guidelines is the recognition that the efficiency-enhancing potential of mergers can increase the competitiveness of firms and result in lower prices to consumers.

The language of the 1982 Guidelines, however, had a restrictive, somewhat misleading tone and indicated that the Department would explicitly consider efficiency claims only in "extraordinary cases." In practice, the Department never ignores efficiency claims. Rather, as the revisions now make clear, the Department considers and gives appropriate weight to efficiency claims in all cases in which they are established by clear and convincing evidence. In addition, the revisions clarify that efficiencies do not constitute a defense to an otherwise anticompetitive merger but are one of many factors that will be considered by the Department in determining whether to challenge a merger.

The revisions are intended not only to correct any misimpressions as to when the Deparatment will consider efficiencies but also to provide guidance as to how efficiencies will be evaluated. The Guidelines indicate that the Department will consider various types of efficiencies including economies of scale, better integration of production facilities, plant specialization, and lower transportation costs. The Deparatment also will consider general selling, administrative and overhead expenses; however, as a practical matter, these types of efficiencies may be difficult to demonstrate. In addition, the department will reject claimed efficiencies if equivalent or comparable savings can reasonably be achieved by the parties by other means. Moreover, the greater the competitive concerns that the merger raises under the other standards of Section 3 of the Guidelines, the greater will be the level of expected efficiencies that the parties must establish. (See Guidelines Section 3.5)

5. Failing Divisions of Healthy Firms

The dynamic nature of our economy underscores the necessity of a merger policy that facilitates the ability of firms to respond to structural changes in the economy. The Department has considered several suggestions that the Guidelines should contain a declining industries defense or that the failing firm defense should be relaxed. However, the Department has concluded that, as revised, the basic framework of the Guidelines provides firms with adequate leeway for any needed restructuring. For example, the Department will consider the financial condition of firms in evaluating the competitive significance of their market shares. (See Guidelines Section 3.22) In addition, if the

acquisitions of a failing firm significantly increases efficiency, that fact will be considered. (See Guidelines Section 3.5)

Although the Department did not relax the failing firm defense or create a declining industries defense, the Department did conclude that it was appropriate to clarify the Guidelines' analysis of mergers involving a "failing division" of an otherwise healthy firm. The 1982 Guidelines stated only that although the standards applicable to failing firms are more difficult to apply to an unincorporated part of a larger parent firm, the Department would recognize the defense "in appropriate cases of that type." The revisions clarify that, in general, a division will be considered to be "failing" only if it would be sold or liquidated in the near future and if there is no competitively preferable purchaser available. (See Guidelines Section 5.2)

U.S. DEPARTMENT OF JUSTICE

Merger Guidelines

Dated: As of June 14, 1984.

1. Purpose and and Underlying Policy Assumptions
2. Market Definition and Measurement
  2.1 Product Market Definition
  2.2 Identification of Firms that Produce the Relevant Product
  2.3 Geographic Market Definition
  2.4 Calculating Market Shares
3. Horizontal Mergers
  3.1 Concentration and Market Shares
  3.2 Factors Affecting the Significance of Market Shares and Concentration
  3.3 Ease of Entry
  3.4 Other Factors
  3.5 Efficiencies
4. Horizontal Effect From Non-Horizontal Mergers
  4.1 Elimination of Specific Potential Entrants
  4.2 Competitive Problems from Vertical Mergers
5. Defenses
  5.1 Failing Firm
  5.2 Failing Division

1. Purpose and Underlying Policy Assumptions

These Guidelines state in outline form the present enforcement policy of the U.S. Department of Justice ("Department") concerning acquisition and mergers ("mergers") subject to section 7 of the Clayton Act[1] or to section 1 of the Sherman Act.[2] They describe the general principles and specific standards normally used by the Department in analyzing mergers.[3] By stating its policy as simply and clearly as possible, the Department hopes to reduce the uncertainty associated with enforcement of the antitrust laws in this area.

Although the Guidelines should improve the predictability of the Department's merger enforcement policy, it is not possible to remove the exercise of judgment from the evaluation of mergers under the antitrust laws. Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, strict application of those standards may provide misleading answers to the economic questions raised under the antitrust laws. Moreover, the picture of competitive conditions that develops from historical evidence may provide an incomplete answer to the forward-looking inquiry of the Guidelines. Therefore, the Department will apply the standards of the Guidelines reasonably and flexibly to the particular facts and circumstances of each proposed merger.

The Guidelines are designed primarily to indicate when the Department is likely to challenge mergers, not how it will conduct the litigation of cases that it decides to bring. Although relevant in the latter context, the factors contemplated in the standards do not exhaust the range of evidence that the Department may introduce in court.[4]

The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance "market power" or to facilitate its exercise. A sole seller (a "monopolist") of a product with no good substitutes can maintain a selling price that is above the level that would prevail if the market were competitive. Where only a few firms account for most of the sales of a product, those firms can in some circumstances either explicitly or implicitly coordinate their actions in order to approximate the performance of a monopolist. This ability of one or more firms profitably to maintain prices above competitive levels for a significant period of time is termed "market power." Sellers with market power also may eliminate rivalry on variables other than price. In either case, the result is a transfer of wealth from buyers to sellers and a misallocation of resources.

"Market power" also encompasses the ability of a single buyer or group of buyers to depress the price paid for a product to a level that is below the competitive price. The exercise of market power by buyers has wealth transfer and resource misallocation effects analogous to those associated with the exercise of market power by sellers.

Although they sometimes harm competition, mergers generally play an important role in a free enterprise economy. They can penalize ineffective management and facilitate the efficient flow of investment capital and the redeployment of existing productive assets. While challenging competitively harmful mergers, the Department seeks to avoid unnecessary interference with that larger universe of mergers that are either competitively beneficial or neutral. In attempting to mediate between these dual concerns, however, the Guidelines reflect the congressional intent that merger enforcement should interdict competitive problems in their incipiency.

2. Market Definition and Measurement

2.0 Using the standards stated below, the Department will define and measure the market for each product or service (hereinafter "product") of each of the merging firms. The standards in the Guidelines are designed to ensure that the Department analyzes the likely competitive impact of a merger within economically meaningful markets—i.e., markets that could be subject to the exercise of market power. Accordingly, for each product of each merging firm, the Department seeks to define a market in which firms could effectively exercise market power if they were able to coordinate their actions. Formally, a market is defined as a product or group of products and a geographic area in which it is sold such that a hypothetical, profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products in that area would impose a "small but significant and nontransitory" increase in price above prevailing or likely future levels. The group of products and geographic area that comprise a market will be referred to respectively as the "product market" and the "geographic market."

In determining whether one or more firms would be in a position to exercise market power, it is necessary to evaluate both the probable demand responses of consumers and the

[1] 15 U.S.C. 18 (1982). Mergers subject to section 7 are prohibited if their effect "may be substantially to lessen competition, or to tend to create a monopoly."

[2] 15 U.S.C. 1 (1982). Mergers subject to section 1 are prohibited if they constitute a "contract, combination . . . , or conspiracy in restraint of trade."

[3] They *update the* Guidelines issued by the Department in 1982. The Department may from time to time revise the Merger Guidelines as necessary to reflect any significant changes in enforcement policy or to clarify aspects of existing policy.

[4] Parties seeking more specific advance guidance concerning the Department's enforcement intentions with respect to any particular merger should consider using the Business Review Procedure. 28 CFR 50.6.

probable supply responses of other firms. A price increase could be made unprofitable by any of four types of demand or supply responses: (1) Consumers switching to other products; (2) consumers switching to the same product produced by firms in other areas; (3) producers of other products switching existing facilities to the production of the product; or (4) producers entering into the production of the product by substantially modifying existing facilities or by constructing new facilities. Each type of response is considered under the Guidelines.

In determining whether any of these responses are probable, the department usually must rely on historical market information as the best, and sometimes the only, indicator of how the market will function in the future. It is important to note, however, that the Guidelines are fundamentaly concerned with probable future demand or supply responses.

Sections 2.1 through 2.4 described how product and geographic markets will be defined under these Guidelines and how market shares will be calculated.

2.1 Product Market Definition

2.11 General Approach

The Department will first determine the relevant product market with respect to each of the products of each of the merging firms. In general, the Department will include in the product market a group of products such that a hypothetical firm that was the only present and future seller of those products ("monopolist") could profitably impose a "small but significant and nontransitory" increase in price. That is, assuming that buyers could respond to an increase in price for a tentatively identified product group only by shifting to other products, what would happen? If readily available alternatives were, in the aggregate, sufficiently attractive to enough buyers, an attempt to raise price would not prove profitable, and the tentatively identified product group would prove to be too narrow.

Specifically, the Department will begin with each product (narrowly defined) produced or sold by each merging firm and ask what would happen if a hypothetical monopolist of that product imposed a "small but significant and nontransitory" increase in price.[5] If the price increase would cause so many buyers to shift to other products that a hypothetical monopolist would not find it profitable to impose such an increase in price, then the Department will add to the product group the product that is the next-best substitute for the merging firm's product and ask the same question again. This process will continue until a group of products is identified for which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price. The Department generally will consider the relevant product market to be the smallest group of products that satisfies this test.

In the above analysis, the Department will use prevailing prices of the products of the merging firms and possible substitutes for such products. However, the Department may use likely future prices when changes in the prevailing prices can be predicted with reasonable reliability. Changes in price may be predicted on the basis of, for example, expected changes in costs or demand caused by changes in environmental regulations or expected changes in regulations that directly affect price.

In general, the price for which an increase will be postulated will be whatever is consider to be the price of the product at the stage of the industry being examined.[6] In attempting to determine objectively the effect of a "small but significant and nontransitory" increase in price, the Department in most contexts will use a price increase of five percent lasting one year. However, what constitutes a "small but significant and nontransitory" increase in price will depend on the nature of the industry, and the Department at times may use a price increase that is larger or smaller than five percent.[7] For the purposes of its analysis, the Department will assume that the buyers and sellers immediately become aware of the price increase.

2.12 Relevant Evidence

Although direct evidence of the likely effect of a future price increase may sometimes be available, it usually will be necessary for the Department to infer the likely effects of a price increase from various types of reliable, circumstantial evidence. The postulated "small but significant and nontransitory" price increase provides an objective standard by which to analyze the available evidence. Thus, in evaluating product substitutability, the Department will consider all relevant evidence but will give particular weight to the following factors:

(1) Evidence of buyers' perceptions that the products are or are not substitutes, particularly if those buyers have actually considered shifting purchases between the products in response to changes in relative price or other competitive variables;

(2) Differences in the price movements of the products or similarities in price movements over a period of years that are not explainable by common or parallel changes in factors such as costs of inputs, income, or other variables;

(3) Similarities or differences between the products in customary usage, design, physical composition, and other technical characteristics; and

(4) Evidence of sellers' perceptions that the products are or are not substitutes, particularly if business decisions have been based on those perceptions.

2.13 Price Discrimination

The analysis of product market definition to this point has assumed that price discrimination—charging different buyers different prices for products having the same cost, for example—would not be possible after the merger. Existing buyers sometimes will differ significantly in their assessment of the adequacy of a particular substitute and the ease with which they could substitute it for the product of the merging firm. Even though a general increase in price might cause such significant substitution that it would not be profitable, sellers who can price discriminate could raise price only to groups of buyers who cannot easily substitute away.[8] If such price discrimination is possible, the Department will consider defining additional, narrower relevant product markets consisting of particular uses of the product for which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price.

2.2 Identification of Firms that Produce the Relevant Product

In most cases, the Department's evaluation of a merger will focus primarily on firms that currently produce and sell the relevant product. In

[5] Although discussed separately, product market definition and geographic market definition are interrelated. In particular, the extent to which buyers of a particular product would shift to other products in the event of a "small but significant and nontransitory" increase in price must be evaluated in the context of the relevant geographic market.

[6] For example, in a merger between retailers, the relevant price would be the retail price of a product to consumers. In the case of a merger among oil pipelines, the relevant price would be the tariff—the price of the transportation service.

[7] For example, a larger increase may be appropriate if the "price" to be increased is a tariff or commission that constitutes a small fraction of the price of the product being transported or sold.

[8] Price discrimination requires that sellers be able to identify those buyers and that other buyers be unable profitably to purchase and resell to them.

addition, the Department may include other firms in the market if their inclusion would more accurately reflect probable supply responses. The following are examples of circumstances in which such additional firms would be included in the market.

2.21 Production Substitution

The same productive and distributive facilities can sometimes be used to produce and sell two or more products that buyers do not regard as good substitutes. Production substitution refers to the shift by a firm in the use of facilities from producing and selling one product to producing and selling another. Depending upon the cost and speed of that shift, production substitution may allow firms that do not currently produce the relevant product to respond effectively to an increase in the price of that product.[9]

If a firm has existing productive and distributive facilities that could easily and economically be used to produce and sell the relevant product within one year in response to a "small but significant and nontransitory" increase in price, the Department will include that firm in the market.[10] In this context, a "small but significant and nontransitory" increase in price will be determined in the same way in which it is determined in product market definition. In many cases, a firm that could readily convert its facilities from the production of one product to another would have significant difficulty distributing or marketing the new product or for some other reason would find the substitution unprofitable. Such firms will not be included in the market. The competitive significance of such firms, as well as those that will not be included in the market because they must construct significant new productive and distributive facilities, will be considered in evaluating entry conditions generally. See Section 3.3 (Ease of Entry).

[9] Under other analytical approaches, production substitution sometimes has been reflected in the description of the product market. For example, the product market for stamped metal products such as automobile hub caps might be described as "light metal stamping," a production process rather than a product. The Department believes that the approach described in the text provides a more clearly focused method of incorporating this factor in merger analysis. If production substitution among a group pf products is nearly universal among the firms selling one or more of those products, however, the Department may use an aggregate description of those markets as a matter of convenience.

[10] The amount of sales or capacity to be included in the market is a separate question discussed in Section 2.4, below.

2.22 Durable Products

Some long-lived products may continue to exert competitive influence after the time of original sale. If, under the standards stated in Section 2.1, recycled or reconditioned products represent good substitutes for new products, the Department will include in the market firms that recycle or recondition those products.

2.23 Internal Consumption

Captive production and consumption of the relevant product by vertically integrated firms are part of the overall market supply and demand. Such firms may respond to an increase in the price of the relevant product in either of two ways. They may begin selling the relevant product, or alternatively, they may continue to consume all of their production but increase their production of both the relevant product and products in which the relevant product is embodied. Either kind of supply response could frustrate collusion by firms currently selling the relevant product. If a firm would be likely to respond either way to a "small but significant and nontransitory" increase in price, the Department will include that firm in the market. In this context, a "small but significant and nontransitory" increase in price will be determined in the same way in which it is determined in product market definition.

2.3 Geographic Market Definition

2.31 General Approach

For each product market of each merging firm, the Department will determine the geographic market or markets in which that firm sells. The purpose of geographic market definition is to establish a geographic boundary that roughly separates firms that are important factors in the competitive analysis of a merger from those that are not. Depending on the nature of the product and the competitive circumstances, the geographic market may be as small as part of a city or as large as the entire world. Also, a single firm may operate in a number of economically discrete geographic markets.

In general, the Department seeks to identify a geographic area such that a hypothetical firm that was the only present or future producer *or seller* of the relevant product in that area could profitably impose a "small but significant and nontransitory" increase in price. That is, assuming that buyers could respond to a price increase within a tentatively identified area only by shifting to firms located outside the area, what would happen? If firms located elsewhere readily could provide the relevant product to the hypothetical firm's buyers in sufficient quantity at a comparable price, an attempt to raise price would not prove profitable, and the tentatively identified geographic area would prove to be too narrow.

In defining the geographic markets or market affected by a merger, the Department will begin with the location of each merging firm (or each plant of a multiplant firm) and ask what would happen if a hypothetical monopolist of the relevant product at that point imposed a "small but significant and nontransitory" increase in price. If this increase in price would cause so many buyers to shift to products produced in other areas that a hypothetical monopolist producing or selling the relevant product at the merging firm's location would not find it profitable to impose such an increase in price, then the Department will add the location from which production is next-best substitute for production at the merging firm's location and ask the same question again. This process will be repeated until the Department identifies an area in which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price. The "smallest market" principal will be applied as it is in product market definition. Both the price in which an increase will be postulated and what constitutes a "small but significant and nontransitory" increase in price will be determined in the same way in which it is determined in product market definition.

2.23 Relevant Evidence

Although direct evidence of the likely effect of a future price increase may sometimes be available, it usually will be necessary for the Department to infer the likely effects of a price increase from various types of reliable, circumstantial evidence. The postulated "small but significant and nontransitory" increase in price provides an objective standard by which to analyze the available evidence. Thus, in evaluating geographic substitutability, the Department will consider all relevant evidence but will give particular weight to the following factors:

(1) The shipment patterns of the merging firm and of those firms with which it actually competes for sales;

(2) Evidence of buyers having actually considered shifting their purchases among sellers at different geographic locations, especially if the shifts

corresponded to changes in relative price or other competitive variables;

(3) Differences in the price movements of the relevant product or similarities in price movements over a period of years that are not explainable by common or parallel changes in factors such as the cost of inputs, income, or other variables in different geographic areas;

(4) Transportation costs;

(5) Costs of local distribution; and

(6) Excess capacity of firms outside the location of the merging firm.

2.33 Price Discrimination

The analysis of geographic market definition to this point has assumed that geographic price discrimination—charging different prices net of transportation costs for the same product to buyers in different locations, for example—would not be possible after the merger. As in the case of product market definition, however, where price discrimination is possible,[11] the Department will consider defining additional, narrower geographic markets consisting of particular locations in which a hypothetical monopolist could profitably impose a "small but significant and nontransitory" increase in price.

2.34 Foreign Competition

In general, the foregoing standards will govern market definition, whether domestic or international. Although voluntary or involuntary quotas may pervent foreign competitors from increasing their imports into the United States in response to a domestic price increase, the Department will not exclude foreign competitors from the relevant market solely on the basis of the quotas. This is primarily because it frequently is difficult to determine and measure the effectiveness and longevity of a particular quota or any offsetting supply response from firms in countries not subject to the quota. The Department will consider the effects of a quota as a separate factor in interpreting the significance of market shares and market concentration. See Section 3.23 (Special Factors Affecting Foreign Firms).

2.4 Calculating Market Shares

The Department normally will include in the market the total sales of capacity of all domestic firms (or plants) that are identified as being in the market under Sections 2.2 and 2.3. Market shares can be expressed either in dollar terms through measurement of sales, shipments, or production, or in physical terms through measurement of sales, shipments, production, capacity, or reserves. As a practical matter, the availability of data often will determine the measurement basis. When the availability of data allows a choice, dollar sales or shipments generally will be used if branded or relatively differentiated products are involved, and physical capacity, reserves, or dollar production generally will be used if relatively homogeneous, undifferentiated products are involved.

In some cases, however, total sales or capacity may overstate the competitive significance of a firm. The Department will include only those sales likely to be made or capacity likely to be used in the market in response to a "small but significant and nontransitory" increase in price, for example, with respect to firms included in the market under Sections 2.21 (Production Substitution) and 2.23 (Internal Consumption). Similarly, a firm's capacity may be so committed elsewhere that it would not be available to respond to an increase in price in the market. In such cases, the Department also may include a smaller part of the firm's sales or capacity.

To the extent available information permits, market shares will be assigned to foreign competitors in the same way in which they are assigned to domestic competitors. If dollar sales or shipments are used to measure shares of domestic firms, the market shares of foreign firms will be measured using dollar sales in, or shipments to, the relevant market.[12] If physical capacity, reserves, or dollar production is used for domestic firms, the shares of foreign firms will be measured in terms of the capacity or reserves likely to be used to supply, or production that is likely to be shipped to, the relevant market in response to a "small but significant and nontransitory" price increase. If shipments from a particular country to the United States are subject to a quota, the market shares assigned to firms in that country will not exceed the amount of shipments by such firms allowed under the quota. Current shipments rather than capacity or reserves may be used for foreign firms if it is impossible reliably to quantify the proportion of the firms' capacity, reserves, or production that would be devoted to the relevant market in response to a "small but significant and nontransitory" increase in price because of, for example, the lack of available data regarding foreign capacity or the commitment of such capacity to other markets. Finally, a single market share may be assigned to a country or group of countries if firms in that country or group of countries act in coordination or if necessitated by data limitations.

3. Horizontal Mergers

3.0 Where the merging firms are in the same product and geographic market, the merger is horizontal. In such cases, the Department will focus first on the post-merger concentration of the market and the increase in concentration caused by the merger. For mergers that result in low market concentration or a relatively slight increase in concentration, the Department will be able to determine without a detailed examination of other factors that the merger poses no significant threat to competition. In other cases, however, the Department will proceed to examine a variety of other factors relevant to that question.

3.1 Concentration and Market Shares

Market concentration is a function of the number of firms in a market and their respective market shares.[13] Other things being equal, concentration affects the likelihood that one firm, or a small group of firms, could successfully exercise market power. The smaller the percentage of total supply that a firm controls, the more severely it must restrict its own output in order to produce a given price increase, and the less likely it is that an output restriction will be profitable. If collective action is necessary, an additional constraint applies. As the number of firms necessary to control a given percentage of total supply increases, the difficulties and costs of reaching and enforcing consensus with respect to the control of that supply also increase.

As an aid to the interpretation of market data, the Department will use the Herfindahl-Hirschman Index ("HHI") of market concentration. The HHI is calculated by summing the squares of the individual market shares of all the firms included in the market under the standards in Section 2 of these

[11] Geographic price discrimination against a group of buyers is more likely when other buyers cannot easily purchase and resell the relevant product to them. Such arbitrage is particularly difficult where the product is sold on a delivered basis and where transportation costs are a significant percentage of the final cost.

[12] If exchange rates fluctuate significantly, making comparable dollar calculations for different firms difficult, then the volume of unit sales may be a better measure of market share than dollar sales and may be used instead.

[13] Markets can range from atomistic, where very large numbers of firms that are small relative to the overall size of the market compete with one another, to monopolistic, where one firm controls the entire market. Far more common, and more difficult analytically, is the large middle range of instances where a relatively small number of firms accounts for most of the sales in the market.

Guidelines.[14] Unlike the traditional four-firm concentration ratio, the HHI reflects both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms. It also gives proportionately greater weight to the market shares of the larger firms, which probably accords with their relative importance in any collusive interaction.

The Department divides the spectrum of market concentration as measured by the HHI into three regions that can be broadly characterized as unconcentrated (HHI below 1000), moderately concentrated (HHI between 1000 and 1800), and highly concentrated (HHI above 1800). An empirical study by the Department of the size dispersion of firms within markets indicates that the critical HHI thresholds at 1000 and 1800 correspond roughly to four-firm concentration ratios of 50 percent and 70 percent, respectively. Although the resulting regions provide a useful format for merger analysis, the numerical divisions suggest greater precision than is possible with the available economic tools and information. Other things being equal, cases falling just above and just below a threshold present comparable competitive concerns. Moreover, because concentration and market share data present a historical picture of the market, the Department must interpret such data in light of the relevant circumstances and the forward-looking objective of the Guidelines—to determine likely future effects of a given merger.

3.11 General Standards

In evaluating horizontal mergers, the Department will consider both the post-merger market concentration and the increase in concentration resulting from the merger.[15] The link between concentration and market power is explained above. The increase in concentration is relevant to several key issues. Although mergers among small firms increase concentration, they are less likely to have anticompetitive consequences. Moreover, even in concentrated markets, it is desirable to allow firms some scope for merger activity in order to achieve economies of scale and to permit exit from the market. However, market share and concentration data provide only the starting point for analyzing the competitive impact of a merger. Before determining whether to challenge a merger, the Department will consider all other relevant factors that pertain to its competitive impact.

The general standards for horizontal mergers are as follows:

(a) Post-Merger HHI Below 1000. Markets in this region generally would be considered to be unconcentrated. Because implicit coordination among firms is likely to be difficult and because the prohibitions of section 1 of the Sherman Act are usually an adequate response to any explicit collusion that might occur, the Department will not challenge mergers falling in this region, except in extraordinary circumstances.

(b) Post-Merger HHI Between 1000 and 1800. Because this region extends from the point at which the competitive concerns associated with concentration are raised to the point at which they become quite serious, generalization is particularly difficult. The Department, however, is unlikely to challenge a merger producing an increase in the HHI of less than 100 points.[16] The Department is *likely* to challenge mergers in this region that produce an increase in the HHI of more than 100 points, unless the Department concludes, on the basis of the post-merger HHI, the increase in the HHI, and the presence or absence of the factors discussed in Sections 3.2, 3.3, 3.4, and 3.5 that the merger is not likely substantially to lessen competition.

(c) Post-Merger HHI Above 1800. Markets in this region generally are considered to be highly concentrated. Additional concentration resulting from mergers is a matter of significant competitive concern. The Department is unlikely, however, to challenge mergers producing an increase in the HHI of less than 50 points.[17] The Department is likely to challenge mergers in this region that produce an increase in the HHI of more than 50 points, unless the Department concludes, on the basis of the post-merger HHI, the increase in the HHI, and the presence or absence of the factors discussed in Sections 3.2, 3.3, 3.4, and 3.5 that the merger is not likely substantially to lessen competition. However, if the increase in the HHI exceeds 100 and the post-merger HHI substantially exceeds 1800, only in extraordinary cases will such factors establish that the merger is not likely substantially to lessen competition.

3.12 Leading Firm Proviso

In some cases, typically where one of the merging firms is small, mergers that may create or enhance the market power of a single dominant firm could pass scrutiny under the standards stated in Section 3.11. Notwithstanding those standards, the Department is likely to challenge the merger of any firm with a market share of at least one percent with the leading firm in the market, provided the leading firm has a market share that is at least 35 percent. Because the ease and profitability of collusion are of little relevance to the ability of a single dominant firm to exercise market power, the Department will not consider the presence or absence of the factors discussed in Section 3.4 because they relate to the likelihood of collusion. The Department will consider, however, the factors in Sections 3.2, 3.3, and 3.5 because they are relevant to the competitive concerns associated with a leading-firm merger.

3.2 Factors Affecting the Significance of Market Shares and Concentration

In a variety of situations, market share and market concentration data may either understate or overstate the likely future competitive significance of a firm or firms in the market. The following are examples of such situations.

3.21 Changing Market Conditions

Market Concentration and market share data of necessity are based on historical evidence. However, recent or on-going changes in the market may indicate that the current market share of a particular firm either understates or overstates the firm's future competitive significance. For example, if a new technology that is important to long-term competitive viability is not available to a particular firm, the Department may conclude that the

---

[14] For example, a market consisting of four firms with market shares of 30 percent, 30 percent, 20 percent and 20 percent has an HHI of 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI ranges from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). Although it is desirable to include all firms in the calculation, lack of information about small fringe firms is not critical because such firms do not affect the HHI significantly.

[15] The increase in concentration as measured by the HHI can be calculated independently of the overall market concentration by doubling the product of the market shares of the merging firms. For example, the merger of firms with shares of 5 percent and 10 percent of the market would increase the HHI by 100 ($5\times10\times2=100$). The explanation for this technique is as follows: In calculating the HHI before the merger, the market shares of the merging firms are squared individually: $(a)^2+(b)^2$. After the merger, the sum of those shares would be squared: $(a+b)^2$ which equals $a^2+2ab+b^2$. The increase in the HHI therefore is represented by $2ab$.

[16] Mergers producing increases in concentration close to the 100 point threshold include those between firms with market shares of 25 percent and 2 percent, 16 percent and 3 percent, 12 percent and 4 percent, 10 percent and 5 percent, 8 percent and 6 percent, and 7 percent and 7 percent.

[17] Mergers producing increases in concentration close to the 50 point threshold include those between firms with market shares of 12 percent and 2 percent, 8 percent and 3 percent, 6 percent and 4 percent, and 5 percent and 5 percent.

historical market share of the firm overstates the firm's future competitive significance. The Department will consider reasonably predictable effects of recent or on-going changes in market conditions in interpreting market concentration and market share data.

3.22 Financial Condition of Firms in the Relevant Market

The Department will consider the financial condition of a merging firm or any firm in the relevant market, to the extent that it is relevant to an analysis of the firm's likely future competitive significance.[18] If the financial difficulties of a firm cannot be explained as phenomena of, for example, the business cycle but clearly reflect an underlying structural weakness of the firm, the firm's current market share may overstate its likely future competitive significance. For example, a firm's current market share may overstate its future competitive significance if that firm has chronic financial difficulties resulting from obsolete productive facilities in a market experiencing a long-term decline in demand.

3.23 Special Factors Affecting Foreign Firms

Actual import sales, shipment data, or capacity in some cases may tend to overstate the relative competitive significance of foreign firms. This will be the case, for example, if foreign firms are subject to quotas (imposed either by the United States or by their own country) that effectively limit the volume of their imports into this country. Foreign firms that are subject to such quotas generally cannot increase imports into the United States in response to a domestic price increase. In the case of restraints that limit imports to some percentage of the total amount of the product sold in the United States (i.e., percentage quotas), a domestic price increase that reduces domestic comsumption would actually reduce the volume of imports into the United States. Thus, actual import sales and shipment data will tend to overstate the competitive significance of firms in countries subject to binding quotas.[19]

Less significant, but still important factors, such as other types of trade restraints and changes in exchange rates, also may cause actual import sales and shipment data to overstate the future competitive significance of foreign firms. To the extent that the relative competitive significance of imports is overstated by the current market shares of foreign firms, the relative competitive significance of domestic firms concomitantly will be understated.

In addition, limitations on available data concerning the amount of foreign capacity that could be devoted to the United States in response to a "small but significant and nontransitory" increase in price may require the Department to use market share data that understate the true competitive significance of foreign competitors. Despite the inability to obtain data to quantify precisely the supply response of foreign competitors, the Department will consider strong qualitative evidence that, for example, there is significant worldwide excess capacity that could readily be devoted to the United States. To the extent market shares based on the best available evidence tend to understate the competitive significance of foreign competitors, the relative competitive significance of domestic firms may be overstated.

In all cases addressed by this section of the Guidelines (Section 3.23), the Department will make appropriate adjustment in its analysis of the available data to reflect more accurately actual competitive concerns.

3.3 Ease of Entry

If entry into a market is so easy that existing competitors could not succeed in raising price for any significant period of time, the Department is unlikely to challenge mergers in that market. Under the standards in Section 2.21, firms that do not currently sell the relevant product, but that could easily and economically sell it using existing facilities, are included in the market and are assigned a market share. This section considers the additional competitive effects of (1) production substitution requiring significant modifications of existing facilities and (2) entry through the construction of new facilities.[20]

In assessing the ease of entry into a market, the Department will consider the likelihood and probable magnitude of entry in response to a "small but significant and nontransitory" increase in price.[21] Both the price to be increased and what constitutes a "small but significant and nontransitory" increase in price will be determined as they are in product market definition, except that a two-year time period generally will be used.[22] The more difficult entry into the market is, the more likely the Department is to challenge the merger.

3.4 Other Factors

A variety of other factors affect the likelihood that a merger will create, enhance, or facilitate the exercise of market power. In evaluating mergers, the Department will consider the following factors, among others, as they relate to the ease and profitability of collusion. Where relevant, the factors are most likely to be important where the Department's decision whether to challenge a merger is otherwise close.

3.41 Nature of the Product and Terms of Sale

3.411 Homogeneity-Heterogeneity of the Relevant Product Generally

In a market with a homogeneous and undifferentiated product, a cartel need establish only a single price—a circumstance that facilitates reaching consensus and detecting deviation. As the products which constitute the relevant product market become more numerous, heterogeneous, or differentiated, however, the problems facing a cartel become more complex. Instead of a single price, it may be necessary to establish and enforce a complex schedule of prices corresponding to gradations in actual or perceived quality attributes among the competing products.[23]

[18] This factor is distinguished from the failing company doctrine, which is an affirmative defense to an otherwise unlawful merger and which, as noted in Section 5.1, the Department will construe strictly.

[19] For example, in the extreme situation where there is an effective trade restraint that places a fixed or percentage limitation on the quantity of goods that can be imported into the United States from all or almost all foreign sources, market shares of foreign sources would usually be accorded little, if any, weight.

[20] "Entry" may occur as firms outside the market enter for the first time or as fringe firms currently in the market greatly expand their current capacity.

[21] In general, entry is more likely to occur when the additional assets necessary to produce the relevant product are short-lived or widely used outside the particular market. Conversely, entry is less likely to occur when those assets are long-lived and highly specialized to the particular application. Entry is generally facilitated by the growth of the market and hindered by its stagnation or decline. Entry also is hindered by the need for scarce special skills or resources, or the need to achieve a substantial market share in order to realize important economies of scale. See also Section 4.212 (Increased Difficulty of Simultaneous Entry to Both Markets).

[22] Although this type of supply response may take longer to materialize than those considered under section 2.21, its prospect may have a greater deterrent effect on the exercise of market power by present sellers. Where new entry involves the dedication of long-lived assets to a market, the resulting capacity and its adverse effects on profitability will be present in the market until those assets are economically depreciated.

[23] A similar situation may exist where there is rapid technological change or where supply arrangements consist of many complicated terms in addition to price.

Product variation is arguably relevant in all cases, but practical considerations dictate a more limited use of the factor. There is neither an objective index of product variation nor an empirical basis for its use in drawing fine distinctions among cases. As a result, this factor will be taken into account only in relatively extreme cases where both identification and effect are more certain. For example, when the relevant product is completely homogeneous and undifferentiated, the Department is more likely to challenge the merger. Conversely, when the relevant product is very heterogeneous or sold subject to complex configuration options or customized production, the Department is less likely to challenge the merger.[24] Over a significant middle range of the spectrum of product variation, this factor is less likely to affect the Department's analysis.

3.412 Degree of Difference Between the Products and Locations in the Market and the Next-Best Substitutes

The market definition standards stated in Section 2 of these Guidelines require drawing relatively bright lines in order to determine the products and sellers to be considered in evaluating a merger. For example, in defining the relevant product, all "good substitutes" in demand are included. The profitability of any collusion that might occur will depend in part, however, on the quality of the next-best substitute. That is, it matters whether the next-best substitute is only slightly or significantly inferior to the last product included in the relevant product. Similarly, it matters whether the next-most-distant seller is only slightly or significantly farther away than the last seller included in the geographic market. The larger the "gap" at the edge of the product and geographic markets, the more likely the Department is to challenge the merger.

3.413 Similarities and Differences in the Products and Locations of the Merging Firms

There also may be relevant comparisons among the products or sellers included in the market. Where products in a relevant market are differentiated or sellers are spatially dispersed, individual sellers usually compete more directly with some rivals than with others. In markets with highly differentiated products, the Department will consider the extent to which consumers perceive the products of the merging firms to be relatively better or worse substitutes for one another than for other products in the market. In markets with spatially dispersed sellers and significant transportation costs, the Department will consider the relative proximity of the merging firms. If the products or plants of the merging firms are particularly good substitutes for one another, the Department is more likely to challenge the merger.

3.42 Information About Specific Transactions and Buyer Market Characteristics

Collusive agreements are more likely to persist if participating firms can quickly detect and retaliate against deviations from the agreed prices or other conditions. Such deviations are easiest to detect, and therefore least likely to occur, in markets where detailed information about specific transactions or individual price or output levels is readily available to competitors. The Department is more likely to challenge a merger if such detailed information is available to competitors, whether the information comes from an exchange among sellers, public disclosure by buyers, reporting by the press or a government agency, or some other source.

Certain buyer market characteristics also may facilitate detection of deviation from collusive agreements. If orders for the relevant product are frequent, regular and small relative to the total output of a typical firm in the market, collusion is more likely to succeed because the benefits of departing from the collusive agreement in any single transaction are likely to be small relative to the potential costs. In order to increase its sales significantly in such circumstances, a seller would have to depart from the collusive agreement on a large number of orders. Each such sale takes customers away from other parties to the agreement, a fact that is particularly evident when demand is stable or declining. As a result, the chances of detection and effective response by other sellers increase with the number of such sales. The Department is more likely to challenge a merger where such buyer market characteristics exist.

3.43 Ability of Small or Fringe Sellers to Increase Sales

Collusion is less likely to occur if small or fringe sellers in the market are able profitably to increase output substantially in response to a "small but significant and nontransitory" increase in price and thus to undermine a cartel. The Department is less likely to challenge a merger if small or fringe firms currently are able to expand significantly their sales at incremental costs that are approximately equal to their incremental costs experienced at current levels of output.

3.44 Conduct of Firms in the Market

The Department is more likely to challenge a merger in the following circumstances:

(a) Firms in the market previously have been found to have engaged in horizontal collusion regarding price, territories, or customers, and the characteristics of the market have not changed appreciably since the most recent finding. The additional concentration resulting from the merger could make explicit collusion more difficult to detect or tacit collusion more feasible.

(b) One or more of the following types of practices are adopted by substantially all of the firms in the market: (1) Mandatory delivered pricing; (2) exchange of price or output information in a form that could assist firms in setting or enforcing an agreed price; (3) collective standardization of product variables on which the firms could compete; and (4) price protection clauses. Although not objectionable under all circumstances, these types of practices tend to make collusion easier, and their widespread adoption by the firms in the market raises some concern that collusion may already exist.

(c) The firm to be acquired has been an unusually disruptive and competitive influence in the market. Before invoking this factor, the Department will determine whether the market is one in which performance might plausibly deteriorate because of the elimination of one disruptive firm.

3.45 Market Performance

When the market in which the proposed merger would occur is currently performing noncompetitively, the Department is more likely to challenge the merger. Noncompetitive performance suggests that the firms in the market already have succeeded in overcoming, at least to some extent, the obstacles to effective collusion. Increased concentration of such a market through merger could further facilitate the collusion that already exists. When the market in which the proposed merger would occur is currently performing competitively, however, the Department will apply its ordinary standards of review. The fact that the market is currently competitive casts little light on the likely effect of the merger.

[24] This conclusion would not apply, however, where the significance of heterogeneity is substantially reduced through detailed specifications that are provided by the buyer and that form the basis for all firms' bids.

In evaluating the performance of market, the Department will consider any relevant evidence, but will give particular weight to the following evidence of possible noncompetitive performance when the factors are found in conjunction:

(a) Stable relative market shares of the leading firms in recent years;

(b) Declining combined market share of the leading firms in recent years; and

(c) Profitability of the leading firms over substantial periods of time that significantly exceeds that of firms in industries comparable in capital intensity and risk.

3.5 Efficiencies

The primary benefit of mergers to the economy is their efficiency-enhancing potential, which can increase the competitiveness of firms and result in lower prices to consumers. Because the antitrust laws, and thus the standards of the Guidelines, are designed to proscribe only mergers that present a significant danger to competition, they do not present an obstacle to most mergers. As a consequence, in the majority of cases, the Guidelines will allow firms to achieve available efficiencies through mergers without interference from the Department.

Some mergers that the Department otherwise might challenge may be reasonably necessary to achieve significant net efficiencies. If the parties to the merger establish by clear and convincing evidence that a merger will achieve such efficiencies, the Department will consider those efficiencies in deciding whether to challenge the merger.

Cognizable efficiencies include, but are not limited to, achieving economies of scale, better intergration of production facilities, plant specialization, lower transportation costs, and similar efficiencies relating to specific manufacturing, servicing, or distribution operations of the merging firms. The Department may also consider claimed efficiencies resulting from reductions in general selling, administrative, and overhead expenses, or that otherwise do not relate to specific manufacturing, servicing, or distribution operations of the merging firms, although, as a practical matter, these types of efficiencies may be difficult to demonstrate. In addition, the Department will reject claims of efficiencies if equivalent or comparable savings can reasonably be achieved by the parties through other means. The parties must establish a greater level of expected net efficiencies the more significant are the competitive risks identified in Section 3.

4. Horizontal Effect From Non-Horizontal Mergers

4.0 By definition, non-horizontal mergers involve firms that do not operate in the same market. It necessarily follows that such mergers produce no immediate change in the level of concentration in any relevant market as defined in Section 2 of these Guidelines. Although non-horizontal mergers are less likely than horizontal mergers to create competitive problems, they are invariably innocuous. This section describes the principal theories under which the Department is likely to challenge non-horizontal mergers.

4.1 Elimination of Specific Potential Entrants

4.11 The Theory of Potential Competition

In some circumstances, the non-horizontal merger [25] of a firm already in a market (the "acquired firm") with a potential entrant to that market (the "acquiring firm") [26] may adversely affect competition in the market. If the merger effectively removes the acquiring firm from the edge of the market, it could have either of the following effects:

4.111 Harm to "perceived Potential Competition"

By eliminating a significant present competitive threat that constrains the behavior of the firms already in the market, the merger could result in an immediate deterioration in market performance. The economic theory of limiting pricing suggests that monopolists and groups of colluding firms may find it profitable to restrain their pricing in order to deter new entry that is likely to push prices even lower by adding capacity to the market. If the acquiring firm had unique advantages in entering the market, the firms in the market might be able to set a new and higher price after the threat of entry by the acquiring firm was eliminated by the merger.

4.112 Harm to "Actual Potential Competition"

By eliminating the possibility of entry by the acquiring firm in a more procompetitive manner, the merger could result in a lost opportunity for improvement in market performance resulting from the addition of a significant competitor. The more procompetitive alternatives include both new entry and entry through a "toehold" acquisition of a present small competitor.

4.12 Relation Between Perceived and Actual Potential Competition

If it were always profit-maximizing for incumbent firms to set price in such a way that all entry was deterred and if information and coordination were sufficient to implement this strategy, harm to perceived potential competition would be the only competitive problem to address. In practice, however, actual potential competition has independent importance. Firms already in the market may not find it optimal to set price low enough to deter all entry; moreover, those firms may misjudge the entry advantages of a particular firm and, therefore, the price necessary to deter its entry.[27]

4.13 Enforcement Standards

Because of the close relationship between perceived potential competition and actual potential competition, the Department will evaluate mergers that raise either type of potential competition concern under a single structural analysis analogous to that applied to horizontal mergers. The Department first will consider a set of objectives factors designed to identify cases in which harmful effects are plausible. In such cases, the Department then will conduct a more focused inquiry to determine whether the likelihood and magnitude of the possible harm justify a challenge to the merger. In this context, the Department will consider any specific evidence presented by the merging parties to show that the inferences of competitive harm drawn from the objective factors are unreliable.

The factors that the Department will consider are as follows:

4.131 Market Concentration

Barriers to entry are unlikely to affect market performance if the structure of the market is otherwise not conducive to monopolization or collusion. Adverse competitive effects are likely only if overall concentration, or the largest firms's market share, is high. The Department is unlikely to challenge a potential competition merger unless overall concentration of the acquired firm's market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that

[25] Under traditional usage, such a merger could be characterized as either "vertical" or "conglomerate," but the label adds nothing to the analysis.

[26] The terms "acquired" and "acquiring" refer to the relationship of the firms to the market of interest, not to the way the particular transaction is formally structured.

[27] When collusion is only tacit, the problem of arriving at and enforcing the correct limit price is likely to be particularly difficult.

effective collusion in the market is particularly likely). Other things being equal, the Department is increasingly likely to challenge a merger as this threshold is exceeded.

4.132 Conditions of Entry Generally

If entry to the market is generally easy, the fact that entry is marginally easier for one or more firms is unlikely to affect the behavior of the firms in the market. The Department is unlikely to challenge a potential competition merger when new entry into the acquired firm's market can be accomplished by firms without any specific entry advantages under the conditions stated in Section 3.3. Other things being equal, the Department is increasingly likely to challenge a merger as the difficulty of entry increases above that threshold.

4.133 The Acquiring Firm's Entry Advantage

If more than a few firms have the same or a comparable advantage in entering the acquired firm's market, the elimination of one firm is unlikely to have any adverse competitive effect. The other similarly situated firm(s) would continue to exert a present restraining influence, or, if entry would be profitable, would recognize the opportunity and enter. The Department is unlikely to challenge a potential competifion merger if the entry advantage ascribed to the acquiring firm (or another advantage of comparable importance) is also possessed by three or more other firms. Other things being equal, the Department is increasingly likely to challenge a merger as the number of other similarly situated firms decreases below three and as the extent of the entry advantage over non-advantaged firms increases.

If the evidence of likely actual entry by the acquiring firm is particularly strong,[28] however, the Department may challenge a potential competition merger, notwithstanding the presence of three or more firms that are objectively similarly situated. In such cases, the Department will determine the likely scale of entry, using either the firm's own documents or the minimum efficient scale in the industry. The Department will then evaluate the merger much as it would a horizontal merger between a firm the size of the likely scale of entry and the acquired firm.

[28] For example, the firm already may have moved beyond the stage of consideration and have made significant investments demonstrating an actual decision to enter.

4.134 The Market Share of the Acquired Firm

Entry through the acquisition of a relatively small firm in the market may have a competitive effect comparable to new entry. Small firms frequently play peripheral roles in collusive interactions, and the particular advantages of the acquiring firm may convert a fringe firm into a significant factor in the market.[29] The Department is unlikely to challenge a potential competition merger when the acquired firm has a market share of five percent or less. Other things being equal, the Department is increasingly likely to challenge a merger as the market share of the acquired firm increases above that threshold. The Department is likely to challenge any merger satisfying the other conditions in which the acquired firm has market share of 20 percent or more.

4.135 Efficiencies

As in the case of horizontal mergers, the Department will consider expected efficiencies in determining whether to challenge a potential competition merger. See Section 3.5 (Efficiencies).

4.2 Competitive Problems from Vertical Mergers

4.21 Barriers to Entry from Vertical Mergers

In certain circumstances, the vertical integration resulting from vertical mergers could create competitively objectionable barriers to entry. Stated generally, three conditions are necessary (but not sufficient) for this problem to exist. First, the degree of vertical integration between the two market must be so extensive that entrants to one market (the "primary market") also would have to enter the other market (the "secondary market")[30] simultaneously. Second, the requirement of entry at the secondary level must make entry at the primary level significantly more difficult and less likely to occur. Finally, the structure and other characteristics of the primary market must be otherwise so conducive to non-competitive performance that the increased difficulty of entry is likely to affect its performance. The following standards state the criteria by which the Department will determine whether these conditions are satisfied.

4.211 Need for Two-Level Entry

If there is sufficient unintegrated capacity[31] in the secondary market, new entrants to the primary market would not have to enter both markets simultaneously. The Department is unlikely to challenge a merger on this ground where post-merger sales (purchases) by unintegrated firms in the secondary market would be sufficient to service two minimum-efficient-scale plants in the primary market. When the other conditions are satisfied, the Department is increasingly likely to challenge a merger as the unintegrated capacity declines below this level.

4.212 Increased Difficulty of Simultaneous Entry to Both Markets

The relevant question is whether the need for simultaneous entry to the secondary market gives rise to a substantial incremental difficulty as compared to entry into the primary market alone. If entry at the secondary level is easy in absolute terms, the requirement of simultaneous entry to that market is unlikely adversely to affect entry to the primary market. Whatever the difficulties of entry into the primary market may be, the Department is unlikely to challenge a merger on this ground if new entry into the secondary market can be accomplished under the conditions stated in Section 3.3.[32] When entry is not possible under those conditions, the Department is increasingly concerned about vertical mergers as the difficulty of entering the secondary market increases. The Department, however, will invoke this theory only where the need for secondary market entry significantly increases the costs (which

[29] Although a similar effect is possible with the acquisition of larger firms, there is an increased danger that the acquiring firm will choose to acquiesce in monopolization or collusion because of the enhanced profits that would result from its own disappearance from the edge of the market.

[30] This competitive problem could result from either upstream or downstream integration, and could affect competition in either the upstream market or the downstream market. In the text, the terms "primary market" refers to the market in which the competitive concerns are being considered, and the term "secondary market" refers to the adjacent market.

[31] Ownership integration does not necessarily mandate two-level entry by new entrants to the primary market. Such entry is most likely to be necessary where the primary and secondary markets are completely integrated by ownership and each firm in the primary market uses all of the capacity of its associated firm in the secondary market. In many cases of ownership integration, however, the functional fit between vertically integrated firms is not perfect, and an outside market exists for the sales (purchases) of the firms in the secondary market. If that market is sufficiently large and diverse, new entrants to the primary market may be able to participate without simultaneous entry to the secondary market. In considering the adequacy of this alternative, the Department will consider the likelihood of predatory price or supply "squeezes" by the integrated firms against their unintegrated rivals.

[32] Entry into the secondary market may be greatly facilitated in that an assured supplier (customer) is provided by the primary market entry.

may take the form of risks) of primary market entry.

More capital is necessary to enter two market than to enter one. Standing alone, however, this additional capital requirement does not constitute a barrier to entry to the primary market. If the necessary funds were available at a cost commensurate with the level of risk in the secondary market, there would be no adverse effect. In some cases, however, lenders may doubt that would-be entrants to the primary market have the necessary skills and knowledge to succeed in the secondary market and, therefore, in the primary market. In order to compensate for this risk of failure, lenders might charge a higher rate for the necessary capital. This problem becomes increasingly significant as a higher percentage of the capital assets in the secondary market are long-lived and specialized to that market and, therefore, difficult to recover in the event of failure. In evaluating the likelihood of increased barriers to entry resulting from increased cost of capital, therefore, the Department will consider both the degree of similarity in the essential skills in the primary and secondary markets and the economic life and degree of specialization of the capital assets in the secondary market.

Economies of scale in the secondary market may constitute an additional barrier to entry to the primary market in some situtaitons requiring two-level entry. The problem could arise if the capacities of minimum-efficient-scale plants in the prmary and secondary markets differ significantly. For example, if the capacity of a minimum-efficient-scale plant in the secondary market were significantly greater than the needs of a minimum-efficient-scale plant in the primary market, entrants would have to choose between ineffecient operation at the secondary level (because of operating an efficient plant at an inefficient output or because of operating an efficiently small plant) or a larger than necessary scale at the primary level. Either of these effects could cause a significant increase in the operating costs of the entering firm.[33]

4.213 Structure and Performance of the Primary Market

Barriers to entry are unlikely to affect performance if the structure of the primary market is otherwise not conducive to monopolization or collusion.[34] The Department is unlikely to challenge a merger on this ground unless overall concentration of the primary market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that effective collusion is particularly likely). Above that threshold, the Department is increasingly likely to challenge a merger that meets the other criteria set forth above as the concentration increases.

4.22 Facilitating Collusion Through Vertical Mergers

4.221 Vertical Integration to the Retail Level

A high level of vertical integration by upstream firms into the associated retail market may facilitate collusion in the upstream market by making it easier to monitor price. Retail prices are generally more visible than prices in upstream markets, and vertical mergers may increase the level of vertical integration to the point at which the monitoring effect becomes significant. Adverse competitive consequences are unlikely unless the upstream market is generally conducive to collusion and a large percentage of the products produced there are sold through vertically integrated retail outlets.

The Department is unlikely to challenge a merger on this ground unless (1) overall concentration of the upstream market is above 1800 HHI (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that effective collusion is particularly likely), and (2) a large percentage of the upstream product would be sold through vertically-integrated retail outlets after the merger. Where the stated thresholds are met or exceeded, the Department's decision whether to challenge a merger on this ground will depend upon an individual evaluation of its likely competitive effect.

4.222 Elimination of a Disruptive Buyer

The elimination by vertical merger of a particularly disruptive buyer in a downstream market may facilitate collusion in the upstream market. If upstream firms view sales to a particular buyer as sufficiently important, they may deviate from the terms of a collusive agreement in an effort to secure that business, thereby disrupting the operation of the agreement. The merger of such a buyer with an upstream firm may eliminate that rivalry, making it easier for the upstream firms to collude effectively. Adverse competitive consequences are unlikely unless the upstream market is generally conducive to collusion and the disruptive firm is significantly more attractive to sellers than the other firms in its market.

The Department is unlikely to challenge a merger on this ground unless (1) overall concentration of the upstream market is 1800 HHI or above (a somewhat lower concentration will suffice if one or more of the factors discussed in Section 3.4 indicate that effective collusion is particularly likely), and (2) the allegedly disruptive firm differs substantially in volume of purchases or other relevant characteristics from the other firms in its market. Where the stated thresholds are met or exceeded, the Department's decision whether to challenge a merger on this ground will depend upon an individual evaluation of its likely competitive effect.

4.23 Evasion of Rate Regulation

Non-horizontal mergers may be used by monopoly public utilities subject to rate regulation as a tool for circumventing that regulation. The clearest example is the acquisition by a regulated utility of a supplier of its fixed or variable inputs. After the merger, the utility would be selling to itself and might be able arbitrarily to inflate the prices of internal transactions. Regulators may have great difficulty in policing these practices, particularly if there is no independent market for the product (or service) purchased from the affiliate.[35] As a result, inflated prices could be passed along to consumers as "legitimate" costs. In extreme cases, the regulated firm may effectively preempt the adjacent market, perhaps for the purpose of suppressing observable market transactions, and may distort resource allocation in that adjacent market as well as in the regulated market. In such cases, however, the Department recognizes that genuine economies of integration may be involved. The Department will consider challenging mergers that create substantial opportuities for such abuses.[36]

[33] It is important to note, however, that this problem would not exist if a significant outside market exists at the secondary level. In that case, entrants could enter with the appropriately scaled plants at both levels, and sell or buy in the market as necessary.

[34] For example, a market with 100 firms of equal size would perform competitively despite a signficant increase in entry barriers.

[35] A less severe, but nevertheless serious, problem can arise when a regulated utility acquires a firm that is not vertically related. The use of common facilities and managers may create an insoluble cost allocation problem and provide the opportunity to charge utility customers for non-utility costs, consequently distorting resource allocation in the adjacent as well as the regulated market.

[36] Where a regulatory agency has the responsibility for approving such mergers, the Department may express its concerns to that agency in its role as competition advocate.

4.24 Efficiencies

As in the case of horizontal mergers, the Department will consider expected efficiencies in determining whether to challenge a vertical merger. See Section 3.5 (Efficiencies). An extensive pattern of vertical integration may constitute evidence that substantial economies are afforded by vertical integration. Therefore, the Department will give relatively more weight to expected efficiencies in determining whether to challenge a vertical merger than in determining whether to challenge a horizontal merger.

5. Defenses

5.1 Failing Firm

The "failing firm defense" is a long-established, but ambiguous, doctrine under which an anticompetitive merger may be allowed because one of the merging firm is "failing." Because the defense can immunize significantly anticompetitive mergers, the Department will construe its elements strictly.

The Department is unlikely to challenge an anticompetitive merger in which one of the merging firms is allegedly failing when: (1) The allegedly failing firm probably would be unable to meet its financial obligations in the near future; (2) it probably would not be able to reorganize successfully under Chapter 11 of the Bankruptcy Act; [37] and (3) it has made unsuccessful good faith efforts to elicit reasonable alternative offers of acquisition of the failing firm [38] that would both keep it in the market and pose a less severe danger to competition than does the proposed merger.

5.2 Failing Division

A similar argument can be made for "failing" divisions as for failing firms. A multidivisional firm may decide to leave a particular line of business by selling or liquidating a division. If the specific conditions set out below are met, the Department will consider the "failure" of the division as an important factor affecting the likely competitive effect of the merger. First, the proponents of a merger involving a "failing" division must establish, not based solely on management plans, which could be prepared simply for the purpose of creating evidence of intent, that the division would be liquidated in the near future if not sold. Second, the proponents of the merger also must demonstrate compliance with the competitively preferable purchaser requirement of the "failing firm" defense.

[FR Doc. 84-17402 Filed 6-28-84; 8:45 am]
BILLING CODE 4410-01-M

[37] 11 U.S.C. 1101-1174 (1982).

[38] The fact that an offer is less than the proposed transaction does not make it unreasonable.

DEPARTMENT OF LABOR

The Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place:
July 10, 1984
9:30 a.m.
Rm. S4215 A & B Frances Perkins, Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210

Purpose: to discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Executive Secretary, Labor Advisory Committee, Phone: (202) 523-6565, June 20, 1984.

Signed at Washington, DC, this 21st day of June 1984.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 84-17325 Filed 6-28-84; 8:45 am]
BILLING CODE 4510-28-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of forms under review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Deprtment of Labor, 200 Constitution Avenue, NW., Room S-5526, Washington, DC. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
Labor Market Information
Labor Market Information Cooperative Agreement
1220-0079, BLS-LMI 83-1, SF 424, LBS-LMI 83-2, ET 362, ADP Cost Estimate Detail Form, Pay Raise Justification
Quarterly (ET 362); Annually (all others)
State or local governments
53 responses; 1,705 hours; 7 forms

Cooperative Agreements will be entered into annually between BLS and the State Employment Security Agencies (SESAs) to provide labor market information statistics.

Extension

Employment and Training Administration
Interstate Arrangement for Combining Employment and Wages
1205–0029; ETA 586
Quarterly
State or local governments
212 responses; 636 hours; 1 form
Pub. L. 91–373 requires the Secretary of Labor be given responsibility for operation of an arrangement for the payment of compensation on the basis of combining wages from more than one State. This report from the 53 jurisdictions is needed to measure the scope of this program and monitor the operation and effectiveness.

Employment Standards Administration
DBRA/CWHSSA Recordkeeping and Reporting Requirements, 29 CFR Part 5 1215–0140; WH–600
On occasion
State or local governments; Businesses or other for profit; Federal agencies or employees; Small businesses or organizations
2,505 responses; 630 hours
Recordkeeping and incidental reporting requirements incurred by employers under DBRA/CWHSSA Regulations, 29 CFR Part 5.
Declaration of Citizenship
1215–0091, WH–509
On occasion
Individuals or households; State or local governments
15,000 responses; 3,750 hours
The Migrant and Seasonal Agricultural Worker Protection Act provides that no farm labor contractor may knowingly employ illegal aliens. This optional form ensures that citizens are not denied employment because they lack documentary proof of citizenship and provides evidence that a contractor has made a bona fide attempt to verify citizenship.

Signed at Washington, D.C. this 26th day of June, 1984.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 84–17407 Filed 6–28–84; 8:45 am]

BILLING CODE 4510–24–4510–27–M

Pension and Welfare Benefit Progams

[Prohibited Transaction Exemption 84–62; Exemption Application No. D–3840 et al.]

Grant of Individual Exemptions; Kimball International, Inc., Retirement Plan et al.

AGENCY: Pension and Welfare Benefit Progams, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notice were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Kimball International, Inc. Indirect Retirement Plan (the Indirect Plan) and Kimball International, Inc. Direct Retirement Plan (the Direct Plan; collectively, the Plans) Located in Jasper, Indiana

[Prohibited Transaction Exemption 84–62; Exemption Application Nos. D–3840 and D–3841]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)((1) (A) through (E) of the Code, shall not apply: (1) To the continuation past June 30, 1984 of a lease by the Indirect Plan of certain improved real property to Kimball International, Inc. (the Employer), the sponsor of the Plans; (2) effective January 1, 1975 to October 5, 1982, to the past lease by the Direct Plan of certain improved real property (the Warehouse Property) to the Employer; and (3) effective October 6, 1982, to the lease of the Warehouse Property by the Direct Plan to the Employer.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18637

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

The Western Conference of Teamsters Pension Trust Fund (the Plan) located in Seattle, Washington

[Prohibited Transaction Exemption 84–63; Exemption Application Nos. D–3960]

Exemption

The restrictions of section 406(a) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply, effective August 1, 1982, to the acquisition or holding on behalf of the Plan of a security issued by an employer of employees covered by the Plan, an affiliate of such an employer as defined in section 407(d)(7) of the Act, or a person who is a party in interest with respect to the Plan by virtue of a relationship described in Act, section 3(14) (E), (G), (H) or (I) to such an employer, provided that the fiduciary responsible for the Plan's engaging in the transaction is the Equitable Life Assurance Society of the United States, the Aetna Life Insurance Company or the Prudential Insurance Company of

America, and further provided that the Plan pays no greater than the fair market value of the security at the time of acquisition.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18639.

Effective Date: This exemption is effective August 1, 1982.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Jensen, Shroyer and Anderson, P.C. Employees Pension Trust (the Plan) Located in Big Rapids, Michigan

[Prohibited Transaction Exemption 84-84; Exemption Application No. D-4249]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the sale of a parcel of real estate (the Property) from the Plan to Drs. L.J. Jensen, R.C. Shroyer and E.W. Anderson (the Trustees) at the higher of (a) its appraised fair market value or (b) the total expenditures incurred by the Plan in connection with the acquisition and holding of the Property through the date of sale. In addition, the Trustees will assume the unpaid balance due on the land contract (the Contract) which encumbers the Property; and (2) the assignment of the Contract by the Plan to the Trustees.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18640.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

First Federal Savings and Loan Association of Toledo, Amended and Restated Retirement Income Plan (the Plan) Located in Toledo, Ohio

[Prohibited Transaction Exemption 84-85; Exemption Application No. D-4344]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale of certain mortgages to the Plan by First Federal Savings and Loan Association of Toledo (the Employer) and to the guarantee by the Employer to repurchase any mortgages which are in default and the repurchase by the Employer of such mortgages, provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated person.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 4, 1984 at 49 FR 19159.

Temporary Nature of Exemption: This exemption is temporary and will expire 5 years after the date of grant. Should the Employer wish to continue to sell mortgages to the Plan beyond the 5 year period, the Employer may submit another application for exemption. Repurchase of mortgages by the Employer may take place after the 5 year period provided the mortgages were purchased by the Plan during the 5 year period.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

J.C. Penney Co., Inc., Located in New York, New York

[Prohibited Transaction Exemption 84-86; Exemption Application No. D-4740]

Exemption

The restrictions of section 406 (a) and (b) of the Act shall not apply, effective December 29, 1982 through December 31, 1984, to the reinsurance of risks and the receipt of premiums therefrom by J.C. Penney Life Insurance Company (Penney Life) from the life insurance contracts sold by the Great American Reserve Insurance Company to provide benefits to various employee benefit plans maintained by Penney Life and J.C. Penney Casualty Insruance Company, provided the conditions set forth in the notice of proposed exemption are satisfied.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18644.

Effective Date: This exemption is effective from December 29, 1982 through December 31, 1984.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Profit Sharing Plan and Trust of J. Gordon Gaines, Inc. (the Plan) Located in Akron, Ohio

[Prohibited Transaction Exemption 84-87; Exemption Application No. D-4788]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to J. Gordon Gaines, Inc. (the Employer) of a $100,000 obligation (the Debenture) of Bayse & Associates for $100,000 cash provided that the amount paid by the Employer is no less than the fair market value of the Debenture as of the date of sale. In addition, the Employer shall pay the Plan all accrued interest due on the Debenture through the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18646.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

The First National Bank of Atlanta Restricted Plan and Trust for Self-Employed Individuals Located in Atlanta, Georgia

[Prohibited Transaction Exemption 84-88; Exemption Application No. D-4793]

Exemption

The application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, for a period of five years, to the contributions of common stock of First Atlanta Corporation to seven individual Keogh plans (the Plans) by parties in interest with respect to the Plans. Because each sponsor of a Plan is the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 25.10.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17615.

Temporary Nature of Exemption: This exemption is temporary in nature and will be effective with respect to contributions of stock made within five years from the date of this grant.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Buchanan, Ingersoll, Rodewald, Kyle and Buerger Pension Plan and the Buchanan, Ingersoll, Rodewald, Kyle and Buerger Profit Sharing Plan (collectively, the Plans) Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 84-89; Exemption Application Nos. D-4823 and D-4824]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the purchase, sale and contribution of certain securities (the Securities) between the Plans and participants (the Participants) maintaining self-directed accounts in the Plans, provided all purchases and sales of the Securities are conducted at fair market value and all Participant contributions are valued at their fair market value on the date of contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18647

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Watson C.S.R. Inc. Employee Profit Sharing Plan and the Watson C.S.R. Inc. Employee Pension Plan (collectively, the Plans) Located in Santa Monica, California

[Prohibited Transaction Exemption 84-90; Exemption Application Nos. D-4905 and D-4906]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plans of certain real property (the Real Property) for $114,788 in cash, to Mr. and Mrs. Michael Watson, provided the sale price for the Real Property is not less than its fair market value at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18648.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Alaska Teamsters—Employer Pension Trust (the Plan) Located in Anchorage, Alaska

[Prohibited Transaction Exemption 84-91; Exemption Application No. D-4919]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the grant of memberships by the Plan in the Desert Horizons Country Club (the Club) to parties in interest (including fiduciaries) and the payment by said party in interest members of all fees, dues and other levies for the use of the Club's facilities; and (2) the eventual conversion of these nonproprietary memberships into proprietary ownerships when the Club is sold to its members, provided that the terms of the transactions are no less favorable to the Plan than similar transactions with unrelated third parties.*

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 17, 1984 at 49 FR 15163.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Shelly's Tall Girl Shops, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 84-92; Exemption Application No. D-4932]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plans of amounts not to exceed 25 percent of its total assets to Shelly's Tall Girl Shops, Inc., the Plan sponsor, on a recurring basis over a five-year period and the guarantee of the repayment of those loans by Messrs. Sheldon Kort, Irving Kellogg and Sherman Andelson, parties in interest with respect to the Plan, provided that the terms of the loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

Temporary Nature of Exemption: If granted, this exemption will be effective for five years from the date a grant of an individual exemption is published in the Federal Register on behalf of the transactions. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five year period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 24, 1984 at 49 FR 17621.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

McKay of California, Inc. Defined Benefit Pension Plan (the Plan) Located in Los Angeles, California

[Prohibited Transaction Exemption 84-93; Exemption Application No. D-4933]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan by the Plan of amounts not to exceed 25% of its total assets to McKay of California, the Plan Sponsor, on a recurring basis over a five-year period, and the guarantee of the repayment of these loans by Messrs. Sherman L. Andelson, Irving Kellogg, and Sherman Kort, parties in interest with respect to the Plan, provided the terms of the loans are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

Temporary Nature of Exemption: This exemption will be effective for five years from the date a grant of an individual exemption is published in the Federal Register on behalf of the transactions. Subsequent to the expiration of the exemption, the Plan may hold the loans provided they were made during the five-year period.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of

*The granting of this exemption does not constitute an opinion or approval by the Department with regard to the appropriateness or prudence of the Plan's decision to invest its assets in Desert Horizons, Inc. or in the development of the Desert Horizons' properties. Nor does the granting of this exemption indicate the Department's opinion or approval with respect to any future decision by the Plan to construct additional residential units in the Desert Horizons development.

proposed exemption published on April 24, 1984 at 49 FR 17621.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Dayton Animal Hospital Association, Inc. Profit Sharing Plan (the Plan) Located in Clayton, Ohio

[Prohibited Transaction Exemption 84-94; Exemption Application No. D-5034]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan to Dayton Animal Care, Inc., an affiliate of the Plan sponsor, of a parcel of land adjacent to the offices of the Plan sponsor, provided the sales price is not less than the fair market value of the Property on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 1, 1984 at 49 FR 18650.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of June, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-17440 Filed 6-28-84; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-4855 et al.]

Proposed Exemptions; Mark A. Levine, M.D. and Thomas G. Swanson, M.D. P.C. Money Purchase Pension and Profit Sharing Plans et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. Attention: Application No: stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, Apr. 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Mark A. Levine, M.D., and Thomas G. Swanson, M.D., P.C. Money Purchase Pension (the Money Purchase Plan) and Profit-Sharing Plan (the Profit-Sharing Plan; Collectively, the Plans) Located in Englewood, Colorado

[Application Nos. D-4855 and D-4856]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a limited partnership interest (the Interest) by the Plans to Dr. Mark A. Levine, a party in interest with

respect to the Plans, provided the sale price is not less than the fair market value of the Interest at the time the sale is consummated.

Summary of Facts and Representations

1. The Plans are a money purchase plan and a profit sharing plan with total assets of approximately $57,000 as of November 30, 1983. There are two participants in each of the Plans, Drs. Mark A. Levine (Dr. Levine) and Thomas G. Swanson. The trustee of the Plans is Dr. Levine, an owner of Mark A. Levine, M.D., and Thomas G. Swanson, M.D., P.C. (the Plan Sponsor).

2. On August 4, 1981 the Plans purchased the Interest, which is a limited partnership interest in a venture known as Platte Valley Business Center (the Limited Partnership) from an unrelated party. The Limited Partnership's purpose was to purchase and hold real property for investment and ultimate resale. The Limited Partnership purchased an 18-acre parcel of undeveloped real property located at 72nd and Washington Streets in Adams County, Colorado (the Property). The Limited Partnership purchased the Property for $1.80 per square foot or a total of approximately $1,440,000. A down payment of 20% of the purchase price was made, with the balance in the form of a money purchase mortgage with a 10 year term. The Money Purchase Plan purchased 75% of the Interest and the Profit-Sharing Plan purchased 25% of the Interest. The Money Purchase Plan has invested a total of $28,500 in the Property and the Profit-Sharing Plan has invested a total of $9,500. The Property was at that time, and remains unimproved.

3. The applicant represents that the economy in the Denver, Colorado area where the Property is located has deteriorated so that the Property has shown little measurable appreciation. As a result, the general partner in the Limited Partnership has negotiated with another entity to become a 50 percent joint venturer, and develop the Property. The Limited Partnership will contribute the Property to the joint venture and the other entity will contribute the cash needed for the development of the Property. In view of the change of objectives of the Limited Partnership, Dr. Levine as trustee of the Plans believes that the Interests no longer fit within the Plans' investment scheme.

4. Dr. Levine has offered to purchase the Plans' Interest. The purchase price will be the fair market value of the Plans' equity in the Property. By letter of November 4, 1983, Mr. Steven P Levine (Mr. Levine is unlrelated to the Plans and the Plans' Sponsor), who is the general partner in the limited Partnership and a realtor in the Denver, Colorado area, represented that the Limited Partnership received a bona fide offer to purchase the Property during the past two months for $2.50 per square foot. This would, according to Mr. Levine, indicate a fair market value of $2,000,000 for the Property, less sales expenses and mortgages to be assumed of $1,350,000 or a net equity of approximately $650,000. Mr. Levine represents that the fair market value of the Money Purchase Plan's interest in the Property is $30,469, and the fair market value of the Profit Sharing Plan's interest in the Property is $10,156.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) It will be a one-time cash transaction;

(2) The Plans will be able to divest themselves of an asset which has changed its objectives since its initial purchase and no longer fits the Plans' investment scheme;

(3) The Plans will receive fair market value for the Interest and such amount will exceed the amount of the Plans' investment in the Interest; and

(4) The Plans' Trustee has determined that the proposed transaction is in the interests of and protective of the Plans and their participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Tasty Baking Company Pension Plan (the Plan) Located in Philadelphia Pennsylvania

[Application No. D-4961]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of certain real property by the Plan to Tasty Baking Company (the Employer) and the possible future cash sale of the Property by the Plan to the Employer, provided the terms and conditions of the transactions are as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party, and that any purchase by the Employer is at no less than fair market value at the date of sale.

Effective Date: If granted, the proposed exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with approximately 2,020 active participants and an additional 514 former participants and beneficiaries who are now receiving benefits or who are entitled to receive benefits in the future. The Plan had total assets of approximately $37,338,000 as of December 31, 1983.

2. The Employer is a holding company incorporated in Pennsylvania in 1914. The employer has three operating subsidiaries—Tastykake, Inc., Buckeye Biscuit Company and Philips & Jacobs, Inc. These subsidiaries are engaged in the manufacture and sale of a variety of small single portion cakes and pies and cookies, under the well-established trade name of TASTYKAKE.

3. The Central Penn National Bank was the corporate co-trustee of the Plan under a Deed of Trustee dated January 5, 1960, as amended, and is currently the trustee of the Plan (the Trustee) under a Pension Plan Deed of Trust as restated on December 20, 1976. The Trustee has the authority to invest and manage the assets of the Plan except under certain limited circumstances unrelated to the subject proposed transaction. The Trustee is generally independent of the Employer. However, the Trustee and the Employer have an existing banking relationship which is of a de minimis nature. The employer's current line of credit with the Bank only constitutes 0.57 percent of the Trustee's commercial loan business. Also, an executive officer of the Trustee is a director of the employer, but has not and will not take any part either directly or indirectly on behalf of the Trustee in approving the proposed lease of the Property.

4. On December 1, 1960, the Employer contributed the building and land (the Property) at 2801-45 Hunting Park Avenue, Philadelphia, Pennsylvania, to the Plan. The Property has been continuously leased to the Employer since December 1, 1960 and has been utilized as the Employer's main baking facility and for corporate offices. At the time of the contribution of the Property, its value was determined by an independent appraisal to be $2,000,000 with the land valued at $150,000 and the building valued at $1,850,000.

5. Simultaneously with the transfer of the Property to the Plan, a 20-year lease (the Lease) was entered into between

the Plan and the Employer providing for an annual rental of $172,000 to be paid by the Employer. The Lease was supplemented and amended in April, 1962; December, 1966; and December, 1967 The basic annual rental was increased to $247,000 commencing January 1, 1968 to reflect additions and improvements to the Property made during the years 1961 through 1966. On December 21, 1973, a new lease (the New Lease) was entered into between the Plan and the Employer to increase the annual rental to reflect improvements and additions to the Property which had been made since 1966 and to provide a rental which was consistent with the fair market appraisal obtained from an independent appraisal performed by Jackson Cross Company.

6. The principal provisions of the New Lease are as follows:

(1) The basic annual rental is $388,000 as based upon the independent appraisal;

(2) As provided by the Lease, the Employer would pay all real estate taxes, water and sewer rents, fire and casualty insurance premiums, public liability insurance, all utilities, and the cost of maintaining the building in good order and repair;

(3) The New Lease is for an initial term of approximately 25 years, beginning on December 1, 1973, and expiring on January 2, 1999. The Employer has an option to renew the New Lease for two additional terms of five years each;

(4) The Employer has the right to make improvements to the Property as the Employer deems necessary or desirable in connection with the requirements of its business so long as such improvements do not devalue the Property;

(5) The Employer has the right to purchase the Property from the Plan at any time prior to the expiration of the original term of the New Lease or any optional renewal term which has been exercised by the Employer. The Trustee will approve the Employer's actual exercise of either the right to purchase the Property or right of first refusal only if it is in the best interests of the Plan and its participants and beneficiaries. The Employer has to give at least 120 days notice to the Plan of its intention to purchase the Property, such purchase price being the fair market value of the Property as determined by an independent real estate appraiser selected by the Trustee;

(6) During the initial term of the New Lease and during each of the two five-year renewal terms, the Employer has a right of first refusal to purchase the Property on the same terms and conditions as made in a bona fide offer by any third party; and

(7) In the event the Employer defaults in fulfilling any of the covenants of the New Lease, including the covenants for the payment of basic rent, the Plan has the right to terminate the New Lease and upon such termination the Employer is required to quit and surrender the Property to the Plan.

7. The applicant represents that the New Lease was not a prohibited transaction at the time entered into within the meaning of section 503(b) of the Internal Revenue Code of 1954 and the New Lease will not be prohibited until June 30, 1984 because it was pursuant to a binding contract in effect on July 1, 1974, and the New Lease remains at least as favorable to the Plan as an arm's-length transaction with an unrelated party would be.[1]

8. The applicant requests an exemption to permit the Employer to continue leasing the Property from the Plan beyond June 30, 1984. If this exemption is granted, the parties intend to enter into another lease (the Future Lease). The terms of the Future Lease will be substantially identical to those of the New Lease. The principal provisions which differ from those of the New Lease are as follows:

(1) An independent appraisal of the Property was performed by the Biswanger Company (Biswanger), a nationwide real estate company that specializes in valuing commercial and industrial property. Biswanger has determined that the fair market value (value in exchange) of the Property as of July 5, 1983 was $1,300,000 and the fair rental value (value in exchange) of the Property is $156,000 per year as of July 5, 1983. Biswanger further represents that the market value (value in use) of the Property was $3,300,000 as of July 5, 1983 and the rental value (value in use) was $396,000 per year as of this date. The Trustee has contacted Biswanger and was informed that the value of the Property had not changed since its July 5, 1983 appraisal. Biswanger will advise the Trustee if the value of the Property would be different as of July 1, 1984. (Biswanger specifies that the fair market value is synonymous with value in exchange and is defined as "the price which a willing seller would sell and a willing buyer would buy, neither being under abnormal pressures.") The basic annual rental for the Property will be the greater of the fair market rental value or the rental value in use.

(2) The Future Lease will be for an initial term of 15 years, which would be renewable by the Employer for five additional three-year periods. The Trustee must approve each renewal of the Future Lease to assure that the renewal will be in the interests of and protective of the Plan. If the Future Lease is renewed, the annual rental value will be the greater of the fair rental value or the rental value in use as determined at the time of the renewal of the lease and at each optional renewal period. The annual rental will be based upon an appraisal to be performed by an independent real estate appraiser approved by the Trustee.

9. The Trustee has reviewed the terms of the Future Lease and the appraisal of the Property. The Trustee has represented that in its opinion the Future Lease would be in the best interests of and protective of the Plan and its participants and beneficiaries. The Trustee believes that the terms of the Future Lease are at least as favorable to the Plan as those it could obtain from an unrelated third party. The Trustee also represents that it will monitor and enforce the provisions of the Future Lease in order to protect the interests of the Plan and its participants and beneficiaries.

10. The Trustee has also represented that the retention of the Property as an investment is in the best interests of the Plan and its participants and beneficiaries because: (1) It represents less than 10 % of total Plan assets and is in line with the Plan's policy of a total portfolio strategy of diversification; (2) the return of a minimum of 12 % is favorable to the Plan because it is tied to the greater of the fair market value or the value in use, and (3) a minimum of 12 % return over a 15-year period compares favorably with the historic indices of other types of investments.

11. The Trustee has represented that it has determined that the provisions of the Future Lease which set forth the Employer's right to purchase the Property from the Plan at any time prior to the expiration of the Future Lease and the Employer's right of first refusal are in the best interests of and protective of the Plan. The Trustee represents that the Employer's rights to purchase the Property and its right of first refusal, while providing some benefit to the Employer, serves to benefit the Plan because the repurchase rights require the Employer to pay the highest value for the Property in that the price paid will be the greater of the fair market value or the value in use. The Employer's right of first refusal will serve to encourage any potential third

[1] In this proposed exemption, the Department expresses no opinion as to whether the New Lease satisfies the requirements of section 414 of the Act.

party buyer in making a "best offer" to make it based on the higher of the fair market value or value in use. The Trustee states that this provision clearly deters potential buyers from making below market offers. The Trustee also states that the repurchase and right to first refusal provisions are not uncommon in leases of real estate. As stated above, the Trustee must approve any actual exercise of these provisions. With regard to the Employer's right to purchase the Property, the Trustee will assure that the purchase price will be paid in cash and that it will be the greater of the fair market value (without diminution because of the Employer's purchase right or right to first refusal) or the value in use of the Property. With regard to the Employer's right of first refusal, the Trustee also must approve any actual exercise of this provision and will assure that any offer of purchase by a third party will be an acceptable bona fide offer only if such offer is in cash and in an amount not less than the greater of the fair market value (without diminution because of the Employer's purchase right or right to first refusal) or the value in use of the Property.

12. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The proposed transaction involves a relatively small percentage of the assets of the Plan;

(2) The Plan's independent Trustee will monitor and enforce the terms and conditions of the New Lease;

(3) The Plan will be permitted to make an excellent investment that will insure a stable source of income, and thereby further its investment objectives and funding needs; and

(4) The Plan's independent Trustee has reviewed all of the terms of the New Lease and has determined that it is favorable to the Plan and in the best interests and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Jamestown Clinic, Ltd. Employees' Retirement Plan (the Plan) Located in Jamestown, North Dakota

[Application No. D-5274]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, Apr. 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed lease, effective July 1, 1984, of certain improved real property (the Property) by the Plan to the Jamestown Clinic, Ltd. (the Employer), the sponsor of the Plan, provided that such lease is on terms and conditions at least equivalent to those which the Plan would receive in an arm's-length transaction with an unrelated party.

Effective Date: If granted, this exemption will be effective July 1, 1984.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with 65 participants and total assets of $2,640,061.68 as of December 31, 1983. The Employer is a North Dakota professional corporation functioning as a multi-purpose clinic for the general practice of medicine. Among the Plan's assets is the Property, a 48,146 square foot parcel of real property improved with a one-story medical clinic and office building and adjacent parking lots located at 401 Third Street Southeast in Jamestown, North Dakota and used by the Employer as its principal place of business. As of February 29, 1984, the Property had a fair market value of $645,800, according to an appraisal performed by Harry R. Arneson, Jr., M.A.I. (Arneson), an independent professional real estate appraiser whose office is located in Fargo, North Dakota. The Property has been leased by the Employer from the Plan continuously since May 1, 1972 under a lease (the Original Lease) which was renewed and extended on May 1, 1982 to expire April 30, 1987 The Employer represents that the Original Lease constitutes a lease as defined under section 414(c)(2) of the Act, and is statutorily exempt until June 30, 1984 from the prohibitions of sections 406 and 407 of the Act.[2] The Employer recognizes that the statutory exemption for the Original Lease expires on June 30, 1984, and therefore proposes that the Plan and the Employer terminate the Original Lease as of June 30, 1984 and enter into a new lease (the New Lease) of the Property by the Plan to the Employer, effective July 1, 1984. The Employer is requesting an exemption to permit the New Lease under the terms and conditions proposed herein.

2. The interests of the Plan for all purposes under the New Lease will be represented by Norwest Bank Minneapolis, N.A. (Norwest), a national bank located in Minneapolis, Minnesota which has acted as trustee of all other Plan assets since the Plan's inception in 1962 and which represents itself to be independent of and unrelated to the Employer. Prior to June 30, 1984, the Property will be transferred from Trust I of the Plan, of which directors of the Employer are trustees, into Trust II of the Plan, of which Norwest is trustee. The New Lease is a triple net lease for a term of three years effective July 1, 1984, with renewal options for four additional three-year terms requiring approval of Norwest. Under the New Lease the Employer assumes responsibility for all taxes, all costs of maintenance and repair, and full fire and extended coverage insurance on the Property. The New Lease requires the Employer to indemnify the Plan and hold the Plan harmless against all claims, demands and liabilities resulting from the Employer's use of the Property. Rental during the initial and any renewal terms will be negotiated between the Employer and Norwest, but in no event will such rental be less than the fair market rental value of the Property. The proposed annual rental for the initial term will be $85,200, which is slightly in excess of the Property's annual fair market rental value as of February 29, 1984 as determined by Arneson. On July 1, 1984, Norwest will conduct an independent inquiry to determine whether the fair market value of the Property as of that date has increased since Arneson's appraisal of February 29, 1984, and the rental for the initial term of the New Lease will be increased to reflect any increase in the Property's annual fair market value above $85,200. At the commencement of each renewal term, if any, Norwest shall cause the Property to be appraised for its annual fair market rental value by an independent, qualified real estate appraiser chosen by Norwest, and the annual rental for such renewal term shall not be less than the Property's annual fair market rental value as appraised. Other than the amount of rental, all terms and conditions of the New Lease for any renewal term shall remain the same as those of the New Lease for its initial term.

3. Norwest will represent the Plan in the enforcement of all terms and conditions of the New Lease and on behalf of the Plan will monitor the Employer's performance thereunder for the duration of the New Lease and any renewal thereof. The proposed New Lease of the Property by the Plan to the Employer has been reviewed and

[2] The Department expresses no opinion as to whether the Original Lease satisfies the requirements of section 414 of the Act.

evaluated by Everett A. Hellickson (Hellickson), assistant vice-president in the Trust Real Estate Division of Norwest. Hellickson, who will be directly responsible for management of the Property under the New Lease, represents that the proposed New Lease will constitute a favorable investment which is in the best interests and protective of the participants and beneficiaries of the Plan. Hellickson notes that the New Lease will provide to the Plan a return of approximately 13.2 percent on its investment in the Property, a return which is net of all expenses. Hellickson also notes that the Property constitutes 24.4% of the Plan's assets and that the Plan's continued holding of the Property allows the Plan to maintain adequate liquidity and sufficient diversity of assets.

4. In summary, the Employer represents that the New Lease will satisfy the criteria of section 408(a) of the Act because: (1) The New Lease is a triple net lease under which the Employer wil pay all expenses related to the Property and will protect the Plan's investment in the Property with full fire and extended coverage insurance; (2) the Plan's interests under the New Lease will be represented by an independent fiduciary, Norwest, which is unrelated to the Employer; (3) the New Lease ensures the Plan a return from the Property of no less than the Property's fair market rental value; and (4) Norwest has determined that the New Lease will constitute an appropriate investment for the Plan and will be in the best interests and protective of the participants and beneficiaries of the Plan.

For Further Information Contact: Ron Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 26th day of June, 1984.

Elliot I. Daniel,

Acting Assistant Administrator for Fiduciary Standards, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 84-17439 Filed 6-28-84; 8:45 am]

BILLING CODE 4510-29-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Options Steering Committee; Regular Meeting Notice

AGENCY: Options Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Resolution of Council Action Item 14.1
- Report on status of NEPA strategy and how it relates to options
- Process for acquiring options
- Public comment

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Options Steering Committee.

DATE: Monday, July 30, 1984. 1 p.m.

ADDRESS: The meeting will be held at the Council Hearing Room at 700 S.W. Taylor; Suite 200, in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Tom Foley, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 84-17340 Filed 6-28-84; 8:45 am]

BILLING CODE 0000-00-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-400]

Carolina Power & Light Co. and North Carolina Eastern Municipal Power Agency; Receipt of Antitrust Information

Carolina Power & Light Company has submitted antitrust information related to its application for an operating license for a pressurized water reactor (Shearon Harris Nuclear Power Plant, Unit 1) located in Wake and Chatham Counties, North Carolina, approximately 20 miles southwest of Raleigh. The data submitted contains antitrust information for review pursuant to NRC Regulatory Guide 9.3 necessary to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage. The construction permit holders for Shearon Harris are Carolina Power & Light Company and North Carolina Eastern Municipal Power Agency.

On completion of the staff's antitrust review, the Director of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the Federal Register and will be sent to the Washington, D.C. and local public document rooms and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for reevaluation may be submitted for a period of 30 days after the date of the Federal Register notice. The results of any reevaluation that is requested will also be published in the Federal Register and copies sent to the Washington, D.C. and local public document room.

A copy of the general information portion of the application for an operating license and the antitrust information is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555, and at the local public document room at the Wake County Library, 104

Fayetteville Street, Raleigh, North Carolina 27601.

Any person who desires additional information regarding the matter covered by this notice or who wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the applicant's activities since the construction permit antitrust review should submit such requests for information of views to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Site Analysis Branch, Office of Nuclear Reactor Regulation, on or before July 30, 1984.

Dated at Bethesda, Maryland, this 15th day of June, 1984.

For the Nuclear Regulatory Commission.

Victor Nerses,

Acting Branch Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 84-17422 Filed 6-28-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-395]

South Carolina Electric & Gas Co. and South Carolina Public Service Authority; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-12, issued to South Carolina Electric & Gas Company and South Carolina Public Service Authority (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit 1, located in Fairfield County, South Carolina.

The amendment would change the spent fuel pool storage capacity listed in Technical Specification 5.6 from 682 fuel assemblies to 1276 fuel assemblies in a three region storage design with a maximum initial enrichment of 4.3 weight percent U-235. The nominal center-to-center distance between spent fuel assemblies listed in Technical Specification 5.6 would be changed from 14 inches to slightly greater than 10 inches. A new Technical Specification ¾.9.12 would be added describing the combination of initial enrichment and cumulative exposure for spent fuel assemblies necessary for storage in Regions 2 and 3. Technical Specifications 5.3.1 and 5.6.1.2 would be changed to reflect storage in the new fuel storage racks of new fuel assemblies for reload enriched up to a maximum of 4.3 weight percent U-235 instead of 3.5 weight percent U-235.

This amendment was requested in the licensee's application for amendment dated January 23, 1984.

Before issuance of the proposed license amendement, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves 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 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 expansion of the spent fuel pool storage consists of replacing existing racks with racks which allow closer spacing between stored spent fuel assemblies. The storage expansion method does not involve rod consolidation or double tiering. The storage expansion will create three regions of storage. Regions 2 and 3 will require fuel burnup (exposure) for storage of fuel assemblies. Region 1 will allow storage with no exposure requirements. Also, the reracked spent fuel pool will allow storage a maximum of 4.3 weight percent U-235 initially enriched fuel assembles. However, the K_{eff} of the reracked spent fuel pool will be maintained less than or equal to 0.95, which is the current requirement. The additional heat load created by the increase in spent fuel assemblies is small and within the capacity of the spent fuel pool cooling system such that the requirement for the temperature of the spent fuel pool to be $\leq$ 140°F is still met. No new technology or unproven technology is utilized in either construction or analysis of the storage expansion. The structural design margin of the spent fuel pool will not be significantly reduced by the rerack. Therefore, the integrity of the spent fuel pool is maintained and as a result no new means of losing cooling water, such that cooling flow can not be maintained, can be postulated beyond those addressed in the staff's earlier reviews the led to the issuance of the operating license. A discussion of fuel pool integrity is contained in the licensee's Final Safety Analysis Report and the staff's Safety Evaluation Report. Also, reload fuel and new fuel pool storage requirements are being changed to reflect fuel assemblies initially enriched to 4.3 vice 3.5 weight percent U-235. However, the K_{eff} of the new fuel pool will not change from its current requirement of less than or equal to 0.98; and, also, for reload fuel usage, the Technical Specification requirements remain the same.

The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. One of the examples relates to a change which may reduce in some way a safety margin, but where the results of the change are clearly within all acceptalbe criteria with respect to the system or component. The change from a maximum of 3.5 to 4.3 weight percent U-235 for new fuel storage and use is similar to this example because the enrichment of the fuel is increased, but all of the Technical Specification safety requirements are still met. Spent fuel pool reracking was specifically excluded from the list of examples considered likely to involve a significant hazards consideration. Pending further study of this matter, the Commission is making a finding on the question of no significant hazards consideration for each reracking application such as this on a case-by-case basis, giving full consideration to the technical circumstances of the case, using the standard of § 50.92 (48 FR 14869).

The licensee's submittal of January 23, 1984, included a discussion of the proposed action with respect to the issue of no significant hazards consideration. This discussion has been reviewed and the Commission finds it acceptable. Specifically, with regard to the first standard of 10 CFR 50.92, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The design requirements of spent fuel storage remain the same and are met by the rerack design; therefore, the probability of an accident previously evaluated is not significantly increased. Accident analyses regarding criticality, fuel handling, seismic, and loss of forced cooling have been performed and the consequences are acceptable with no significant increases.

With regard to the second standard of 10 CFR 50.92, this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The storage expansion just involves replacing existing racks with racks which allow closer spacing between stored spent fuel assemblies; and, therefore, applicable accidents remain

the same. Also, since the integrity of the spent fuel pool is maintained, no new means of losing cooling water, such that cooling flow cannot be maintained, can be postulated and therefore, the proposed action does not create the possibility of a new or different accident from any accident previously evaluated.

With regard to the third standard of 10 CFR 50.92, this amendment does not involve a significant reduction in a margin of safety. Even with more spent fuel assemblies and higher enriched fuel, spent fuel storage Technical Specifications and Standard Review Plan requirements are still met with regard to K_{eff}, spent fuel pool cooling capability, and structural strength.

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.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By July 30, 1984, 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. Request for a hearing and petitions for leave to intervene shall be filed inaccordance 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.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner is required to file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity, pursuant to 10 CFR 2.714(b). Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one concentration will not be permitted to participate as a party.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in controversy", proceeded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR Part 2 procedures apply.

(At this time, the Commission does not have effective regulations implementing section 134 of the NWPA although it has published proposed rules. See Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 48 FR 54499 (December 5, 1983).)

Subject to the above requirements, and any limitations in the order granting leave to intervene those permitted to intervene become parties to the proceeding, 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 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. 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 Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period. 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 (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: 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 Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Randolph R. Mahan, P.O. Box 764, Columbia, South Carolina 29218, 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 designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the 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, 1717 H Street, NW., Washington, D.C., and at the Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Dated at Bethesda, Maryland, this 25th day of June 1984.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 84-17424 Filed 6-28-84; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island, Unit 2 (TMI-2) will be meeting on July 12, 1984, from 7:00 p.m. to 10:00 p.m. at the Holiday Inn, 23 South Second Street, Harrisburg, Pennsylvania 17101. Less than 15 days notice is being given for this meeting because of difficulties associated with the coordination of individual Committee members' schedules. The meeting will be open to the public.

At this meeting the Panel will be briefed by W. Kirk, EPA, on the results of the interagency radiation monitoring program review. Representatives from General Public Utilities Corporation will discuss facility decontamination alternatives after fuel removal and funding for the cleanup for 1985 and beyond. The status of the Edison Electric Institute TMI-2 voluntary contribution program will also be presented.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492-7466.

Dated: June 27, 1984.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 84-17508 Filed 6-28-84; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21039; File No. SR-OCC-84-4]

Options Clearing Corp.; Filing of Proposed Rule change

Correction

In FR Doc. 84-16345 appearing on page 25057 in the issue of Tuesday, June 19, 1984, the docket number in the heading was inaccurate, and should have appeared as set forth above.

BILLING CODE 1505-01-M

[Release No. 23339; 70-6985]

American Electric Power Co., Inc.; Proposal of Parent To Act as Indemnitor, Guarantor and/or Surety

June 22, 1984.

American Electric Power Company, Inc. ("AEP"), 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed an application with this Commission pursuant to Section 12(b) and 12(f) of the Public Utility Holding Company Act of 1935 ("ACT") and Rule 45 thereunder.

From time to time AEP has or may for the convenience, economy, and in some cases necessity, acted or may act as indemnitor, guarantor or surety on behalf of companies in the EPA System by reason of law, regulation, ordinance, or otherwise. AEP proposes that it be given authority, when such circumstances arise, to act as surety, indemnitor or guarantor for companies in the AEP System in an aggregate amount not in excess of $75 million. This dollar amount is in addition to any previous authorization or authorization granted in this filing. In support of this request, AEP notes that in the past companies in the AEP System either have been unable to obtain bonds from insurance companies without AEP acting as surety, indemnitor or guarantor and/or in having AEP acting in such a capacity, these companies were able to save substantially in insurance premiums. AEP will charge no fee to the companies when it acts as surety, indemnitor or guarantor.

AEP is also requesting permission to execute a supersedeas bond, as surety, in an amount up to $22 million. This request arises as a result of a January 9, 1984 final judgment entered in favor of Terre Haute Industries, Inc. and against AEP subsidiaries American Electric Power Service Corporation ("AEPSC") and Indiana and Michigan Electric Company ("I&M") in the sum of $16,933,700 with partial pre-judgment interest in the approximate amount of $567,000 and costs. AEPSC and I&M have represented to the Court that they intend to appeal the judgment. In order to supercede the judgment, AEPSC and I&M have obtained a supersedeas bond. It was determined, in order to obtain a favorable premium for such bond, that AEP would agree to indemnify the bond company with respect to the bond, thus AEP's reason for this request to execute a supersedeas bond as surety. AEP will charge no fee to I&M or AEPSC for acting in the capacity of surety.

AEP also proposes to guarantee or to enter into an agreement or agreements of indemnity or to act as surety with one or more surety bonding companies providing for idemnification by AEP of liabilities incurred by any such surety bonding company or companies in connection with the issuance of self-insurance pneumoconiosis (black lung) disability bonds that are required by AEP subsidiary coal companies. The AEP System companies have not been able to purchase or renew such surety bonds without indemnification by AEP of the corporate surety bonding company issuing such surety bonds. The maximum amount of guaranty by AEP or indemnity from AEP to a bonding company at any one time out-standing with respect to self-insurance pneumoconiosis disability benefits will not exceed $10 million.

Finally, AEP notes that under its existing authorizations, it is indemnifying Safeco Insurance

Company of America with respect to posting bonds for various purposes on behalf of AEP System Companies. AEP in this application requests permission, when appropriate, to enter into indemnity agreements, or to act as surety, indemnitor or guarantor with other surety bond companies in all instances where the Commission has in the past, or will in the instant matter, permit AEP to enter into such arrangements.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by July 16, 1984, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Office of Public Utility Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17358 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14005; 812-5780]

Mortgage Bankers Financial Corp I; Filing of Application

June 25, 1984.

Notice is hereby given, That Mortgage Bankers Financial Corporation I ("Applicant"), c/o Chapman and Cutler, 111 West Monroe Street, Chicago, IL 60603, a limited purpose finance corporation organized to facilitate the financing of long-term residential mortgages on single family residences, filed an application on February 28, 1984, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below, and to the Act for the text of all applicable sections.

According to the application, Applicant will be formed as a Delaware Corporation and is expected to be owned by companies engaged in the mortgage banking business. Applicant states that its purpose will be to facilitate the financing of long-term residential mortgages on single family residences and that it will not engage in any other unrelated business or investment activities.

Applicant intends to issue bonds in series ("Bonds") and lend the proceeds to various single purpose finance companies ("Finance Companies"), each of which will be wholly-owned by a home building company and have a mortgage banker as its agent. Applicant states that each series of Bonds will be separately secured by a pledge by the Finance Companies to Applicant and by Applicant to a trustee of collateral consisting of guaranteed mortgage pass-through certificates issued by the Federal National Mortgage Association ("FNMA Certificates"), Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates"), guaranteed fully-modified pass-through mortgage-backed certificates issued by the Government National Mortgage Association ("GNMA Certificates") or conventional first mortgage notes secured by mortgages on single-family residences (collectively "Mortgage Related Collateral"). Each series of Bonds will also be secured by a supplemental debt service fund established under an indenture and each GNMA, FNMA and FHLMC Certificate will evidence an interest in a pool of mortgage loans on single family residences.

Applicant states that each series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee ("Trustee"). Each series of Bonds will be sold to institutional or retail investors through one or more investment banking firms. Applicant represents that certain series of the Bonds will be registered under the Securities Act of 1933 and others will be sold in private placements. Applicant further represents that Indentures for public offerings will be subject to the provisions of the Trust Indenture Act of 1939.

Applicant states that the proceeds of the sale of each series of Bonds will be loaned to the various Finance Companies. Each Finance Company will use the proceeds to repay indebtedness to lenders or others incurred in connection with the funding or acquisition of mortgage loans owned by the Finance Company on single-family residences constructed primarily by its respective home builder. Applicant states that the Finance Companies will repay the loans made to them by Applicant by making or causing payments to be made directly to the Trustee on behalf of Applicant in amounts that are necessary to pay the principal of and interest on the Bonds as they become due. Each Finance Company will pledge the Mortgage-Related Collateral to Applicant as security for its loans and Applicant will assign to the Trustee its entire right, title and interest in the Mortgage-Related Collateral pledged as security. Applicant states that payments on first mortgage loans on single-family residences will be the primary source of funds for payments of principal and interest due on the Bonds.

Applicant Believes that it does not fall within the definition of an investment company as set forth in Section 3(a) of the Act. Applicant states that its primary activity will be the facilitation of the sales of single-family residences through the financing of whole residential mortgages and that it filed this application to eliminate any possible ambiguity concerning the applicability of the Act to Applicant.

Applicant also asserts that its proposed activities could be carried out directly by each of the Finance Companies without registering under the Act due to the exemption provided in Section 3(c)(5)(C) of the Act. Applicant submits that it is only facilitating the financing efforts of a number of small builders to achieve economies of scale.

Notice is further given, That any interested person wishing to request a hearing on the application may, not later than July 17, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17360 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21085; SR-NYSE-84-13]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change.

June 22, 1984.

The New York Stock Exchange, Incorporated ("NYSE"), Eleven Wall Street, New York, New York 10005, submitted on April 25, 1984, copies of a proposed rule change pursuant to Section 19((b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to provide for a minimum fractional change in premium bids or offers for index options of one sixteenth of $100 (or $6.25) regardless of the size of the premium. Under existing rules, the minimum fractional change in premium bids or offers for index options is one sixteenth of $100 only when the premium is less than $300 and is one-eighth of $100 (or $12.50) when the premium is equal to or greater that $300.

The NYSE contends that the smaller premium increments will encourage investor activity and will permit members to more readily use index options to hedge or speculate where the larger premium increments might have discouraged them. In its view, the increased trading flexibility will improve the index options market by increasing its liquidity and will thereby produce a more efficient and competitive marketplace.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 20937, May 7, 1984) and by publication in the Federal Register (49 FR 20589, May 15, 1984). No comments were received with respect to the proposed rule filing.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

[1] The Exchange does not intend to implement this rule change until it completes a survey or market data vendors to determine their capabilities to handle the reduced minimum risk. Accordingly, the exchange may postpone the effectiveness of the rule change pending completion of the survey.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to the delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17361 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21086; File No. SR-PSDTC-84-6]

The Pacific Securities Depository Trust Co., Filing of Proposed Rule Change

June 22, 1984.

On May 29, 1984, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Securities and Exchange Commission a proposed rule change under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would establish a program ("Units Program") through which PSDTC would offer participants depository services for eligible unit issues. A unit issue is a combination of two to four component securities issued and traded as a single security for a specified period of time. The Commission is publishing this notice to solicit your comments on the proposed rule change.

PSDTC's proposed Units Program would establish general procedures governing the deposit, withdrawal and transfer of unit issues and/or their component parts to or from participants' classified, unclassified or loan free positions through the separation date. The separation date for eligible unit issues is the date that component securities become separately transferable and the unit ceases to be transferable by the issuer's agent. As a result, participants that desire to deposit to or withdraw those units from their classified, unclassified or loan free positions would have to do so prior to the separation date. After the separation date, deposits and withdrawals would be limited to component parts of unit issues. Nevertheless, if the market in a particular unit issue remained active after the separation date, PSDTC participants, if they so desired, would be permitted to carry the component securities as units.

PSDTC initially has approved 25 unit security issues as eligible for deposit in the Units Program, but intends to increase the number of eligible unit issues on a regular basis thereafter. PSDTC notes that since the separation dates for the unit issues initially eligible for its Unit Program have already passed, only the component securities of those units would be accepted for deposit.

PSDTC proposes to institute a charge for each book-entry movement effected pursuant to its Units Program. PSDTC has determined that the initial charge will be $3.00 per book-entry movement.

PSDTC states in its filing that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 in general and with Sections 17A(b)(3)(F) and 17A(b)(3)(D) of the Act in particular. Specifically, PSDTC maintains that this proposed rule change is consistent with Section 17A(b)(3)(F) of the Act because it will facilitate the safeguarding of securities on deposit at PSDTC and will enable its participants to more efficiently handle their security positions. In addition, PSDTC states that its Units Program is consistent with Section 17A(b)(3)(F) of the Act because it provides for the allocation of reasonable fees and changes among its participants.

To assist the Commission in determining whether to approve the proposed rule change or to institute disapproval proceedings, you are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. If you decide to comment on this filing, please file six copies of your views in writing with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-PSDTC-84-06.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of PSDTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17359 Filed 6-28-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-21094; File No. SR-PSE-11]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 4, 1984, the Pacific Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange, Inc. ("PSE") proposes to amend several sections of Rule VI of the Rules of the Board of Governors, and Options Floor Procedure advice ("OFPA") B-5. These proposals redefine the obligations of market-makers and create a zone system for market-making. The Statement of Purpose in Item II(A) below contains a description of the terms of substance of the proposed rule changes.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change

The purpose of the rule change is to revise the Exchange's system of regulating Market Maker obligations, to more effectively accomplish the intended goals. To implement this system, some of the existing language of Rule VI, Section 79 must be amended, and new language will be added to Sections 75 and 79. Options Floor Procedure Advice B-5 will also be amended to reflect the changes made to Section 79.

Proposed Commentary .03 of Section 75 authorizes the Options Appointment Committee to create primary zones consisting of several posts, each post containing several classes of options. Under the new Commentary, a Market Maker's principal assignment will extend to a primary zone consisting of several posts, rather than a single post. The zone system will increase the number of Market Makers primarily assigned to each option, which will have the effect of improving liquidity.

Section 79(b)(1) of Rule VI and Commentary .02 will be amended to reduce the maximum bid-ask differentials in all series of options, to create tighter markets. The practice of doubling the maximum bid-ask differential for the far term series is eliminated.

Commentary .03 of Section 79, which required that no more than 25% of a Market Maker's trading activity in any quarter be in classes of options contracts to which the Market Maker holds neither a Principal nor Supplemental Appointment, is being completely eliminated. In its place, the following Commentaries to Section 79 are being added.

Proposed Commentaries .03(a) and .03(b) will obligate a Market Maker who represents the best market in the crowd to inform the Order Book Official when he is leaving the post, and state that a market Maker must inform the crowd when he changes a market he has recently given. These measures are intended to reduce crowd disruption and ensure that the displayed bids and offers accurately reflect the current best market in the crowd.

Proposed Commentary .06 of Section 79 formalizes the obligation of every Market Maker who is present at a post to trade one contract at the established price, in response to a Floor Broker's call for a market in an option at that post. If a Market Maker at the post either bids lower or offers higher than the established market, such Market Maker shall be obligated to trade one contract at the price quoted by the Market Maker. This Commentary states an affirmative obligation that Market Makers currently have under Section 79, and will aid Floor Brokers in filling orders at one price in an option with liquidity problems.

Proposed Commentary .07 formalizes the existing obligation of Market Makers to honor a quotation just given. This amendment is intended to reduce crowd disruption and assist in the maintenance of a fair and orderly market.

The Exchange's Market Maker attendance requirements, currently contained in OFPA B-5, are being eliminated, and are replaced with the requirement that Market Makers must execute 40% of their total transactions in-person. The Options Floor Trading Committee, which unanimously approved this proposed rule change, believes that the in-person trading requirement is a better method of enforcing Market Maker obligations than the existing attendance rules.

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Securities Exchange Act of 1934, in that it promotes just and equitable principles of trade by improving the Exchange's methods of regulating Market Maker obligations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicitated nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the PSE. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 22, 1984.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17363 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21084; File No. SR-NYSE-84-21]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc.

June 22, 1984.

The New York Stock Exchange, Inc. ("NYSE") submitted on June 8, 1984, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to implement certain enhancements to the NYSE's Designated Order Turnaround ("DOT") and Limit ("LMT") systems as well as an Immediate Reporting Service for specified securities. In this release the Commission is both providing notice of the proposed rule change and soliciting public comment on several specific issues raised by the proposed procedures.

The proposed rule change provides as follows: (i) The order-size eligibility in the DOT system would be increased from 599 shares to 1,099 shares for market orders, and the order eligibility size in LMT would be increased to 5,099 shares for all LMT orders;[1] (ii) marketable limit orders up to 1,099 shares would be treated as market orders for the purposes of DOT;[2] (iii) market orders up to 1,099 shares and marketable limit orders up to 1,099 shares would (in such security issues as the NYSE may from time to time determine) by guaranteed execution at a single price; (iv) the NYSE's policy of specialists' not charging a commission on DOT orders would be extended to both market orders and marketable limit orders up to 1,099 shares, but due to the greater service required on short sales, specialists would be authorized to charge commission fot both market and marketable limit orders to sell short; (v) the specialists' existing ½ point price guarantee (with certain exceptions as provided in NYSE Rule 123A.47) for execution prices reported through DOT would apply to market and marketable limit orders up to 1,099 shares,[3] and a new exception would be created providing that the specialist's guarantee would not apply to an erroneous execution report on a limit order if, in fact, the subject security never reached the limit price on that trading day; (vi) the time parameter within which a specialist must report an execution or a "stop" on a DOT order (or cause a system generated report to be issued) would be reduced from five minutes to 30 seconds, on a phased-in basis as the Exchange deems appropriate; and (vii) the NYSE's proposed "Immediate Reporting Service" would be used for certain stocks (to be selected by the NYSE) to provide for immediate execution and report through DOT for market and marketable limit orders up to 1,099 shares when the spread between the bid and the offer in the subject stock is ⅛ point and the NYSE quotation is the best Intermarket Trading System ("ITS") quotation in that stock.[4] The NYSE states that the proposed modifications to its DOT system will increase the operating efficiency of the Exchange and have become necessary due to substantial increases in its volume of transactions and in its average order size since 1976, when DOT was introduced.

Publication of the submission is expected to be made in the Federal Register during the week of June 25, 1984. In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-84-21.

As noted above, the NYSE's Immediate Reporting Service would provide immediate executions to orders entered into the DOT system when the NYSE quotation spread in the subject stock was no more than ⅛ point and the NYSE quote equaled the best ITS quotation. In all other cases, however, DOT market orders would be assigned a reference price based on the NYSE's most recent last sale price in the subject stock preceding the order, and, if not executed within the specified time after receipt, the DOT order would be automatically executed at this reference price. Marketable limit orders would be assigned the prevailing NYSE quote at time of receipt as a reference price, and would be similarly executed at the reference price if not executed by a specialist within the specified time period. The NYSE proposes to reduce the time parameter preceding system execution of these orders from the existing five minute period to as little as thirty seconds, on a phased-in basis.

The NYSE's proposed immediate Reporting Service would be the first fully automated execution system for round-lots introduced on the NYSE.[5] Other exchanges, including the Pacific ("PSE"), Midwest ("MSE"), and Philadelphia ("Phlx") Stock Exchanges have offered automated executions for small orders in listed stocks for a

[1] Currently, the order eligibility size in LMT is 599 shares for day limit orders, and 5,099 shares for GTC ("good 'til cancelled") limit orders. The NYSE proposes to further raise the eligibility standard to 30,099 shares for all LMT orders, as further system enhancements are made.

[2] The NYSE defines a "marketable limit order" as a limit order that is immediately executable because the price of the subject security at the time the order is entered is equal to or better than the limit price on the order.

[3] Under NYSE Rule 123A.47(b) an erroneous execution report sent by a specialist through DOT shall be binding unless the report is more than ½ point away from the execution price, in which case the execution price shall be binding.

[4] The ITS is an intermarket communications facility operated jointly by certain national securities exchanges and the National Association of Securities Dealers, Inc. ("NASD").

[5] The NYSE previously has implemented its Registered Representative Rapid Response Service ("R4"), currently approved on a temporary basis until November 10, 1984. *See* Securities Exchange Act Release No. 20350 (November 4, 1983). R4 allows participating broker-dealers to execute small customer orders in certain NYSE stocks at the best ITS quotation and then send reports of those executions for acceptance by the specialist. Although R4 provides immediate executions, it does so through allowing reports of off-floor executions to be forwarded to the Exchange rather than through an on-floor execution system such as the Immediate Reporting Service.

number of years. These systems execute orders automatically on a derivative basis at the best ITS quote;[6] that is, even if the exchange's own quotation does not equal the best ITS quote, customers are assured an execution in these automated systems at this price. The NYSE's immediate Reporting Service similarly would assure an execution at the best ITS quote in stocks included in the service.[7]

In view of the significance of the introduction of an automated execution system on the NYSE, the commission solicits comments on the NYSE's proposed immediate Reporting Service. The Commission especially solicits comment on any possible structural implications of the immediate Reporting Service, as well as on possible execution efficiencies afforded by this system.

The Commission also requests comments on the NYSE's proposal to reduce the time parameters for system generated executions of DOT and marketable limit orders to as short as thirty seconds. The Commission notes that, with a thirty second parameter, this DOT system would be equivalent in many respects to the PSE's SCOREX and the MSE's MAX automated execution systems, in which orders are exposed to the specialist for thirty seconds prior to execution. The NYSE's DOT system would differ from these systems, however, in that the DOT system, which uses as reference prices the preceding NYSE last sale and quote, would not assure customer executions at the best ITS quote or even an execution based on the consolidated last sale price. Use of a last sale reference price could result at times in executions of DOT orders at prices better than the best ITS quote, if the preceding trade occurred between the ITS spread. However, it also could result in trades outside the best ITS quotation if, for instance, the last NYSE trade involved a block at a price away from the market or the market had moved since the last trade. Moreover, use of the NYSE quote would result in inferior executions whenever the NYSE quote did not equal the best ITS quote. Accordingly, the Commission particularly requests comment concerning the potential impact on the quality of customer executions of DOT orders at the NYSE Last sale or the NYSE quote after a period as short as thirty seconds.[8]

Copies of the submission,[9] all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C.

Copies of the filing and of any subsequent amendments also will be available at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

Exhibit A

In the matter of proposed rule change by New York Stock Exchange, Inc. relating to enhancements to the DOT and LMT systems and the introduction of an Immediate Reporting Service. Comments requested within 21 days after the date of this publication.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 8, 1984, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements to the Exchange's DOT and LMT Systems and the introduction of an Immediate Reporting Service for specified securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of the rule change proposed herein is to increase the efficiency of Exchange systems by providing more rapid and cost-effective reports to subscriber member organizations. The proposed rule changes consist essentially of the following:

(i) Raising order-size eligibility in the Designated Order Turnaround (DOT) and Limit (LMT) Systems.

(ii) Providing that marketable limit orders up to 1,099 shares be treated as market orders for purposes of the DOT System rules and procedures.

(iii) Providing for a single-priced execution of DOT orders and marketable limit orders up to 1,099 shares.

(iv) Extending the Exchange's policy on the specialist not charging a commission on DOT market orders to marketable limit orders up to 1,099 shares, and clarifying that the specialist may charge a commission on DOT market orders to sell short and marketable limit orders to sell short.

(v) Providing that, subject to specified exceptions, the specialist shall be liable for erroneous execution reports of limit orders up ½ point for orders up to 1,099 shares.

(vi) Changing the time parameter for system-generated reports for DOT market orders whenever the specialist fails to report an execution or a "stop" to 30 seconds, to be implemented over a period of time as the Exchange deems appropriate, and extending the concept of system-generated reporting to marketable limit orders up to 1,099 shares subject to the same "timer" as for DOT market orders.

[6] The PSE, however, currently does not include certain NASD quotes in its automated execution system.

[7] It should be noted that the NYSE's proposed immediate Reporting Service, while offering automated executions at the best quote, would not be a derivative system like the other exchange automated systems, because the NYSE quote must match the best ITS quote before orders are automatically executed in this system.

[8] The NYSE staff has indicated that it intends to move eventually to using the best ITS quote as the reference price for execution of DOT and marketable limit orders, after the NYSE's internal systems have been modified to allow pricing in these systems off the best ITS quote.

[9] The NYSE's submission for publication in the Federal Register is appended as Exhibit A to this notice.

(vii) Providing that a member firm shall receive an immediate report of execution of a DOT market order or marketable limit order in a stock eligible for the Exchange's "Immediate Reporting Service" when the spread between the bid and offer in the stock is ⅛ point and the NYSE quotation is the best Intermarket Trading System ("ITS") quotation in that stock.

Increase in Order Size Eligibility. The Exchange proposes that the size of orders eligible for transmission to the Floor via the DOT System be increased from 599 shares to 1,099 shares. The Exchange notes that the size of the average trade has been increasing since the DOT System was introduced in 1976. In that year, DOT order eligibility was 199 shares, and the size of the average trade on the NYSE was 559 shares. Last year, the size of the average trade was more than 1,300 shares. In 1983, there were more than 37,000 trades per day in the range of 100 to 900 shares. The increase in the eligibility size of DOT orders represents an attempt by the Exchange to handle such orders as efficiently as possible in light of overall market trends toward larger size orders and trades.

In addition to increasing DOT order eligibility to 1,099 shares, the Exchange is also proposing to increase the size of orders eligible for its LMT System. Currently, the order eligibility size in LMT is 599 shares for day limit orders, and 5,099 shares for GTC ("good till cancelled") limit orders. The Exchange wants to raise the order eligibility size to 5,099 shares for *all* orders in the LMT System, and, in several months as system enhancements are made, to further raise the eligibility standards to 30,099 shares for all LMT orders. The Exchange believes that these enhancements are appropriate to ensure the efficient functioning and utilization of the LMT System.

"Marketable" Limit Orders. The Exchange is proposing that "marketable" limit orders (i.e., limit orders that are immediately executable because the price of the subject security at the time the orders are entered into the LMT System is equal to or better than the limit price specified on the order) up to 1,099 shares be handled in the same manner as DOT market orders, and be subject to all DOT trading rules and procedures, including the Immediate Reporting Service discussed below. In Exchange's view, a marketable limit order is, for all intents and purposes, the equivalent of a market order, and therefore may be appropriately handled in the same manner as conventional DOT market orders. The Exchange believes that this will result in the more efficient handling and processing of marketable limit orders.

Single-Price Execution. The Exchange is proposing that DOT market orders and marketable limit orders up to an order size of 1,099 shares, in selected issues as the Exchange shall from time to time determine, be guaranteed an execution at a single price, and would not be "split up" into two or more segments, with each part of the order receiving a different price. The Exchange notes that currently 98% of all DOT orders are executed at a single price, and that automated execution systems on regional exchanges, such as PACE (Philadelphia), SCOREX (Pacific), and MAX (Midwest) guarantee single-price executions to their subscriber organizations. The Exchange believes that a single-price guarantee for DOT orders and marketable limit orders up to 1,099 shares will provide efficient handling and processing of such orders, and meet the expressed needs of subscriber organizations, who prefer single-price executions of such orders.

Commissions on DOT and Marketable Limit Orders to Sell Short. It is Exchange policy that the specialist not charge a commission for executing DOT market orders. Basically, such orders are of an important, but relatively routine, nature, and do not require the degree of service that might be called for in handling larger orders, or orders with special instructions. Thus, the Exchange believes that a "no commission" policy is appropriate. The Exchange also believes it is appropriate to extend the "no commission" policy to marketable limit orders since such orders are for all intents and purposes the equivalent of immediately executable market orders. However, DOT market orders to sell short and marketable limit orders to sell short do require a degree of service greater than that called for in executing simple buy or sell orders. Therefore, the Exchange has determined that the "no commission" policy shall not apply to DOT market orders to sell short and marketable limit orders to sell short. Any commissions or other charges in regard to the execution of such orders are subject to negotiation between the specialist and the subscriber member organization. The Exchange notes that orders to sell short are not elibible for system-generated reporting or for the Immediate Reporting Service, both of which are discussed below.

Specialist's Liability for Erroneous Limit Order Execution Reports. In SR-NYSE-82-17, the Exchange submitted an amendment to NYSE Rule 123A.47 to provide essentially that the specialist must guarantee the execution prices he reports through the DOT System, except that (i) if the erroneous report is at a price which is more than one-half point away from the execution price, then the price of the execution shall be binding, and (ii) if the DOT subscribing member organization requests a correction from the specialist prior to the opening on the third business day following the day of the transaction, the specialist shall correct the execution report to the price of the execution and that price shall be binding. The Exchange is now proposing to amend Rule 123A.47 to extend the concept of specialists guaranteeing execution reports to orders up to 1,099 shares in the LMT System, subject to the two exceptions enumerated above. In addition, a third exception would be added in the case of LMT orders when an execution report is sent but the stock price never reached, on that trading day, the limit price specified on the order. In the Exchange's view, it would be inappropriate to have the specialist guarantee an execution price when, under the terms of the order, the order could not have been properly executed, and the subscriber member organization could not really have expected a report of execution. The error experience of specialists generally in handling small-size orders, and the efficiences achieved by the ½ point price guarantee, are discussed in detail in SR-NYSE-82-17, and are herein reiterated.

System-Generated Reports When Specialist Fails to Report Execution. In SR-NYSE-83-20, the Exchange submitted a proposal to provide system-generated reports for DOT orders whenever the specialist fails to report an execution or a "stop" once five minutes have elapsed after such order reaches the Floor. As the Exchange noted in that 19b-4 filing, system-generated reporting is designed to ensure that *all* DOT orders are responded to on a timely basis. In Amendment No. 1 to SR-NYSE-83-20, the Exchange subsequently agreed that the time parameter for system-generated reporting would be not less than three minutes unless the Exchange first obtained SEC approval under the 19b-4 process.

At this time, the Exchange is hereby requesting that the time parameter for system-generated reports be reduced to 30 seconds. The Exchange intends to gradually "phase in" this time parameter over a period of several months, consistent with the implementation of new display-oriented technology. The Exchange is also proposing to extend system-generated reporting to marketable limit orders up to 1,099

shares, subject to the same "timer" as for DOT market orders.

The Immediate Reporting Service. The Exchange's proposed Immediate Reporting Service would be used for certain stocks to be selected based on the stock's activity, price, the percentage of time the NYSE quotation represents the minimum price variation (i.e., a "⅛ market"), the percentage of time the NYSE quotation represents the best Intermarket Trading System ("ITS") quotation in the stock, and such other competitive considerations as the Exchange may deem appropriate.

When a Service-eligible stock is trading in a ⅛ point market and the NYSE quotation is the best ITS quotation, a market order entered through the DOT System, or a marketable limit order up to 1,099 shares entered through the LMT System, would be immediately priced and reported by the system to the originating member organization. Buy orders are priced at the NYSE offer and sell orders are priced at the NYSE bid. Orders would be executed at a single price. The Service would be used *only* when a Service-eligible stock is trading at a ⅛ point, ITS best-quotation market. If the market is not ⅛ point, or the NYSE quotation is not the best ITS quotation, the order would not be immediately priced and reported, but rather would be transmitted to the specialist's post for execution pursuant to the usual DOT procedures.

Upon receipt of a report of an order priced and reported by the Service, the specialist shall accept such report as the report of an execution that has already taken place.

If a bid or offer on which the report of execution is based is on behalf of the book or the Crowd, the specialist would give up the book or the Crowd, based on priority. If the specialist has priority over an order in the Crowd, he may retain priority and accept the Service report for his own account. If the execution report is not at the prevailing quote when the report is received on the Floor, the execution is allocated to the contra-side interest which was responsible for the bid or offer at the time of the Service execution. If that interest has been filled by an intervening transaction, or has been withdrawn from the market, the specialist shall guarantee the execution price as a matter of last resort.

The Exchange believes that the Service offers a distinct benefit to member organizations by providing them with immediate, guaranteed execution reports. The Service also uses the universal contrast that are employed in the DOT System, and thus provides for automatic submission of trade data to comparison. Thus, the Service should eliminate errors and omissions and provide a fully compared trade on trade date.

(2) Statutory Basis

The DOT and LMT Order System enhancements proposed herein are designed to facilitate transactions involving orders on the Exchange and to provide for efficient clearance and settlement of these transactions. Implementation of these enhancements will be consistent with those provisions of the Securities and Exchange Act of 1934 (the "Act") which encourage use of new data processing and communications techniques and more efficient market operations. It will also advance the prompt and accurate clearance and settlement of securities transactions. See Sections 11A(a)(1) and 17A(a)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication. For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 84-17332 Filed 6-28-84; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the RTCA Executive Committee to be held on July 20, 1984, in the RTCA Conference Room, One McPherson Square, 1425 K Street N.W., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Approval of Minutes of Meeting Held on May 10, 1984; (2) Chairman's Report on RTCA Administration and Activities; (3) Special Committee Activities Report for May and June, 1984; (4) Consideration of Establishing New Special Committees; (5) Approval of Special Committee 135 Recommended Revisions to RTCA Document DO-160A "Environmental Conditions and Test Procedures for Airborne Equipment"; and (6) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA

Secretariat, One McPherson Square, 1425 K Street, N.W., Suite 500, Washington, D.C. 20005, (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 21, 1984.

Karl F. Bierach,

Designated Officer.

[FR Doc. 84-17328 Filed 6-28-84; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

Cultural Property Advisory Committee; Meeting Agenda

The Cultural Property Advisory Committee will conduct a meeting at Room 840, 301 4th Street, SW., Washington D.C. on July 11 and 12. Agenda for the two day session is as follows:

Wednesday, July 11

9:00 a.m.—Committee Chairmán, Michael J. Kelly, convenes meeting. New member, James Berry Hill takes the oath of office.

9:30 a.m.—Report by the Executive Director, Ann Guthrie, regarding the status of outstanding issues from March meeting.

9:45 a.m.—Presentation and discussion of proposed "Committee Organization."

1:15 a.m.—Presentation by Anne Raidl of the Cultural Heritage Division of UNESCO, Paris.

12:00 p.m.—Break for lunch.

1:30 p.m.—Presentation and discussion of Committee's procedures for considering a State Party request.

5:00 p.m.—Adjourn.

Thursday, July 12

9:00 a.m.—Chairman convenes meeting. Consideration of Committee's internal procedures and operations.

12:30 p.m.—Adjournment (time approximate)

Afternoon session of July 11 and morning of July 12 will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c)(7)(E)). Discussion will involve investigative techniques and procedures. The session will also be closed because the discussion will involve internal personnel rules and practices (5 U.S.C. 552b(c)(2)), and information the premature disclosure of which would be likely to frustrate significantly by implementation of proposed actions (5 U.S.C. 552b(c)(9)(B)).

Members of the public wishing to attend the open session on Wednesday, July 11, should contact Ms. Vicki Rose on 485-7319, for the exact location of Committee activities. Public attendance will be limited due to the size of the meeting room, and must be arranged in advance because of controlled access to the USIA Building.

Dated: June 26, 1984.

Charles N. Canestro,

Federal Register Liaison.

Determination To Close Advisory Committee Meeting; July 11-12, 1984

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that the sessions of the meeting scheduled for the afternoon of July 11 and the morning of July 12, may be closed to the public.

The Committee has requested that these portions of the July 11-12 meeting be closed, because it will be discussing investigative techniques and procedures (5 U.S.C. 552b(c)(7)(E)). It will also involve discussion of internal personnel rules and practices (5 U.S.C. 552b(c)(2)) and information, premature disclosure of which, would be likely to frustrate significantly implementation of proposed actions and policies (5 U.S.C. 552b(c)(9)(B)).

Charles Z. Wick,

Director.

[FR Doc. 84-17346 Filed 6-28-84; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: The Veterans Administration has submitted to OMB for reveiw the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains extensions and lists the following information: (1) The Department or Staff Office issuing the form; (2) the title of the form; (3) the agency form number if applicable; (4) how often the form must be filled out; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form; and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389-2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-6880.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: June 25, 1984.

By direction of the Administrator.

Dominick Onorator,

Associate Deputy Administrator for Information Resources Management.

Extension

1. Department of Veterans Benefits
2. Farm Survey and Overall Farm and Home Plan Self-Proprietor/ Manager—Chapter 31, Title 38, United States Code
3. VA Form 28-1905n
4. On occasion
5. Individuals or households
6. 30 responses
7. 60 hours
8. Not applicable

Extension

1. Department of Veterans Benefits
2. Monthly Certification of Flight Training
3. VA Form 22-6553c
4. On occasion; Monthly
5. Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
6. 615 responses
7. 1800 hours
8. Not applicable

[FR Doc. 84-17357 Filed 6-28-84; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Medical Center, Sepulveda, California, Chevron Drilling Lease; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the proposed lease of ½ acre of VA land, with access, for a period of 18 months and has determined that the potential environmental impacts will be minimal as a result of the issuance of the lease.

Chevron, Inc., proposes to use the leased land as the site for drilling an exploratory corehole by directional drilling. This will not be a production oil well. It is only for exploratory information gathering purposes.

Development of the project will cause minor short term impacts in the form of air pollution and generation of noise

during construction and drilling operations. Chevron will adhere to all applicable Federal, State, and local environmental regulations during construction and operation of this project.

The significance of the identified impacts has been evaluated relative to the considerations of both context and intensity, as defined by the Council on Environmental Quality (Title 40 CFR 1508.27).

An Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, Sections 1501.3 and 1508.9. A Finding of No Significant Impact has been reached based upon the information presented in this assessment. The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs (088C), Room 423, Veterans Administration, 811 Vermont Avenue, N.W., Washington, D.C. 20420, (202) 389-3316. Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: June 25, 1984.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 84-17333 Filed 6-28-84; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 127
Friday, June 29, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Federal Election Commission	1
Federal Energy Regulatory Commission	2
Federal Home Loan Bank Board	3

1

FEDERAL ELECTION COMMISSION

Federal Register No. 84-1663

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 28, 1984, 10:00 a.m.

Pursuant to 11 CFR 3.5(d)(1), the Commission is adding the following matter to the open meeting agenda:

Financial Control and Compliance Manual for General Election Candidates Receiving Public Financing

* * * * *

The meetings scheduled for the dates of July 3, 1984, and July 5, 1984, have been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 84-17458 Filed 6-27-84; 10:45 am]

BILLING CODE 6715-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: June 26, 1984, 49 FR 26181.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., June 28, 1984.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CAG-6: RP84-16-0002 and RP84-21-000, Locust Ridge Gas Company

CAG-14: RP84-42-000 and RP72-133-000, *et al.*, United Gas Pipe Line Company

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17454 Filed 6-27-84; 10:27 am]

BILLING CODE 6717-02-M

3

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 49 Page No.—None at this time. Date to be Published—Thursday, June 28, 1984.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

CHANGES IN THE MEETING: The following items have been withdrawn from the Bank Board Meeting scheduled Monday, July 2, 1984, at 2:00 p.m.

Limitations on Acceptance of Brokered Deposits, Recordkeeping for Insurance of Accounts

Finance Subsidiaries

No. 88, June 27, 1984.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 84-17493 Filed 6-27-84; 2:44 pm]

BILLING CODE 6720-01-M

Federal Register

Friday
June 29, 1984

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the Federal Register without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the Federal Register are listed with each State.

California: CA84-5007	May 18, 1984.
Delaware: DE82-3015	June 4, 1982.
Illinois:	
IL83-2035	Apr. 8, 1983.
IL 83-2066	Aug. 12, 1983.
Iowa: IA84-4011	Feb. 24, 1984.
Kansas: KS84-4026	Apr. 27, 1984.
Louisiana: LA84-4010	Mar. 9, 1984.
Oklahoma:	
OK84-4033	May 18, 1984.
OK84-4034	Do.
Texas:	
TX82-4045	Sept. 24, 1982.
TX84-4002	Janu. 27, 1984.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the Federal Register are listed with each State. Supersedeas decision numbers are in parentheses following the number of the decisions being superseded.

Nevada: NV82-5115(NV84-5017)	Aug. 6, 1982.
New Mexico NM83-4074 (NM84-4041)	Oct. 21, 1983.

Signed at Washington, D.C., This 22nd day June 1984.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION #CA84-5007-MOD#4 (49 FR 21245-May 18, 1984) Imperial, Inyo, Kern, etc Counties, California	Basic Hourly Rates	Fringe Benefits
CHANGE		
Bricklayers; Stonemasons:		
Area 3	$20 75	$3 52
Area 4	19 75	3 95
Area 7	20 50	3 22
Divers:		
Diver, Wet	38.41	6 745
Diver, Stand-by	19 205	6 745
Diver, Tender	18 205	6 745
Plasterers:		
Area 2	25 40	
Terrazzo Workers:		
Area 2	17 50	4 80
ADD:		
Carpenters:		
Area 1:		
Piledrivers	19 275	7 275
Area 2:		
Piledrivers	17 275	7 275
Marble Setters:		
Area 3	20 75	3 52
Area 4	19 75	3 95
Area 5	20 50	3 22
The area descriptions will read:		
Area 3: Los Angeles County		
Area 4: Riverside and San Bernardino Counties		
Area 5: Orange County		
Tile Setters:		
Area 6	16 45	4 55
The area description will read:		
Area 6: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties		

DECISION NO. DE82-3015 - MOD. #17 (47 FR 24526 - June 4, 1982) State of Delaware	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS & STEAMFITTERS:		
New Castle & Kent Counties (north of southern boundary of Dover City)	19 47	3 60
Sussex & Kent (Remainder of County) Counties	17 40	2 55

DECISION #KS84-4026-MOD.02 (49 FR 18217-April 27 1984) DOUGLAS JEFFERSON, LEAVENWORTH, MIAMI, AND SHAWNEE COUNTIES, KANSAS	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Laborers: Zone 3		
Group 1	$8 85	$2 25
Group 2	9 00	2 25
Group 3	9 10	2 25
Group 4	9 25	2 25
Laborers: Zone 4		
Group 1	7 65	2 30
Group 2	7 80	2 30
Group 3	7 90	2 30
Group 4	8 05	2 30

DECISION NO. IL83-2035 - Mod #3 (48 FR 15413 April 8, 1983) Bureau, Carroll, Henry Jo Daviess, Lee, Ogle, Rock Island Stephenson, Whiteside & Winnebago Counties, Illinois	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Area 1	$17 30	$2 71
Area 2	16 62	2 49
Area 3	16 93	3 08
Area 4	17 52	2 49
Area 5	15 35	4 59
Area 6	17 00	1 70
CEMENT MASONS:		
Area 3	14 90	1 35
LINE CONSTRUCTION:		
Area 1:		
Linemen	18 10	1 00+8½%
Groundmen Equipment perator	16 89	1 00+8½%
Groundmen Truck Driver with Winch	12 85	1 00+8½%
Groundmen Truck Driver without winch	12 10	1 00+8½%
Groundmen	11 54	1 00+8½%
Area 2:		
Linemen; Digger Op, Crane Op (15 tons or over)	17 40	65+11½% +a
Equipment Operator, Semi-Truck Driver	14 78	
Truck Drivers	11 78	65+11½% +a
Groundman	11 39	65+11½% +a
LABORER:		
Area 5:		
Unskilled	13 92	2 65
Semi-skilled	14 12	2 65
Skilled	14 32	2 65
Area 6:		
Unskilled	13 18	2 70
Semi-skilled	13 43	2 70
Skilled	13 68	2 70
TRUCK DRIVERS:		
Area 1:		
Group 1	14 275	1 90+b
Group 2	14 675	1 90+b
Group 3	14 875	1 90+b
Group 4	15 125	1 90+b
Area 2:		
2-3 Axles	14 87	4 00
4 Axles	15 02	4 00
5 Axles	15 22	4 00
6 Axles	15 42	4 00
FOOTNOTE:		
b $55.00 per week per employee		

DECISION NO. IL83-2066 - Mod #3 (48 FR 36780 - Aug 12, 1983) Bond, Calhoun, Clinton, Greene Jersey, Macoupin, Madison, Monroe, Montgomery, St Clair & Washington Counties, Illinois	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS & PILEDRIVERMEN:		
Area 1	$16 785	$2 90
TRUCK DRIVERS:		
Group 1	14 275	1 90+a
Group 2	14 675	1 90+a
Group 3	14 875	1 90+a
Group 4	15 125	1 90+a
FOOTNOTE:		
a $55.00 per week per employee		

DECISION NO. IA84-4011 - MOD. #4 (49 FR 7068 - 2/24/84) Scott County, Iowa	Basic Hourly Rates	Fringe Benefits
CHANGE:		
Bricklayers & stonemason	$15 11	2 97
Carpenters:		
The frame construction or repair of nursing & retirement homes & apartments over 4 stories:		
The City of Davenport	9 10	1 43
Remainder of County	6 10	1 43
All other work:		
Carpenters	14 91	3 08
Millwrights	16 28	3 57
Piledrivermen	15 41	3 08

MODIFICATIONS P 3

DECISION #0K84-4033-MOD.#3
(49 FR 21257-May 18, 1984)

Adair, Atoka, Bryan, Coal Cherokee Craig, Creek, Delaware, Haskell, Hughes, Leflore Latimer, Mcintosh, Mayes, Muskogee, Nowata, Okfuskee, Okmulgee, Osage Ottawa, Pawnee, Pittsburg, Pushmataha, Rogers, Tulsa Sequoyah, Wagoner and Washington Cos Oklahoma

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Roofers	$12 40	$1 39
Tile Layers Terrazzo Workers & Marble Masons		
Area 1	16 25	1 30
Area 2	15 09	3 10

DECISION #0K84-4034-MOD.#3
(49 FR 21252-May 18, 1984)

Alfalfa, Beckham Blaine, Caddo, Canadian, Carter, Cleveland, Comanche Cotton Custer, Dewey, Ellis Garfield Garvin Grady Grant, Greer, Harmon, Harper, Jackson Jefferson, Johnston, Kay Kingfisher, Kiowa, Lincoln Logan, Love, McClain, Major, Marshall, Murray, Noble, Oklahoma, Payne Pontotoc, Roger Mills, Pottawatomie, Seminole, Stephens, Tillman, Washita, Woods, & Woodward Counties Oklahoma

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Roofers	$12 40	$1 39
Asbestos Workers		
Area 1	15 20	2 37
Area 2	17 76	2 33
Area 3	17 16	2 76

DECISION #0K84-4034 (contd)

	Basic Hourly Rates	Fringe Benefits
Carpenters - Area 3		
Carpenters	$11 25	$1 74
Millwrights	11 50	1 74
Piledrivermen	11 50	1 74
Carpenters - Area 4		
Carpenters	12 45	1 50

DECISION NO. LA84-4010 -
MOD. #7
(49 FR 9064 - 3/9/84)
Statewide Louisiana

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Elevator constructors:		
Zone 2:		
Mechanics	$13.03	3 00+a
Helpers	70%JR	3 00+a
Helpers (Prob.)	50%JR	
Plumbers & pipefitters:		
Zone 2	13 42	2 58

DECISION NO. TX82-4045 -
MOD. #4
(47 FR 42257 - 9/24/82)
Taylor County, Texas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Electricians	$13 50	1 55+ 3-1/4%

DECISION NO. TX84-4002 -
MOD. #4
(49 FR 3575 - 1/27/84)
Lubbock County, Texas

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Bricklayers & stonemason	13 50	50

SUPERSEDEAS DECISION

STATE: Nevada COUNTY: Washoe
DECISION NUMBER: NV84-5017 DATE: Date of Publication
Supersedes Decision No. NV82-5115 dated August 6, 1982, in 47 FR 34314
DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS; Stonemasons	$14 30	2 06
BRICK HOD CARRIERS	13 56	2 60
CARPENTERS	11 48	5 47
CEMENT MASONS:		
Lake Tahoe Area:		
Cement masons	17 22	5 43
Mastic, Magnesite and all Composition Masons	17 47	5 43
Troweling Machine; Grinder Operator and Kelly Float	17 62	5 43
Remainder of Washoe Co		
Cement Maons	15 47	5 43
Mastic, Magnesite and all Composition Masons	15 72	5 43
Troweling Machine; Grinder Operator and Kelly Float	15 97	5 43
DRYWALL INSTALLERS	15 55	5 47
ELECTRICIANS	12 00	3.74+ 3%
INSULATION INSTALLER	8 50	
IRONWORKERS:		
FENCE Erectors	18 99	5 95
Ornamental; Reinforcing; Structural	19 88	5 95
PAINTERS	14 45	1 25
PLASTERERS	15 47	3 21
PLUMBERS	12 67	
ROOFERS	18 75	2 32
SHEET METAL WORKERS	16 48	5 67
SOFT FLOOR LAYERS	16 74	1 58
TERRAZZO WORKERS; TILE SETTERS	15 04	2 28
LABORERS:		
Group 1	13 92	2 80
Group 2	14 02	2 80
Group 3	14 17	2 80
Group 4	14 42	2 80
Group 5	14 72	2 80
Group 6-A	14 72	2 80
Group 6-B	14 42	2 80
Group 6-C	14 07	2 80

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Piledriving:		
Group 1	13 62	9 14
Group 1-A	14 11	9 14
Group 1-B	14 41	9 14
Group 2-A	14 41	9 14
Group 2-B	15 24	9 14
Group 2-C	15 49	9 14
Group 2-D	15 70	9 14
Group 3	15 92	9 14
Group 3-A	16 54	9 14
Group 4	17 34	9 14
Group 5	17 58	9 14
Group 6	19 23	9 14
Steel Erection:		
Group 1	14 31	9 14
Group 2	14 84	9 14
Group 3	16 31	9 14
Group 4	16 52	9 14
Group 4-A	16 96	9 14
Group 5	17 68	9 14
Group 6	18 30	9 14
Group 7	18 73	9 14
Group 8	19 15	9 14
Group 9	20 65	9 14
TRUCK DRIVERS:		
GROUP 1	12 97	5 28
Group 2	13 02	5 28
Group 3	13 13	5 28
Group 4	13 19	5 28
Group 5	13 24	5 28
Group 6	13 29	5 28
Group 7	13 40	5 28
Group 8	13 46	5 28
Group 9	13 51	5 28
Group 10	13 54	5 28
Group 11	13 57	5 28
Group 12	13 68	5 28
Group 13	13 73	5 28
Group 14	13 99	5 28
Group 15	14 01	5 28
Group 16	14 17	5 28
Group 17	14 34	5 28

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

GROUPS	AREA 1	AREA 2	AREA 3	AREA 4
1-A	$13 64	$15 14	$15 64	$16 64
2	14 17	15 67	16 17	17 17
3	14 44	15 94	16 44	17 44
4	15 18	16 68	17 18	18 18
5	15 48	16 98	17 48	18 48
6	15 65	17 15	17 65	18 65
7	15 90	17 40	17 90	18 90
8	16 49	17 99	18 49	19 49
9	16 81	18 31	18 81	19 81
10	17 16	18 66	19 16	20 16
10-A	17 35	18 85	19 35	20 35
11	17 59	19 09	19 59	20 59
11-A	19 23	20 73	21 23	22 23

FRINGE BENEFITS PAYMENTS:
$9 14

AREA DEFINITIONS:

AREA 1: Area within 50 road miles of either the Carson City Courthouse or the Washoe County Courthouse

AREA 2: Area between 50 and 150 road miles of the Washoe County Courthouse

AREA 3: Area between 150 and 300 road miles of the Washoe County Courthouse

AREA 4: Area over 300 road miles of the Washoe County Courthouse

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTE:
a Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit Seven Paid Holidays: A thru G

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Friday after Thanksgiving Day; G-Christmas Day

LABORERS

Group 1: All cleanup work of debris, grounds and buildings including Brushloader and windows and tile; Dumpman or Spotter (other than asphalt); General Laborer; Gardeners and Landscape Laborers; Limber, Brushloader and Piler

Group 2: Choker Setter or Rigger (clearing work only); Pittsburgh Chipper and similar type Brush Shredders; Concrete Worker (wet or dry) - all concrete work not listed in Group 3; Crusher or Grizzly Tender; Guinea Chaser (Stakeman); Panel Forms (wood or metal) - handling, cleaning and stripping of; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete; Railroad Trackmen (maintenance, repair or builders); Sloper; Semi-skilled Wreckers (salvaging of building materials other than those listed in Group 3); Greasing Dowels

Group 3: Asphalt Workers (Ironers, Shoveler, Cutting Machine); Buggymobile; Chainsaw, faller, logloader and bucker; Compactor (all types); Concrete Mixer, under 1/2 yard; Concrete pan work (breadpan type) (handling, cleaning, stripping); Concrete Saw, Chipping, grinding, sanding, Vibrator; Cribbing, shoring, Lagging, trench jacking, handguided Lagging Hammer; Curbing or Divider Machine; Curb Setter (pre-cast or cut); Ditching Machine (hand guided); Driller's Tender, Chuck Tender; Form Raiser, Slip forms; Grouting of concrete walls, windows and door jams; Headerboardman; Jackhammer, Pavement Breaker, Air Spade; Mastic Workers (wet or dry); Pipe Wrapper, Kettleman, Potman, and Men applying asphalt, creosote and similar type materials; All power tools (air, gas or electric not listed in Group 5); Pipejacking; Posthole Digger (air, gas or electric); Post Driver; Riprap-stonepaver and Rock Slinger, including placing of sack concrete wet or dry; Rototiller; Rigger and signaling in connection with Laborers' work; Sandblaster, Potman, Gunman or Nozzleman; Vibra-screed; Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electrical fixtures)

LABORERS (Cont'd)

Group 4: Burning and Welding in connection with Laborer's work; Joy Drill Model TWM-2A, Gardner Denver Model DN 143 and similar type drills; Track Drillers, Diamond Core Drillers, Wagon Drillers, Mechanical Drillers on multiple units; High Scalers; Concrete Pump; Heavy Duty Vibrator with stinger 5" diameter or over; Pipelayer, Caulker and Bander; Pipelayer - waterline, sewerline, gasline, or conduit; Asphalt Rakers

Group 5: Blasters and Powdermen, all work of loading, placing and blasting of all powder and explosives of any type, regardless of method used for such loading and placing

Group 6-A: Nozzleman

Group 6-B: Gunman, Materialman

Group 6-C: Reboundman

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Brakeman; Deckhand; Fireman; Oiler; Switchman; Tar Pot Fireman

Group 2: Compressor; Material Loader and/or Conveyor (handling building materials); Pumps; Tar Pot Fireman (power agitated)

Group 3: Box Operator (bunker); Concrete Curing Machine (streets, highways, airports, canals); Conveyor Belt (tunnel); Engineer Generating Plant (500 K W); Fireman Hot Plant; Hydraulic Monitor; Mixer Box Operator (concrete plant); Motorman; Oiler (truck crane); Rotomist; Screedman (except asphalt or concrete paving); Bobcat or similar Loader, 1/4 cu yd or less

Group 4: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper (multi-purpose); Boxman (asphalt plant); Concrete Mixer, skip type; Dinky; Fork Lift (construction jobsite); Line Master; Ross Carrier; Skip Loader (under 1 cu yd); Tie Spacer

Group 5: Concrete Mixer (over 1 cu. yd.); Concrete Pumps or Pumpcrete Guns; Elevator and Material Hoist (1 drum); Shuttle Car; Signalman; Screedman (Barber-Greene and similar) (asphalt or concrete paving)

POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 6: Boom Truck or Dual Purpose "A" Frame Truck; B L.H. Lima Road Pactor or similar; Chip Box Spreader (Flaherty type or similar); Concrete Batch Plant (wet or dry); Concrete Saws (highways, streets, airports, canals); Highline Cableway Signalman; Locomotive (over 30 tons); Lubrication and Service Engineer (mobile and grease rack); Maginnis International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical Burn, Curb and/or Curb and Gutter Machine (concrete or asphalt); Pavement Breaker, truck mounted, with compressor combination; Pavement Breaker or Tamper (with or without compressor combination); Power Jumbo (setting slip-forms, etc , in tunnels); Roller (except asphalt); Self-propelled Tape Machines; Self-propelled Compactor (single engine); Slip Form Pump (power-driven by hydraulic, electric, air, gas, etc , lifting device for concrete forms); Small rubber-tired tractors; Snooper Crane, Paxton-Mitchell or similar; Stationary Pipe Wrapping, Cleaning, and Bending Machine; Auger-type drilling equipment up to and including 30 ft depth drilling capacity M R C

Group 7: Bit Sharpener; Compressor (over 2); Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Deck Engineer; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Crusher Plant Engineer; Generator; Kolman Loader; Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Pipe Bending Machines (pipelines only); Pipe Cleaning Machines (tractor propelled and supported); Pipe Wrapping Machines (tractor propelled and supported); Portable Crushing and Screening Plants; Pumps (over 2); Refrigeration Plants; Roller Operator (asphalt); Self-propelled Boom-type Lifting Device (center mount) (10 ton capacity or less); Slusher; Soil Tester (certified); Surface Heater and Planer; Trenching Machine (maximum digging capacity 3 ft depth); Post Driller and/or Driver; Auger-type drilling equipment over 30 ft depth digging capacity M R C

Group 8: Asphalt Milling Machine; Asphalt Plant Engineer; Car Passer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor; Concrete Batch Plant (multiple units); Dozer; Drill Doctor; Elevating Grader; Gradesetter, Grade Checker; Grooving and Grinding Machine (highways); Heavy-duty Repairman and/or Welder; Ken-seal; Loader (up to and including 2½ cu yds.); Mechanical Trench Shield; Mixer-mobile; Push Cats; Road Oil Mixing Machine (wood-mixer and other similar Pugmill equipment); Rubber-tired earth-moving equipment (up to and including 35 cu yds "struck" M R C , Euclid, T-Pulls, DW's 10, 20, 21 and similar); Self-propelled Compactor with Dozer; Hyster 450 or Cat 825 or similar; Sheepfoot; Small Tractor (with boom); Soil Stabilizer (P & H or equal); Timber Skidder (rubber-tired or similar equipment); Tractor-drawn Scraper; Tractor; Tractor-mounted Compressor Drill Combination; Trenching Machine (over 3 ft depth); Tri-batch Paver; Tunnel Badger or Tunnel Boring Machine; Tunnel Mole Boring Machine; Vermeer T-600B Rock Cutter

IPOWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 9: Chicago Boom; Combination Backhoe and Loader (up to and including 3/8 yds); Combination Mixer and Compressor (Gunite); Lull Hi-lift (20 ft. or over); Mucking Machine; Subgrader (Gurries or other types); Tractor (with boom) (D6 or larger); Track-laying-type earthmoving machine (single engine with tandem scrapers)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift or similar; Chemical Grouting Machine; Derricks; Derrick Barges (except excavation work); Euclid Loader and similar types; Heavy-duty Rotary Drill Rigs; Lift-slab (Vagtborg and similar types); Loader (over 2½ cu. yds up to and including 4 cu yds); Locomotive (over 100 tons) (single or multiple units); Multiple engine Earth-moving Machines (Euclid, Dozers, etc.); Pre-stress Wire-wrapping Machines; Rubber-tired Scraper, self-loading; Single-engine Scraper (over 35 cu yds); Self-propelled Reservoir-debris equipment floating (200 H P. and over); Shuttle Car (reclaim station); Train Loading Station; Trenching Machine, multi-engine with sloping attachments (Jefco or similar); Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (up to and including 1 cu yd. Hydraulic); Backhoe (up to and including 1 cu. yd cable); Cranes (not over 25 tons) (Hammerhead and Gantry); Grade-alls (up to and including 1 cu yd); Motor Patrol; Power Shovels, Clamshells, Draglines, Cranes (up to and including 1 cu yd.); Rubber-tired Scraper, self-loading (twin-engine); Self-propelled boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); CMI Dual-lane, Auto-grades SP300 and similar

Group 11: Automatic Asphalt or Concrete Slip-form Paver; Automatic Railroad Car Bumper; Canal Trimmer; Cary Lift, Campbell or similar; Cranes (over 25 tons); Highline Cableway Operator; Loader (over 4 cu yds. up to and including 12 cu. yds.); Multiple-engine Scraper (when used to push pull); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 cu. yd. and up to and including 7 cu. yds. M.R C); Self-propelled Compactor (with multiple-propulsion power units); Self-propelled boom-type lifting device (over 25 tons M.R.C); Single-engine Rubber-tired earth-moving machine (with tandem scraper); Slip Form Paver (concrete or asphalt); Tandem Cats and Scrapers; Tower Crane Mobile (including rail-mounted); Universal Liebher and Tower Cranes and similar types; Wheel Excavator (up to and including 750 cu yds. per hour); Whirley Cranes (over 25 tons); Euclid Loader when controlled from the Pullcat

Group 11-A: Band Wagon (in conjunction with wheel excavators); Loader (over 12 cu. yds.); Multi-engine earthmoving equipment (over 75 cu yds "struck" M R C); Operator of Helicopter (when used in construction work); Power Shovels, Clamshells, Draglines, Backhoes, and Gradealls (over 7 cu. yds M R.C); Remote-controlled earthmoving equipment; Wheel Excavator (over 750 cu. yds per hour)

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDRIVING

Group 1: Fireman; Oilman; Deckhand

Group 1-A: Compressor Operator

Group 1-B: Truck Crane Oiler

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Fork Lift Operator

Group 2-C: A-Frames

Group 2-D: Compressor Operator (over 2); Generator Operator; Pump Operator (over 2); Welding Machine Operator (powered other than by electricity)

Group 3: Deck Engineer; Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M R C)

Group 3-A: Heavy-duty Repairman/Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending Boiler or Compressor attached to Crane Piledriver; Operator of Piledriving Rigs, skid or floating and Derrick Barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler) (up to and including 1 cu yd. rating); Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler) (over 1 cu. yd. rating); Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam-powered Crawler, or Universal-type driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work); Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 6: Cranes (over 125 tons)

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION

Group 1: Oiler

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 K.W or over) (Structural Steel or Tank Erection only); Truck Crane Oiler

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Structural Steel or Tank Erection only); Deck Engineer; Signalman (using mechanical equipment); Fork-lift

Group 4: Heavy-duty Repairman; Tractor Operator

Group 4-A: Combination Heavy-duty Repairman/Welder

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M R C or less); Self-propelled boom-type lifting device (center mount) (10 ton capacity or less M R C); Single drum Hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R C); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Self-propelled boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile; Universal Liebher and Tower Cranes (and similar types); Two or more drum Hoist

Group 7: Self-propelled boom-type lifting device (center mount) (over 25 tons); Truck-mounted Hydraulic Crane when remote-control equipped (over 10 tons up to and including 25 tons)

Group 8: Cranes (over 125 tons)

Group 9: Operator of Helicopter

TRUCK DRIVERS

Group 1: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, under 4 yds

Group 2: Bus and Manhaul Drivers, single units, up to 18,000 lbs

Group 3: Bus and Manhaul Drivers, single unit, 18,000 lbs and over; Winch Trucks and A-Frame Drivers, under 18,000 lbs.; Road Oil Trucks or Bootman; Fuel Truck Drivers; Fuel Man and Fuel Island Man

Group 4: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 4 yards and under 8 yards; Water Truck and Jetting Trucks, up to 2,500 gallons; Flatrack, includes Industrial Lift with mechanical tail-gate, single unit 2-axle

Group 5: Lift Jitneys and Forklift

Group 6: Flatrack, includes Industrial Lift with mechanical tail-gate, single unit 3-axle

Group 7: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 8 yds and under 18 yds.; Transit Mix under 8 yds ; Water Trucks and Jetting Trucks, 2,500 gallons and over; Tire Repairman

Group 8: Bootman, combination; Bootman and Road Oiler

Group 9: Transit Mix, 8 yds and including 12 yds

Group 10: Winch Truck and A-Frame Drivers, 18,000 lbs and over

Group 11: Dump (single or multiple unit including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 18 yds and under 25 yds ; Heavy Duty Transport (Highbed); Heavy Duty Transport (Gooseneck Lowbed); Tiltbed or Flatbed Pull Trailers

Group 12: DW 20's and 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournerocker, euclid and similar type Equipment when pulling Aqua/Pak; Water Tank Trailers and Fuel and/or Grease Tank Trailer, or other miscellaneous Trailers (except as defined under Dump Trucks)

Group 13: Transit Mixer Over 12 yards; Truck Repairman

26878 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Notices

TRUCK DRIVERS (Cont'd)

Group 14: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 25 yds and under 60 yds

Group 15: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 60 yds and under 75 yds ; Helicopter Pilot (when transporting men or materials)

Group 16: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 75 yds and under 100 yds

Group 17: Dump (single or multiple units including semis, double and transfer units), Dumpcrete and Bulk Cement Spreaders, 100 yds and over

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5 5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: NEW MEXICO COUNTY: STATEWIDE
DECISION NO. NM84-4041 DATE: Date of Publication
SUPERSEDES DECISION NO. NM83-4074 dated October 21, 1983 in 48 FR 48905
DESCRIPTION OF WORK: STREETS, HIGHWAY, UTILITY AND LIGHT ENGINEERING CONSTRUCTION shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields, highway bridges, median channels and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling telephone and electrical transmission lines and site preparations which are part of streets, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stubouts), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, including the Navajo Indian Reservation

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$ 8 11	$ 44
CEMENT MASONS	7 08	26
IRONWORKERS:		
Reinforcing	7 49	50
Structural	8 25	1 29
LABORERS:		
GROUP I	4 92	35
GROUP II	5 22	35
GROUP III	5 62	35
COMMERCIAL LINE WORK:		
AREA A		
Lineman-Technicians:		
Zone I	17 00	2 00+ 3-1/2%
Zone II	18 53	2 00+ 3-1/2%
Zone III	19 55	2 00+ 3-1/2%
Zone IV	21 42	2 00+ 3-1/2%
Cable Splicers:		
Zone I	18 70	2 00+ 3-1/2%
Zone II	20 23	2 00+ 3-1/2%
Zone III	21 25	2 00+ 3-1/2%
Zone IV	23 12	2 00+ 3-1/2%
COMMERCIAL LINE WORK (CONT'D):		
Equipment Ops (includes helicopter op):		
Zone I	$16 15	2 00+ 3-1/2%
Zone II	17 68	2 00+ 3-1/2%
Zone III	18 70	2 00+ 3-1/2%
Zone IV	20 57	2 00+ 3-1/2%
Equipment Mechanic (includes helicopter mechanic) & Powderman:		
Zone I	14 79	2 00+ 3-1/2%
Zone II	16 32	2 00+ 3-1/2%
Zone III	17 34	2 00+ 3-1/2%
Zone IV	19 21	2 00+ 3-1/2%
Groundman & Jackhammer:		
Zone I	12 07	2 00+ 3-1/2%
Zone II	13 60	2 00+ 3-1/2%
Zone III	14 62	2 00+ 3-1/2%
Zone IV	16 49	2 00+ 3-1/2%

DECISION NO NM84-4041

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
AREA B		
Linemen-Technicians:		
Zone I	$14 20	.80+ 3-1/2%
Zone II	15 65	.80+ 3-1/2%
Cable Splicers:		
Zone I	14 45	.80+ 3-1/2%
Zone II	15 90	.80+ 31/2%
Equipment Op & Mechanic (includes helicopter op & helicopter mechanic):		
Zone I	12 35	.80+ 3-1/2%
Zone II	13 62	.80+ 3-1/2%
Powderman:		
Zone I	11 93	.80+ 3-1/2%
Zone II	13 15	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	10 08	.80+ 3-1/2%
Zone II	11 11	.80+ 3-1/2%
AREA C:		
Linemen-Technicians:		
Zone I	17 10	.80+ 3-1/2%
Zone II	17 55	.80+ 3-1/2%
Zone III	17 70	.80+ 3-1/2%
Zone IV	17 95	.80+ 3-1/2%
Cable Splicers:		
Zone I	17 45	.80+ 3-1/2%
Zone II	17 90	.80+ 3-1/2%
Zone III	18 05	.80+ 3-1/2%
Zone IV	18 30	.80+ 3-1/2%

	Basic Hourly Rates	Fringe Benefits
COMMERCIAL LINE WORK (CONT'D):		
Equipment Op & Mechanic (includes helicopter op & helicopter mechanic):		
Zone I	$14 88	.80+ 3-1/2%
Zone II	15 33	.80+ 3-1/2%
Zone III	15 48	.80+ 3-1/2%
Zone IV	15 73	.80+ 3-1/2%
Powderman:		
Zone I	14 36	.80+ 3-1/2%
Zone II	14 81	.80+ 3-1/2%
Zone III	14 96	.80+ 3-1/2%
Zone IV	15 21	.80+ 3-1/2%
Groundman-Jackhammer:		
Zone I	12 14	.80+ 3-1/2%
Zone II	12 59	.80+ 3-1/2%
Zone III	12 74	.80+ 3-1/2%
Zone IV	12 99	.80+ 3-1/2%
LINE CONSTRUCTION-UTILITY FOR ELECTRIC & TELEPHONE UTILITIES, REA CO-OPS, RAILROADS & MUNICIPALITIES:		
Linemen-Technicians	15 47	1.80+ 3-1/2%
Cable Splicers	I6 55	1.80+ 3-1/2%
Equipment op & mechanic (includes helicopter op & helicopter mechanic)	13 46	1.80+ 3-1/2%
Powderman	12 99	1.80+ 3-1/2%
Groundman-Jackhammer	10 52	1.80+ 3-1/2%

DECISION NO NM84-4041

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush	$ 8 64	$ 44
Spray	7 74	20
POWER EQUIPMENT OPERATORS:		
GROUP I	7 32	26
GROUP II	7 52	26
GROUP III	8 10	26
GROUP IV	8 12	26
GROUP V	8 12	26
GROUP VI	8 27	26
GROUP VII	8 32	26
GROUP VIII	8 47	26
GROUP IX	8 97	26
GROUP X	9 77	26
TRUCK DRIVERS:		
Pick-up truck 3/4 ton or under; warehouseman; dump truck under 8 cu yds ; flat bed, 1½ ton or under	5 97	26
Dump truck, 8 to 16 cu yds.; flat bed over 1½ ton	6 17	26
Distributor (asphalt); transit-mix; lowboy, light equipment; off-highway hauler; dump truck over 16 cu. yds ; trailer semi-trailer dump	6 37	26
Diesel-powered transport; lowboy heavy equipment	6 57	26

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5 5(a)(1)(ii))

Basic Hourly Rates	Fringe Benefits

CLASSIFICATION AREA AND ZONE DEFNINITIONS

LABORERS:
GROUP I - Common laborer; carpenter tender; concrete buggy op (hand); concrete workers
GROUP II - Air & power tool man; asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenders (to cement mason & plasterer); chain sawman; concrete power buggyman; concrete touchup man; concrete sawman; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer & mason tender; powderman or blaster tender; sandblaster; scaler; vibratorman (hand type); vibrator compactor (hand type); wagon air tract, drill & diamond driller (outside) & tender
GROUP III - Gunite pumpcrete & nozzleman; multiplate setter; manhole builder; pipelayer; powderman-blaster-make-up

COMMERCIAL LINE WORK (excluding work done for electric & telephone utilities, REA co-ops, railroad & municipalities):
AREA A - Also applies to switching stations & substations adjacent to power plants. Bernalillo, Catron, Chaves, Cibola, Colfax, Curry, Debaca, Grant, Guadalupe, Harding, Lincoln, Los Almos, McKinley, Mora, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Union, Valencia, White Sands Missile Range & that portion of Fort Bliss in New Mexico
ZONE 1 - Cities & Towns Basing Points & Miles from Main Post Office

*Albuquerque - 25 miles	Roswell - 12 miles
Santa Fe - 10 miles	Ruidoso - 12 miles
Las Vegas - 8 miles	Portales - 12 miles
Farmington - 6 miles	Carrizozo - 12 miles
Raton - 6 miles	Clovis - 12 miles
Tucumcari - 6 miles	Gallup - 10 miles
Aztec - 6 miles	**Pojoaque - 2 miles

*The eastern edge of the Albuquerque zone extends no further than the western boundary of the Village of Tijeras
**All areas adjacent to Pojoaque that are 2 miles distance from the main post office in that town will be zoned out of Santa Fe.
ZONE II - Extending up to 20 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 9% of the journeyman rate of Zone I
ZONE III - Extending up to 30 miles beyond Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 15% of the journeyman rate of Zone I
ZONE IV - Anything beyond 30 miles from Zone I, EXCEPT ALBUQUERQUE, rates per hour shall be increased by 26% of the journeyman rate for Zone I
For establishing the outlying free zones from the Albuquerque free zone only, Zone II shall extend up to 10 miles beyond Zone I, Zone III shall extend up to 20 miles beyond Zone I and Zone IV anything beyond 20 miles from Zone I
FOR WORK IN LOS ALAMOS COUNTY - USE THE ZONE III RATE.

CLASSIFICATION AREA AND ZONE DEFINITIONS - CONT'D

COMMERCIAL LINE WORK (Cont'd):
AREA B - Applies to switching stations & substations adjacent to power plants in Zone I & Zone II in Luna, Dona Ana, Otero & Hildalgo Cos , exclusive of White Sands Missile Range & that part of Fort Bliss in New Mexico.
ZONE I - that area within 25 miles radius from the downtown Post Office of El Paso, Texas. Fort Bliss & Biggs Field; the area within a 5 mile radius of any city, town or municipality within which an employer establishes or maintains his place of business; the area within 10 mile radius from the Post Office in Alamogordo, New Mexico
ZONE II - all other areas of the jurisdiction except those specified in Zone I
AREA C - applies to switching stations adjacent to power plants in Eddy & Lea Cos.; the following zones listed shall be designated from the Main Post Office of Artesia, Carlsbad, Hobbs & Lovington:

Zone I - 0 to 12 miles	Zone II - 12 to 22 miles
Zone III - 22 to 40 miles	Zone IV - 40 miles & beyond

POWER EQUIPMENT OPERATORS
GROUP I - Concrete paving curing machine
GROUP II - Belt type conveyors (material & concrete); broom (self-propelled); fork lift; grease truck op.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attachment); industrial locomotive brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine; roller (self-propelled)
GROUP III - Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving subgrader; tractor with backhoe attachment; subgrade or base finisher; power plant (electric, general or welding machine)
GROUP IV - Bulldozer (including self-propelled roller with dozer attachment; batch or continuous mix plant (concrete soil-cement or asphalt); roller (steel wheel); front end loader (2 CY thru 10 CY); scraper; motor grader
GROUP V - Asphalt distributor; asphalt paving or laydown machine; asphalt; retort heater; mixer, heavy duty, asphalt or soil cement; trenching machine; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM & over); crushing, screening & washing plants; drilling machine (cable, core or rotary); mixer, concrete (1 CY & less); pump (6" intake or over); winch truck; hoist (1 drum); industrial locomotive motorman; lumber stacker; tractor (50 drawbar HP or over)
GROUP VI - Concrete paver mixer; hoist (2 drum & over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer concrete (over 1 CY); mechanic and/or welder
GROUP VII - Concrete slip-form paving machine; concrete paving finishing machine; concrete paving longitudinal float; gunite machines; refrigerator; jumbo form or drilling; stage; slusher; concrete paving spreader; pumpcrete machine; grout pump op.
GROUP VIII - Mine hoist; bulldozer (multiple units); scraper (multiple units); mucking machines; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile)
GROUP IX - Belt loader (CMI type) op ; derrick cableway
GROUP X - Pipemobile op., mole op.

[FR Doc. 84-17149 Filed 6-28-84; 8:45 am]
BILLING CODE 4510-27-C

Federal Register

Friday
June 29, 1984

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Flexible Vinyl and Urethane Coating and Printing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 2510-6]

Standards of Performance for New Stationary Sources; Flexible Vinyl and Urethane Coating and Printing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for flexible vinyl coating and printing operations were proposed in the Federal Register on January 18, 1983 (48 FR 2276). On October 11, 1983, the proposal was extended (48 FR 46224) to cover coating and printing of urethane webs. The source category is being renamed "flexible vinyl and urethane coating and printing." The standard implements Section 111 of the Clean Air Act and is based on the Administrator's determination that rotogravure printing and coating of flexible vinyl and urethane causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of this standard is to require all new, modified, and reconstructed printing lines used for rotogravure printing and coating of flexible vinyl and urethane to achieve emission limitations reflecting the best demonstrated system of emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: June 29, 1984.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777 Please refer to "Flexible Vinyl and Urethane Coating and Printing—Background Information for Promulgated Standards," EPA-450/3-81-016b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final Environmental Impact Statement which summarizes the impacts of the standard.

Docket. A docket, number A-80-8, containing information considered by EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning development of the standard should be directed to Doug Bell, Standards Development Branch, telephone (919) 541-5624. Questions concerning the background information document for the industry should be directed to Mr. Jim Berry, Chemicals and Petroleum Branch, telephone (919) 541-5605. The address for both contacts is Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The affected facility to which the promulgated standard applies is each rotogravure printing line used to print or coat flexible vinyl or urethane products. Construction, reconstruction or modification of the printing line must have begun after January 18, 1983 for the standard to be applicable. Existing facilities are not subject to the standard unless modified or reconstructed as defined in 40 CFR 60.14 or 60.15. The term "printing" is used in this preamble to include printing and coating processes. Similarly, the term "inks" is used to mean inks and coatings.

The owner or operator of each affected facility is required either to reduce gaseous VOC emissions by 85 percent or to use waterborne inks with an average VOC content of less than 1.0 kilogram (kg) VOC per kg ink solids. The Agency has identified as the best demonstrated technology the use of either waterborne inks, fixed-bed carbon adsorption systems, or thermal or catalytic incineration systems. Carbon adsorbers and incineration systems must be operated in conjunction with an efficient vapor capture system. Currently, low VOC-content or waterborne inks are in the developmental stage in the flexible vinyl printing industry, and therefore, their present use is limited. Industry spokespersons expect their use to increase significantly in the next 5 years.

Reference Methods 1, 2, 3, 4, and 25A will be used during the performance test to measure the gaseous VOC emissions from affected facilities using add-on control equipment to comply with the standard. Reference Method 24 or the ink manufacturer's formulation data will be used to determine compliance for affected facilities using waterborne inks. The average VOC content of waterborne inks (the weighted average mass (kg) of VOC per unit mass (kg) of ink solids) must be calculated over a time period that does not exceed one calendar month, or over a time period based on quarters consisting of two 28 calendar day periods and one 35 calendar day period. Use of the latter averaging period must be documented in the initial performance test. The weighted average VOC content of waterborne inks may also be determined using plant blending records (if plant blending is done) or inventory/purchase records in combination with Reference Method 24 or ink manufacturers' formulation data. Dilution solvent added at the rotogravure printing station must be included in the calculation of the weighted average. Each monthly average VOC content of the inks constitutes a performance test. The initial performance test results must be reported to the Administrator. Semiannual reports of exceedances of the average VOC content are also required. These data must be retained at the source for a period of 2 years.

The standard of 85 percent reduction is based on an overall gaseous VOC emission reduction. The overall gaseous reduction for a control system is calculated by multiplying the efficiency of the control device by the efficiency of the vapor capture system. The result is the overall gaseous VOC emission reduction achieved by the control system. Fixed-bed carbon adsorption systems or thermal or catalytic incineration systems will meet the

standard when operated in conjunction with an efficient vapor capture system.

There are monitoring requirements for facilities using inks with an average VOC content of 1.0 kg VOC per kg ink solids or greater. For facilities controlled by a solvent recovery emission control device, the continuous monitoring requirements will not apply until EPA has promulgated performance specifications. If a thermal or catalytic incinerator is used to control emissions, monitoring requirements include continuous measurement and recording of the temperature of the thermal incinerator exhaust gases, or of the gas temperature upstream and downstream of the catalytic incineration catalyst bed. Deviations in these parameters beyond specified limits serve as indicators to the Administrator and to the owner or operator that the control system may not be reducing emissions to performance test levels. Such deviations must be reported to the Administrator semiannually. Owners or operators are required to maintain for 2 years the records of the control device operating parameters that must be monitored, as specified in 40 CFR 60.7(d).

Summary of Environmental, Energy, and Economic Impacts

The environmental, energy, and economic impacts of this new source performance standard (NSPS) are expressed as incremental differences between the impacts for facilities complying with the standard and for those facilities if no NSPS were promulgated. In the absence of an NSPS, it is assumed that facilities would comply with the applicable State implementation plan (SIP) for VOC emissions. This SIP control level is referred to as the baseline and is based on the 65 percent overall emission reduction requirement in the control techniques guideline (CTG) document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography" (EPA–450/2–78–033). It is expected that States would impose this level of control for any new plants locating in nonattainment areas. This level of control may or may not be required in attainment areas, however, and would depend on the particular plant and State agency involved. Thus, to the extent that State requirements in attainment areas differ from the requirements of a typical SIP, the actual impacts may differ from the impacts presented in the following discussion.

The flexible vinyl and urethane printing industry is composed of approximately 112 plants, many of which have multiple rotogravure printing lines. EPA estimates that the promulgated standard will affect three to six new printing lines within the first 5 years after the standard is effective. Extensive equipment modifications and reconstructions are not expected to occur.

The growth rate and projection that three to six new printing lines would be installed by 1987 reflects a recent reevaluation. This was done in response to recent comments and information received from two trade associations. The results of the reevaluation indicate that a growth rate of at least 8.9 percent is still expected for the vinyl wallcovering industry. The reevaluation results indicate that about three new sources would be constructed. This is a conservative estimate based upon a capacity utilization rate of between 70 and 80 percent which was suggested by one of the trade associations. During the initial development of the standard, EPA estimated a 60 percent capacity utilization factor. Growth rate estimates based on this lower factor would be greater. As such, the calculated impacts of the standard which are presented below may be somewhat overstated since they are based on a projected six new printing lines.

The standard would reduce VOC emissions by about 57 percent beyond the levels achievable under the baseline level. Nationwide in 1987, the standard would reduce VOC emissions from new, modified, or reconstructed flexible vinyl printing lines by 790 megagrams (870 tons) beyond the emission level required by the baseline.

Potential wastewater pollution from a controlled flexible vinyl printing line results from the use of a carbon adsorption emission control system. National wastewater discharges would increase by 36 percent or 4,800,000 liters (1,300,000 gallons) in 1987 as a result of the standard if all affected facilities used carbon adsorption. Incineration systems generate no wastewater.

Nationwide in 1987, the solid waste load (spent carbon from carbon adsorption) associated with standard would be 5.4 megagrams (6.0 tons) or 25 percent greater than the load associated with typical SIP control if all affected facilities used carbon adsorbers as the control device. No solid waste is generated by incineration.

Carbon adsorption was the predominant VOC control technique found to be operating in the flexible vinyl printing industry, and therefore it was used to estimate energy impacts associated with standard. By comparing the potential national energy savings resulting from reusing recovered solvent with the energy required to operate emission control devices, a potential net national energy impact can be estimated. Fuels and organic solvents can both be derived from crude oil. A decrease in the demand for solvent due to solvent recovery will thus increase the potential for fuel availability by offsetting the need for additional crude oil. On a national basis in 1987, the standard would result in an energy savings of 41,000 GJ (39 billion Btu). The standard would save about 15 percent more energy than if all facilities were controlled at the baseline level.

A typical new flexible vinyl printing line producing about 9 million square meters (10.8 million square yards) of material annually would require approximately 970 GJ (270,000 kwh) of electrical energy and approximately 9,700 GJ (9.2 billion Btu) of fuel oil energy to meet the standard. If the typical line were controlled to the level of the standard, the total energy demand would be approximately 10,700 GJ. The amount of solvent potentially recoverable under the standard could be calculated to be equivalent to about 17,500 GJ of energy. Thus, the net energy impact per print line would be a savings of approximately 6,800 GJ annually.

The energy requirements for a typical plant controlled by incineration to the level required by the standard would be approximately 37,200 GJ (35 billion Btu) per year.

The capital cost for a typical new printing line is $1 million and the annualized costs are $6.1 million. The initial capital cost of a control system (carbon adsorption) capable of achieving the baseline control level is $1 million and a control system (carbon adsorption) capable of achieving the level of the standard would cost $1.2 million. Because of the value of potentially recoverable solvent, annualized costs for control system operation represent about 1 percent of the total annualized cost for the controlled plant. At a typical new plant controlled to the baseline level by carbon adsorption, this annualized cost is about $69,000. At a plant controlled at the level of the standard, because more solvent could be recovered, the annualized costs decrease to approximately $48,000.

Although incineration was not being used during development of the standard, some vinyl printers anticipate the use of incineration to achieve the standard. At a typical plant, the total capital cost for an incinerator capable of achieving the standard would be

$669,000 with an annual operating cost of $358,000.

Projections show a growth rate of more than 8 percent per year for vinyl wallcovering products and little growth in the other sections of the industry through 1987. At this growth rate, the cumulative capital cost of control is approximately $6.2 million for baseline control and $7.4 million for the control level of the standard. Annualized costs (i.e., control system operation costs less recovered solvent value) are approximately $414,000 for baseline control and $289,000 for the control level of the standard.

The expected worst case maximum price increase, based on the use of carbon adsorption, would be 0.05 percent. If incineration were selected as the control device, the worst case price increase would be 0.67 percent. No major impacts are expected on geographical regions or local governments.

The environmental, energy, and economic impacts associated with the use of carbon adsorption are discussed in greater detail in the background information document for the proposed standard ("Rotogravure Printing and Coating of Flexible Vinyl and Urethane—Background Information for Proposed Standards," EPA–450/3–81–016a). Inpacts resulting from the use of incineration are discussed in a separate document which has been added to the docket (IV–B–8).

Public Participation

Prior to proposal of the standard, interested parties were advised by public notice in the Federal Register (46 FR 42910, August 25, 1981) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the flexible vinyl printing standard recommended for proposal. This meeting was held on September 22, 1981. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standard was proposed and published in the Federal Register on January 18, 1983 (48 FR 2276). The preamble to the proposed standard discussed the availability of the background information document (BID), "Flexible Vinyl Coating and Printing Operations-Background Information for Proposed Standards," EPA–450/3–81–016a, which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. The proposal notice stated that a public hearing would be held if requested to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standard. There were no requests for a public hearing and, therefore, no hearing was held. The public comment period was from January 18, 1983 to April 1, 1983.

Twelve comment letters were received concerning issues relative to the proposed standard for flexible vinyl coating and printing operations. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standard.

During the comment period, a letter was received from a major manufacturer of flexible urethane products who recommended that flexible urethane coated products be regulated under this standard. The Administrator issued a supplemental notice to the proposed rule on October 11, 1983 (48 FR 46224), to include the printing and coating of flexible urethane products. A 30-day public comment period ending November 10, 1983, was held for receipt of comments concerning urethane only. No comment letters were received. The promulgated standard includes the printing and coating of flexible urethane along with flexible vinyl.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standard were received from four vinyl printers, an ink manufacturer, a printer of urethane products, a manufacturer of flexible packaging, a manufacturer of carbon adsorbers and two vinyl printing trade associations. A detailed discussion of these comments and responses can be found in the background information document which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions which have been made to the standard between proposal and promulgation. Six major comments and responses are summarized in this preamble.

In response to public comments received on the proposed rulemaking and as a result of EPA reevaluation, six major changes were made in the proposed standard prior to promulgation. The changes involved (1) expanding the applicability of the standard to include printing on urethane sheets or urethane coated webs as well as on vinyl sheets or vinyl coated webs, (2) the addition of considerations for petitioning the administrator to show compliance using an inventory-type system to account for VOC content of waterborne inks, (3) the addition of compliance provisions for incineration, (4) the addition of semiannual reporting of exceedances of the waterborne ink limitation or deviations from the monitored parameters for carbon adsorption or incineration, (5) the redefinition of the averaging period for waterborne inks, and (6) redefining "flexible vinyl and urethane products" to exempt flexible packaging.

Most of the comment letters contained multiple comments. In the BID, the comments have been divided into the following areas: Selection of Source Category, Emission Control Technology, Modification and Reconstruction, Economic Impact, Selection of Best Demonstrated Technology, Selection of Format, Selection of Emission Limits, Legal Considerations, Test Methods and Monitoring, and Reporting and Recordkeeping. The six major comments summarized in this preamble involve application of the standard to printing on urethane sheets or urethane coated webs, the exemption of flexible packaging, test data on capture system efficiency, compliance provisions for incineration, the selection of best demonstrated technology, and the use of inventory records to determine compliance with the waterborne ink provisions.

Docket entry numbers referenced in each comment refer to docket number A–80–8. Access to this docket is described in the **ADDRESSES** section of this preamble.

Printing of Urethane Products

One commenter (IV–D–1) felt that it was a serious oversight that the proposed regulation covered the printing of flexible vinyl coated webs without reference to printing or finishing flexible urethane coated webs. The commenter, whose company produces both vinyl and urethane coated products, pointed out that the major difference between the two webs is the chemistry of the coating compounds composing the web. In one instance, these are plasticized polyvinyl chloride (PVC) compounds and in the other, flexible thermoplastic urethane polymers. The commenter noted that, regardless of the chemical composition of the coating, the webs are finished by printing with solvent solutions of PVC, urethanes, and/or acrylic resins. The commenter stated that his company knew of no technical or scientific reasons why the printing of polyurethane coated fabrics should be regulated differently from the printing of flexible polyvinyl coated fabrics. He

concluded by suggesting that the proposed standards for printing of flexible vinyl be revised to specifically include the printing of urethane coated fabrics.

After some discussion of this issue with the commenter (IV–E–1, IV–E–7) to get more information on the process of printing on urethane webs, the Administrator believes that urethane product manufacturers can achieve the proposed emission standard at reasonable costs. Since the Agency had not performed an extensive investigation of the environmental, energy, and economic impacts of the standard upon urethane product manufacturers, notice of this proposed change appeared in the Federal Register on October 11, 1983, at 48 FR 46224. This notice allowed for a 30-day public comment period and specifically requested comments regarding the impacts of the standard upon urethane printers. No comments were received. The Administrator has concluded that the promulgated standard should include the coating and printing of both flexible vinyl and flexible urethane.

Exemption of Flexible Packaging

One commenter (IV–D–4, IV–E–4), a producer of flexible packaging, felt that the proposed regulation could be errroneously viewed to apply to sources producing flexible packaging products such as products consisting of a thin vinyl coating applied to aluminum or paper based substrates on rotogravure printing equipment. He gave facial tissue boxes as an example of this. He noted that EPA staff members had told him that the standard did not apply to flexible packaging. He said that the definitions of "affected facility" and "flexible vinyl products" hinged on a minimum thickness of 50 micrometers (0.002 inches), but that some of his company's flexible packaging products exceeded that thickness. He urged EPA to revise the final regulation to clearly state that it does not apply to the manufacture of flexible vinyl packaging. He suggested that this be done by specifically excluding "flexible packaging" in the definition of "flexible vinyl products."

After receiving this comment, EPA contacted the Flexible Packaging Association (IV–E–5) to ask for a definition of "flexible packaging." Although the Association representative explained that there was some disagreement within the Association about an exact definition, he gave the following definition: "Flexible packaging is the use of paper, film, or foil to package a product in such a manner that the packaging material itself generally takes the shape of its contents." The Association representative stated that most flexible packaging is less than 50 micrometers (0.002 inches) thick, but noted that some Association members have products up to 0.010 inches thick.

Although it appears that the flexible vinyl coating and printing process is similar to the flexible packaging process described by the commenter (IV–E–4), EPA did not obtain the technical or economic information to determine whether best demonstrated technology (BDT) for the flexible vinyl industry is also BDT for this segment of the flexible packaging industry. Therefore, the definition of "flexible vinyl and urethane products" has been revised to specifically exempt flexible packaging from this standard. However, the Agency is beginning to develop new source performance standards for the flexible packaging industry and the packaging process described by the commenter will be investigated in the near future. If the investigation shows that BDT for flexible vinyl is also applicable to this segment of the flexible packaging industry, then this standard will be revised to include this segment of the packaging industry.

Test Data on Capture System Efficiency

Two commenters (IV–D–6, IV–D–8), both representing producers of vinyl coated products and vinyl printed products, disagreed with EPA's treatment of the test data on capture efficiency. One of the commenters (IV–D–6) explained that during the second test which indicated a capture efficiency in excess of 90 percent, the room air supply fan was not operating and the wall exhaust fan was only operational during times that the print head fans were off. He stated that machines cannot be run with the room air supply fans off, and therefore he felt that the test was not valid or representative. The other commenter (IV–D–8) felt that the "turbulence" or "disruption of air distribution" cited in the BID due to operation of the room air supply fan and the wall exhaust fan were legitimate operating conditions, and he felt their effects should not be ignored in determining capture efficiency. He felt that EPA had "discarded all lower but real world" capture efficiency data. He urged EPA to discard the test data cited in the BID and conduct a new series of tests on a new printer. A trade association (IV–D–7) concurred with these views. In addition, the trade association stated that the emission testing program was not conducted under normal operating conditions and referred to the General Provisions, 40 CFR 60.8(c), which requires that performance tests be "based on representative performance of the affected facility." The association noted that techniques such as turning off the fans or total enclosure of the print line may be necessary during the performance test. The association, however, maintained that enclosure of a print line creates conditions which are not representative of the capture efficiency achieved at a print line under normal operating conditions. In other words, it is not clear that any new source in this industry could achieve 90 percent capture efficiency during ordinary operations. The commenter elaborated that total print line enclosure is not practicable during operation, and the efficiency of air management around the print line depends on a number of factors over which the operator may not have control, even in the design of a new print line. For example, where a new print line is installed in a large building containing other processes, major capital expenditures could be required to achieve 90 percent capture efficiency during normal operation. Another commenter (IV–D–6) agreed that a total enclosure of the print line is not practical because of operator accessibility and the high concentrations of solvent encountered with the enclosures that in some places could exceed the lower explosive level (LEL). The trade association (IV–D–7), therefore, concluded that EPA should conduct further capture efficiency tests for a new vinyl print line during normal operation. Another commenter (IV–D–10) stated that the emission test that verified 90 percent capture efficiency was conducted under contrived conditions, and therefore questioned the results and appropriateness of a 90 percent capture regulation.

In order to respond to the comments on the performance tests and the representativeness of test conditions, it is important first to make clear that the performance test procedure is, in effect, an integral part of the standard. For this reason, the test procedures and test conditions used by EPA during the development of the standard must be the same as or have a known relationship to the test procedures which will be used and the performance test conditions which may be encountered during the testing of sources which are subject to this standard.

In this standard, the test procedures to be used by a plant operator for determining compliance will be the same as or equivalent to those used by EPA in developing the standard. The performance conditions may differ

depending, for example, on the configuration of the plant and the number of lines. However, the EPA tests were, and subsequent performance tests will be, conducted in conformance with the same criteria, thereby assuring that the standard is achievable during any performance test.

In conducting a performance test, the plant owner must demonstrate that his new line can achieve the performance standard when tested under operating conditions which are representative of normal production and/or which reflect the air change conditions during the EPA test (as specified below). One important feature of the performance test is that all fugitive VOC emissions from the printing area must be captured and vented through stacks suitable for measurement. For a new line(s) in a new plant, emissions from the room in which the line(s) is (are) located can be measured with no special arrangements. For a new line in a plant with existing lines, the owner or operator may desire to isolate emissions associated with the new line from those associated with existing lines. In this case, he has three options:

(1) Build a permanent enclosure around the affected facility;

(2) Build a temporary enclosure around the affected facility (the enclosure has to be ventilated at a rate which approximates the rate to which the affected facility is exposed without the enclosure up to 20 air changes per hour); or

(3) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected facility through any building ventilation system and other room exhausts such as print line ovens and embossers.

The industry has argued that a total enclosure restricts operator access and would allow VOC concentrations to increase to unacceptable levels. It is the Agency's position that it is possible to construct a total enclosure which provides the necessary operator access while also preventing the buildup of high concentrations of solvent. The EPA test results show that an increase in solvent concentration is not the inevitable product of a total enclosure.

The two tests performed during the development of the standard were conducted at a new facility which had installed only the first of a total of three print lines within a building. Thus, the building itself served as a permanent total enclosure housing only one line.

The industry would disregard results of the test at this plant because it alleges that EPA "contrived" the operating conditions. Air management is a critical aspect of any pollution control system. EPA did indeed alter the old normal air management scheme within the building in an attempt to attain the best operating conditions for pollution control. As a consequence of what was learned, the plant adopted new normal operating conditions, the conditions under which the EPA tests were actually conducted.

During the first test, the room containing the printing line had two ventilation fans, one in the ceiling and one on the wall. Only the wall fan was operating prior to the first test. (The test data revealed its discharge was much less than design.) A large intake ventilation fan mounted directly above the operating line was turned on at EPA's request in an attempt to assure that the test took place under normal operating conditions. It was assumed that the ventilation fan would normally be operated when the plant ultimately had three lines. It was not until after the first test was complete that the owner explained that normal operation was usually with the overhead ventilation fan off. Because of the fan's location, it discharged directly on the print heads, causing premature drying of the inks on the gravure cylinders and adversely affecting the quality of much of the material printed during the test. The plant personnel subsequently had to turn the fan off in order to produce a product within specification. It was because EPA had inadvertently tested the plant under abnormal conditions that the decision was made to return for a second test.

The wall exhaust fan was not operated during the second test based on the Agency's judgment that the best air management for capture of VOC emissions from the plant required that the fan not operate. That judgment was based on the following reasoning. The fan was originally installed to ensure that the threshold limit value (TLV) would not be exceeded within the building. On the first day of the second test, however, air flow measurements revealed that although the fan motor was running, the fan was essentially operating at a zero discharge rate because of loose drive belts. After EPA arranged to have the belts adjusted, the fan's operation caused turbulent drafts of air through and around the printing press.

Results of the second day's test showed that the drafts interfered with the print line's fugitive capture system. The data showed that significantly less VOC was captured than during the tests conducted the previous day when the belts were loose. The plant personnel and the test team jointly concluded that the fan's location (directly adjacent to and above the press) created drafts which adversely affected the capture system. Since the fan had previously been operating ineffectively (because of the maladjusted drive belts), there obviously was some question regarding the need for it. It was then decided to run the print line with the fan off to confirm that it was not critical to the operation of the line. If the VOC concentrations did not increase and exceed the TLV, the fan was unnecessary. The subsequent test confirmed that the exhaust systems associated with the press and embosser provided sufficient ventilation to keep the VOC concentrations below the TLV, and the wall exhaust fan was not needed during normal operation. Plant personnel concluded that the wall fan would subsequently be used only when the print line fans were off or in the event of an unusual occurrence, such as a solvent spill.

This mode of operation was advantageous for the plant because it increased the amount of solvent captured, thereby improving the return on the investment for the carbon adsorber. Obviously, this printing press could, did (because of the loose belts), and would continue to operate with ventilation provided only by the evacuation systems associated with the press and embosser exhaust systems. The results of monitoring conducted during the second test showed that with the wall exhaust fan off, the 11,700 SCFM evacuated from the vicinity of the printing press by the print head ovens and embosser ventilation system was sufficient to ensure that concentrations did not increase to unacceptable levels and that the 8-hour average concentration in working areas did not exceed the TLV. This draft would provide air changes approximately every 3 minutes to a room with dimensions of 20' x 20' x 90', more than adequate to house the print line and, coincidentally, about one-third the volume of the room which housed this print line. This is consistent with good ventilation practice for a clean room as discussed in *Industrial Ventilation—A Manual of Recommended Practices* (Committee on Industrial Ventilation), 1976, p. 5–112.

Should the operator decide to conduct his performance test with the print line contained in a total enclosure, he has two options: to construct either a permanent enclosure or a temporary enclosure which would be removed upon completion of the performance test. The cost of a permanent enclosure would be relatively small, less than 2 percent of the total capital required for

the new line (IV–B–9). A temporary enclosure would be even less expensive.

If an operator chooses to conduct the performance test with a temporary enclosure, the only constraint the Agency places on the test is that the plant operator must approximate the ventilation conditions expected to be in effect when the enclosure is removed or create conditions that would represent good ventilation practice as recognized by authoritative sources such as *Industrial Ventilation.* However, it is not necessary to ventilate the enclosed space at a rate greater than 20 air changes per hour. This rate is consistent with that of the test conducted by the Agency.

As an alternative to the total enclosure, a plant operator may elect to shut down other sources of VOC in the room which contains the affected facility. The fugitive emissions from the print line must continue to be exhausted through any area or building ventilation system and other room exhausts, such as print line ovens and embossers, that would operate under normal conditions.

At some plants, the work area may be ventilated only by the drafts of ovens and embossers. At other plants, high levels of fugitive emissions from existing facilities may require that separate ventilation fans be operated. In this latter situation, the operator should consider two of the advantages of reducing the amount of ventilation used for the existing facilities. First, the costs of circulating, pumping, heating, and conditioning large quantities of air through a plant can be significant. Secondly, poorly designed ventilation systems (as evidenced during testing of the reference plant) can interfere with the VOC capture system, increase the fugitive emissions within the building, and perhaps thereby create a need for even more ventilation air.

If a new line is installed in the same room with existing lines, there are ways to design and install or alter building ventilation systems which would minimize its effect on the efficiency of the capture system of all lines, but especially the line subject to the NSPS. For example, if a building ventilation draft fan must be used, the intake can be manifolded with the suction inlets located around the work stations of the existing lines where the fugitive VOC concentrations could be expected to be highest. If a forced air fan is used, the ventilation air can be manifolded to a number of outlets located such that they do not compete with the solvent recovery system but may actually improve it. Such a thoughtfully designed dispersion system would likely permit operating with much smaller volumes of ventilation air.

Another improvement in air management techniques was developed by the plant that EPA tested when a second line was installed after the test program was completed. The duct work for a second new print line was constructed so that oven make-up air is collected from between the print heads by "floor sweeps", rather than above the print heads as was done by the first print line which EPA tested. This should further reduce fugitive emissions and improve overall capture efficiency. The cost of making the type of air management changes discussed above would likely not exceed 2 percent of the control cost for the new line. The potential savings to the owner in reduced utility costs and increased solvent recovery would offset some and perhaps all of the incremental control cost.

The final standard gives the plant operator a great deal of latitude in deciding how to demonstrate compliance. A new line could be constructed within a permanent enclosure, thereby simulating the conditions under which EPA conducted its tests. Alternatively, the line could be installed in a room with existing sources. If the ventilation system in the existing room is expected to affect the performance of the new line's capture system, the performance test may be conducted with the existing sources shut off or a temporary enclosure may be installed to isolate the new line from the existing plant equipment. If a temporary enclosure is constructed, the building ventilation system (to which the new line will normally be subject) must be approximated, but only up to a maximum of 20 air changes an hour. This is consistent with conditions under which EPA tests were conducted and representative of good ventilation practices.

For the reasons previously discussed, it is the Administrator's judgment that the results from the second test show that high capture efficiency can be attained and worker exposure limited if a print line and its adjunct vapor capture and work space ventilation systems are properly designed. The adjustments made to the plant's air management system during testing were needed in order to best represent the plant's normal operating conditions, but more importantly, the adjustments were made to ensure that the test was conducted under conditions which were representative of the best demonstrated technology. Also, the capture efficiency data were obtained under conditions that could be normally and routinely maintained by properly designed new print lines and were representative of capture efficiency that could be achieved by any new print line even when installed in existing plants. Therefore, further capture efficiency tests were not conducted as requested.

Compliance Provisions for Incineration

Several commenters noted that incineration is being considered by some vinyl printers as an alternative to carbon adsorption due to certain technical difficulties with carbon adsorption. They felt that the NSPS should address incineration as a control alternative and that EPA should investigate the economic, environmental, and energy impacts associated with incineration.

During the development of this standard, carbon adsorption was the only control device in use in this industry and, thus, the analysis for development of the NSPS was based on carbon adsorption. Incineration was described in the BID and was mentioned as a possible control technique although it was not in use at the time.

Due to the several comments received on the use of incineration, the Agency reviewed the current status of this control technology in the vinyl printing industry (IV–E–10, 11, 12) by contacting the three plants listed in one commenter's letter (IV–D–7). Of these three plants, one is considering the use of incineration, one has considered it but has no current plans to install incineration, and one has firm plans to install an incinerator.

The Clean Air Act requires that each NSPS reflect "application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, * * *) the Administrator determines has been adequately demonstrated." Such technology is often referred to as "best demonstrated technology" or simply BDT. After studying the comments received, the Agency had to determine if there were some circumstances described where carbon adsorption could not be used and could not be considered BDT as it had been during the development of the standard. Because EPA found no vinyl printers using a control technology other than carbon adsorption, the only information available on which to base such a determination has come from contacts with vinyl printers who were or had considered incineration in favor of carbon adsorption and the comments received concerning incineration.

Based on this information, the Administrator has concluded that there are certain site-specific and process-specific conditions where carbon adsorption would not be BDT. Site-specific conditions include sites where only a single print line is to be controlled, where print line configuration prohibits control by a single carbon adsorber, and where the available space is insufficient for a carbon adsorber. Some of the possible process-specific conditions occur when high oven temperatures cause plasticizer emissions and when solvents with close distillation temperatures are used.

EPA developed estimates (IV–B–8) of capital and annualized costs and cost effectiveness for thermal incineration. Thermal rather than catalytic incineration was selected for the analysis because that is the type under consideration by the three plants contacted and because, since thermal incineration is more costly than catalytic, the test for reasonableness would be based on the "worst case." At a typical plant, Model Plant C described in the BID, the results of the analysis for thermal incineration showed an annualized operating cost of control of $358,000 and a total capital investment of $669,000. The cost effectiveness of control using incineration was determined to be approximately $530/ton VOC reduction. The cost effectiveness of control at the baseline level was determined to be approximately $600/ton VOC reduction or $70/ton more than the control level of the standard. Although this is higher than the cost of carbon adsorption ($75/ton VOC reduction), the Administrator considers this a reasonable cost and therefore compliance provisions for thermal and catalytic incineration have been added to the standard.

Energy demands of an incineration control system are greater than for carbon adsorption. At a typical plant such as Model Plant C in the BID, energy demand would be about 42×10^9 Btu per year greater for incineration than for carbon adsorption. In terms of environmental impacts, both systems can reduce VOC emissions by the required 85 percent. Noise wastewater, and solid waste are not generated from the use of incineration.

EPA's analysis indicates that there would be no adverse environmental, economic, or energy impacts resulting from the use of incineration. Based on this fact and indications that carbon adsorption would not be BDT is some circumstances, EPA has added compliance provisions for incineration. It has been adequately demonstrated that incineration can achieve a control efficiency comparable to that of carbon adsorption at a higher, yet reasonable cost.

Selection of Best Demonstrated Technology

The trade association commenter (IV–D–7) stated that the technology required to achieve the standard had not been demonstrated for most segments of the industry for the following reasons: (1) The emission testing program was not conducted under normal operating conditions and (2) the test data on residential wallcovering production did not adequately demonstrate that the control technology was applicable to the industry as a whole.

In regard to the applicability of the test data to the industry as a whole, the commenter questioned whether data and technology applicable to a residential wallcovering facility are transferable to or characteristic of other parts of the industry such as automotive trim, upholstery, and apparel. He cited several variables including solvents, raw materials, line speed, web widths, and coating applications which change depending on end-use of the product, stating that it is inadequate to use tests from one facility using one process to print one type of product as representative of the entire industry. Another commenter (IV–D–6) added that air management and testing of lines wider than 30 inches has not been demonstrated. He noted that the BID states that 30 inches would be a typical width for a new source but that the typical width for his lines is 57 to 60 inches. The trade association representative (IV–D–7) noted that solvents used to produce some products such as apparel are incompatible with carbon adsorption. He explained that incineration is probably the most flexible control option where process parameters are variable. Such variability would be desirable to enable a print line to produce different types of products. He listed three trade association members that use or plan to use incineration. The commenter felt that further study by EPA would be necessary to establish standards that reflect emissions reductions achievable through application of the best technological system demonstrated for the different categories of sources in the industry.

The discussion of EPA's emission testing program is included in the response to the comment on "Test Data on Capture System Efficiency." In regard to the applicability of carbon adsorption to the industry as a whole, EPA recognizes that there may be some technological limitations to carbon adsorption. Therefore, the Agency contacted the three plants this commenter listed as having incinerators in use or being installed (IV–E–10, 11, 12). Only one of these plants has firm plans to install an incinerator. Based on these contacts and on comments outlining potential technical advantages, EPA has included compliance provisions for incineration. It appears that there may be potential situations where carbon adsorption could not be used or would not be the control device of choice, and, in these cases, incineration can be used. Incineration control efficiencies of 98 percent have been demonstrated (IV–B–8). Since incinerators can achieve higher control efficiencies than carbon adsorbers, incinerators should be able to meet the standard. For those cases in which incineration would be the preferred control method, the standard includes compliance provisions for incineration.

The standard appropriately applies to the entire vinyl printing and coating industry. In regard to the commenter's remark that the only print line tested was printing wallcovering, the rotogravure printing processes are substantially the same with respect to fugitive emission generation and capture, regardless of the vinyl printed product produced. Factors which affect the emissions from a printing line include equipment design parameters such as configurations of the dryers and print stations, air velocities at the fugitive capture points, and process and product parameters such as solvent volatilities, resin types, web widths, line speeds, and run lengths. The most important equipment design factor in reducing VOC emission by improved capture efficiency is design of the print heads and dryer to minimize exposure of the wet web as it travels from the print head to the dryer. To accomplish this, the print head can be almost completely enclosed by moveable doors or panels that can be readily opened for operator access. If these doors are panels made of transparent material, the print head will still be visible to the operator. The dryer can be designed so that the opening is very close to the point where the wet web leaves the print head and enters the dryer to assure that emissions enter the dryer rather than escape at this point. EPA believes that proper design of the print head-dryer relationship and associated air velocities are the key to achieving the demonstrated control efficiencies and that other parameters such as product type, web widths, line speeds, etc., have little effect on performance.

In a 1981 meeting of the Chemical Film and Fabrics Association (CFFA) and EPA (II–E–101), there appeared to be agreement that the main factor which affects the emissions from any flexible vinyl printing and coating print line is the design of the capture system. If the capture system is properly designed and operated, other equipment design and product parameters become much less important. Since the affected facility which prints wallcovering is the same rotogravure print line used to print other flexible vinyl products, a wallcovering rotogravure print line is representative of the industry. Most CFFA members present at the meeting apparently agreed with this position, although disagreement was later expressed by CFFA (II–D–89). (EPA's response to the CFFA letter II–D–89 is found at II–C–73.) The information in the docket (IV–B–7) supports EPA's conclusion.

EPA visited several flexible vinyl coating plants (II–B–7, II–B–9, II–B–11, II–B–13 through 19, II–B–21, II–B–22, II–B–24, II–B–25) that manufactured a variety of vinyl printed products including wallcovering, furniture upholstery, automobile upholstery, window shades, and awnings. Information from these plant visits supported the conclusions that capture system design and operation is indeed the key to achieving 90 percent capture and that tests of a wallcovering print line are representative of the entire vinyl printing industry.

Use of Inventory Records

Two commenters (IV–D–2, IV–D–5) addressed compliance provisions for facilities using waterborne inks. One commenter (IV–D–2), an ink manufacturer, felt that calculating the VOC content of each ink would be meaningless, add to overhead, and thus decrease profits because they have thousands of formulations and because they change formulations to meet customers' specifications. He agreed with the need to measure or calculate VOC content in the inks and suggested that ink manufacturers be allowed to submit general type formulations for families of inks and use approximate figures (plus or minus a certain percent) for VOC content. The second commenter (IV–D–5) felt that it was physically and economically infeasible for a facility using inks with an average VOC content of less than 1 kg VOC per kg ink solids to demonstrate compliance by determining and recording the VOC content of each ink used at the print head. He had explained this in previous comments dated October 20, 1981 (II–D–100), and resubmitted those comments with this letter. He pointed out that the inks applied are a blend of recycled excess inks, solvent, water, and new inks. Due to recycling and addition of water and solvent, the commenter felt that ink manufacturer's data would be of little use to his company. He added that it would also be practically impossible to use Reference Method 24 for the large number of inks his company would apply per day. This would be 250 to 350 tests in on day for each of two plants.

The commenter suggested what he considered a more reasonable and more accurate compliance system where the average VOC content of the inks applied would be determined through the use of ink manufacturer's formulations, inventory and purchase records for new inks and diluents, the acceptance of recycled inks as being previously accounted for as new ink and diluent, and the measure of VOC content of discarded inks. This system was expressed by the following equation:

Emission VOC=Ink VOC+Solvent VOC−Discard VOC−Blending and Storage VOC

VOC diluent added at the press would be accounted for in the solvent inventory and purchase records. The commenter noted that a small amount of VOC would be lost from storage and blending of recycled inks, but that this loss would be of little significance to the compliance determination as the evaporation rate of the low VOC content inks would be slight and the resulting error would inflate the calculated VOC-to-solids ratio. He felt that this limited number of samples could be analyzed in outside laboratories and eliminate the creation of a need for analytical laboratories in printing facilities. He also pointed out that short-term use of solvent-based inks on primarily waterborne facilities would be accountable because the two systems are incompatible and will be easily differentiated in purchasing, inventory, and manufacturing records.

The commenter concluded by requesting that the requirement in § 60.583 (Test methods and procedures) to determine the VOC content of each ink as applied be deleted because it is not attainable for all facilities. He urged that the use of the weighted average be modified to provide credit for unused excess inks for determination of compliance. The commenter felt that the unreasonable cost of determining the VOC content of each waterborne ink, as applied, to comply with the proposed standard would discourage further development of waterborne inks.

EPA agrees that in some cases the method suggested in this comment would be preferable to the use of ink manufacturer's formulation data or Reference Method 24. Therefore, points to be covered in petitioning the Administrator to use such a method have been added to Section 60.583(c). Under such a method, the operator would account for the VOC and solids content of new inks and dilution solvent directed to the print line during the averaging period. Credit would be given for VOC in discarded ink. Credit would also be given for inks that are to be recycled but are not yet recycled during the averaging period. Credit for these recycled inks is not to be taken again during the next averaging period. As the commenter stated, however, no credit can be given for VOC lost during blending and storage of recycled inks since this quantity cannot be easily measured. This quantity would be of little significance in the compliance determination.

The ink manufacturer (IV–D–2) explained that calculating VOC content of every formulation would be an excessive requirement and asked that ink manufacturers be allowed to submit general type of formulations and to approximate VOC content. This standard places no requirements on ink manufacturers. However, it is anticipated that, by allowing operators of affected facilities to use inventory and purchase records to account for VOC content and by easing the requirement to account for the content of each ink as used at the print head, this commenter (IV–D–5) may find some relief.

Paperwork Reduction Act

The reporting and recordkeeping requirements of the regulation are assessed in Standard Form 83 and an accompanying supporting statement, which are included in the docket (IV–H–4) for public review. This documentation contains (1) a description of the reporting and recordkeeping required by the regulation and the General Provisions, (2) the reasons for the requirements, (3) an evaluation of the major alternatives considered (including the use of existing sources of information), and (4) an estimate of the labor-hour burden of the requirements.

The General Provisions and the standard would require three types of reports: (1) Notification requirements which enable the Agency to keep abreast of facilities subject to the standard, (2) reporting of initial performance test results and continuous monitoring system performance evaluations, and (3) semiannual reporting of exceedances of the waterborne ink limitation or deviations

from the monitored parameters for carbon adsorption or incineration. Analysis of these reporting requirements (IV–H–4) indicates that they are both necessary and reasonble considering the savings in Agency time and resources required for effective enforcement.

The resources needed by the industry to maintain records and to prepare the reports for the first 2 years average about 0.36 person-years per year. The resources required by EPA and State and local agencies to process the reports and to maintain records for the first 2 years would avarage about 0.06 person-years per year.

Information collection requirements associated with this regulation (40 CFR 60.7, 60.8, 60.583, 60.584, and 60.585) have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2060–0073.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is June 29, 1984. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (January 18, 1983).

As prescribed by Section 111, the promulgation of this standard was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this promulgated standard was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. For the purposes of the economic impact assessment, three regulatory alternatives were identified. Regulatory Alternatives I, II, and III called for 65, 75, and 85 percent overall reduction of VOC, respectively. All aspects of the assessment were considered in the formulation of the standards to insure that cost was carefully considered in determining BDT. The economic impact assessment is included in the background information document for the proposed standard.

Under Executive Order 12291, the EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not "major" because: (1) The national annualized compliance costs, including capital charges resulting from the standards, total less than $100 million; (2) the standards do not cause a major increase in prices or production costs; and (3) the standards do not cause significant adverse effects on domestic competition, employment, investment, productivity, innovation or competition in foreign markets. This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to the EPA and any EPA response to those comments are included in docket number A–81–03. The docket is available for public inspection at the EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

Regulatory Flexibility Analysis

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant impact on a substantial number of small business entities. There are approximately 107 plants that manufacture vinyl products and about five companies that manufacture urethane products, one of which would be considered small. The economic analysis conducted for small vinyl manufacturers indicated no significant impacts. Similarly, it is not expected that the standard will significantly impact small urethane manufacturers. Further, this standard will have no impact on any other small entities.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

Dated: June 15, 1984.

William D. Ruckelshaus,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new Subpart FFF to read as follows:

Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

Sec.

60.580 Applicability and designation of affected facility.
60.581 Definitions and symbols.
60.582 Standard for volatile organic compounds.
60.583 Test methods and procedures.
60.584 Monitoring of operations and recordkeeping requirements.
60.585 Reporting requirements.

Authority: Secs. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart FFF—Standards of Performance for Flexible Vinyl and Urethane Coating and Printing

§ 60.580 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each rotogravure printing line used to print or coat flexible vinyl or urethane products.

(b) This subpart applies to any affected facility which begins

construction, modification, or reconstruction after January 18, 1983.

(c) For facilities controlled by a solvent recovery emission control device, the provisions of § 60.584(a) requiring monitoring of operations will not apply until EPA has promulgated performance specifications under Appendix B for the continuous monitoring system. After the promulgation of performance specifications, these provisions will apply to each affected facility under paragraph (b) of this section. Facilities controlled by a solvent recovery emission control device that become subject to the standard prior to promulgation of performance specifications must conduct performance tests in accordance with § 60.13(b) after performance specifications are promulgated.

§ 60.581 Definitions and symbols.

(a) All terms used in this subpart, not defined below, are given the same meaning as in the Act or in Subpart A of this part.

"Emission control device" means any solvent recovery or solvent destruction device used to control volatile organic compounds (VOC) emissions from flexible vinyl and urethane rotogravure printing lines.

"Emission control system" means the combination of an emission control device and a vapor capture system for the purpose of reducing VOC emissions from flexible vinyl and urethane rotogravure printing lines.

"Flexible vinyl and urethane products" mean those products, except for resilient floor coverings (1977 Standard Industry Code 3996) and flexible packaging, that are more than 50 micrometers (0.002 inches) thick, and that consist of or contain a vinyl or urethane sheet or a vinyl or urethane coated web.

"Gravure cylinder" means a plated cylinder with a printing image consisting of minute cells or indentations, specifically engraved or etched into the cylinder's surface to hold ink when continuously revolved through a fountain of ink.

"Ink" means any mixture of ink, coating solids, organic solvents including dilution solvent, and water that is applied to the web of flexible vinyl or urethane on a rotogravure printing line.

"Ink solids" means the solids content of an ink as determined by Reference Method 24, ink manufacturer's formulation data, or plant blending records.

"Inventory system" means a method of physically accounting for the quantity of ink, solvent, and solids used at one or more affected facilities during a time period. The system is based on plant purchase or inventory records.

"Plant blending records" means those records which document the weight fraction of organic solvents and solids used in the formulation or preparation of inks at the vinyl or urethane printing plant where they are used.

"Rotogravure print station" means any device designed to print or coat inks on one side of a continuous web or substrate using the intaglio printing process with a gravure cylinder.

"Rotogravure printing line" means any number of rotogravure print stations and associated dryers capable of printing or coating simultaneously on the same continuous vinyl or urethane web or substrate, which is fed from a continuous roll.

"Vapor capture system" means any device or combination of devices designed to contain, collect, and route organic solvent vapors emitted from the flexible vinyl or urethane rotogravure printing line.

(b) All symbols used in this subpart not defined below are given the same meaning as in the Act or in Subpart A of this part.

"a" means the gas stream vents exiting the emission control device.

"b" means the gas stream vents entering the emission control device.

"f" means the gas stream vents which are not directed to an emission control device.

"C_{aj}" means the concentration of VOC in each gas stream (j) for the time period exiting the emission control device, in parts per million by volume.

"C_{bi}" means the concentration of VOC in each gas stream (i) for the time period entering the emission control device, in parts per million by volume.

"C_{fk}" means the concentration of VOC in each gas stream (k) for the time period which is not directed to an emission control device, in parts per million by volume.

"G" means the weighted average mass of VOC per mass of ink solids applied, in kilograms per kilogram.

"M_{di}" means the total mass of each ink (i) applied in the time period as determined from plant records, in kilograms.

"M_{dj}" means the total mass of each dilution solvent (j) added at the print line in the time period determined from plant records, in kilograms.

"Q_{aj}" means the volumetric flow rate of each effluent gas stream (j) exiting the emission control device, in standard cubic meters per hour.

"Q_{abi}" means the volumetric flow rate of each effluent gas stream (i) entering the emission control device, in standard cubic meters per hour.

"Q_{fk}" means the volumetric flow rate of each effluent gas stream (k) not directed to an emission control device, in standard cubic meters per hour.

"E" means the VOC emission reduction efficiency (as a fraction) of the emission control device during performance testing.

"F" means the VOC emission capture efficiency (as a fraction) of the vapor capture system during performance testing.

"W_{ci}" means the weight fraction of VOC in each ink (i) used in the time period as determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

"W_{si}" means the weight fraction of solids in each ink (i) used in the time period as determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

"W_{cj}" means the weight fraction of VOC in each dilution solvent (j) added at the print line in the time period determined from Reference Method 24, manufacturer's formulation data, or plant blending records, in kilograms per kilogram.

§ 60.582 Standard for volatile organic compounds.

(a) On and after the date on which the performance test required by § 60.8 has been completed, each owner or operator subject to this subpart shall either:

(1) Use inks with a weighted average VOC content less than 1.0 kilogram VOC per kilogram ink solids at each affected facility, or

(2) Reduce VOC emissions to the atmosphere by 85 percent from each affected facility.

§ 60.583 Test methods and procedures.

(a) Reference Methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.582(a) as follows:

(1) Method 24 for analysis of inks. If nonphotochemically reactive solvents are used in the inks, standard gas chromatographic techniques may be used to identify and quantify these solvents. The results of Reference Method 24 may be adjusted to subtract these solvents from the measured VOC content.

(2) Method 25A for VOC concentration (the calibration gas shall be propane);

(3) Method 1 for sample and velocity traverses;

(4) Method 2 for velocity and volumetric flow rates;

(5) Method 3 for gas analysis;

(6) Method for stack gas moisture.

(b) To demonstrate compliance with § 60.582(a)(1), the owner or operator of an affected facility shall determine the weighted average VOC content of the inks according to the following procedures:

(1) Determine and record the VOC content and amount of each ink used at the print head, including the VOC content and amount of diluent solvent, for any time periods when VOC emission control equipment is not used.

(2) Compute the weighted average VOC content by the following equation:

$$G = \frac{\sum_{i=1}^{n} (W_{oi}M_{ci}) + \sum_{j=1}^{m} (W_{oj}M_{dj})}{\sum_{i=1}^{n} (M_{ci}W_{si})}$$

(3) The weighted average VOC content of the inks shall be calculated over a period that does not exceed one calendar month, or four consecutive weeks. A facility that uses an accounting system based on quarters consisting of two 28 calendar day periods and one 35 calendar day period may use an averaging period of 35 calendar days four times per year, provided the use of such an accounting system is documented in the initial performance test.

(4) Each determination of the weighted average VOC content shall constitute a performance test for any period when VOC emission control equipment is not used. Results of the initial performance test must be reported to the Administrator. Reference Method 24 or ink manufacturers' formulation data along with plant blending records (if plant blending is done) may be used to determine VOC content. The Administrator may require the use of Reference Method 24 if there is a question concerning the accuracy of the ink manufacturer's data or plant blending records.

(5) If, during the time periods when emission control equipment is not used, all inks used contain less than 1.0 kilogram VOC per kilogram ink solids, the owner or operator is not required to calculate the weighted average VOC content, but must verify and record the VOC content of each ink (including any added dilution solvent) used as determined by Reference Method 24, ink manufacturers' formulation data, or plant blending records.

(c) To demonstrate compliance with § 60.582(a)(1), the owner or operator may determine the weighted average VOC content using an inventory system.

(1) The inventory system shall accurately account to the nearest kilogram for the VOC content of all inks and dilution solvent used, recycled, and discarded for each affected facility during the averaging period. Separate records must be kept for each affected facility.

(2) To determine VOC content of inks and dilution solvent used or recycled, Reference Method 24 or ink manufacturers' formulation data must be used in combination with plant blending records (if plant blending is done) or inventory records or purchase records for new inks or dilution solvent.

(3) For inks to be discarded, only Reference Method 24 shall be used to determine the VOC content. Inks to be discarded may be combined prior to measurement of volume or weight and testing by Reference Method 24.

(4) The Administrator may require the use of Reference Method 24 if there is a question concerning the accuracy of the ink manufacturer's data or plant records.

(5) The Administrator shall approve the inventory system of accounting for VOC content prior to the initial performance test.

(d) To demonstrate compliance with § 60.582(a)(2), the owner or operator of an affected facility controlled by a solvent recovery emission control device or an incineration control device shall conduct a performance test to determine overall VOC emission control efficiency according to the following procedures:

(1) The performance test shall consist of three runs. Each test run must last a minimum of 30 minutes and shall continue until the printing operation is interrupted or until 180 minutes of continuous operation occurs. During each test run, the print line shall be printing continuously and operating normally. The VOC emission reduction efficiency achieved for each test run is averaged over the entire test run period.

(2) VOC concentration values at each site shall be measured simultaneously.

(3) The volumetric flow rate shall be determined from one Method 2 measurement for each test run conducted immediately prior to, during, or after that test run. Volumetric flow rates at each site do not need to be measured simultaneously.

(4) In order to determine capture efficiency from an affected facility, all fugitive VOC emissions from the affected facility shall be captured and vented through stacks suitable for measurement. During a performance test, the owner or operator of an affected facility located in an area with other sources of VOC shall isolate the affected facility from other sources of VOC. These two requirements shall be accomplished using one of the following methods:

(i) Build a permanent enclosure around the affected facility;

(ii) Build a temporary enclosure around the affected facility and duplicate, to an extent that is reasonably feasible, the ventilation conditions that are in effect when the affected facility is not enclosed (one way to do this is to divide the room exhaust rate by the volume of the room and then duplicate that quotient or 20 air changes per hour, whichever is smaller, in the temporary enclosure); or

(iii) Shut down all other sources of VOC and continue to exhaust fugitive emissions from the affected facility through any building ventilation system and other room exhausts such as print line ovens and embossers.

(5) For each affected facility, compliance with § 60.582(a)(2) has been demonstrated if the average value of the overall control efficiency (EF) for the three runs is equal to or greater than 85 percent. An overall control efficiency is calculated for each run as follows:

(i) For efficiency of the emission control device,

$$E = \frac{\sum_{i=1}^{n} (Q_{bi}C_{bi}) - \sum_{j=1}^{m} (Q_{aj}C_{aj})}{\sum_{i=1}^{n} (Q_{bi}C_{bi})}$$

(ii) For efficiency of the vapor capture system,

$$F = \frac{\sum_{i=1}^{n} (Q_{bi}C_{bi})}{\sum_{i=1}^{n} (Q_{bi}C_{bi}) + \sum_{k=1}^{p} (Q_{fk}C_{fk})}$$

(Sec. 114, Clean Air Act as amended [42 U.S.C. 7414])

§ 60.584 Monitoring of operations and recordkeeping requirements.

(a) The owner or operator of an affected facility controlled by a solvent recovery emission control device shall install, calibrate, operate, and maintain a monitoring system which continuously measures and records the VOC concentration of the exhaust vent stream from the control device and shall comply with the following requirements:

(1) The continuous monitoring system shall be installed in a location that is representative of the VOC concentration in the exhaust vent, at least two equivalent stack diameters from the exhaust point, and protected from interferences due to wind, weather, or other processes.

(2) During the performance test, the owner or operator shall determine and record the average exhaust vent VOC concentration in parts per million by volume. After the performance test, the owner or operator shall determine and, in addition to the record made by the continuous monitoring device, record the average exhaust vent VOC concentration for each 3-hour clock period of printing operation when the average concentration is greater than 50 ppm and more than 20 percent greater than the average concentration value demonstrated during the most recent performance test.

(b) The owner or operator of an affected facility controlled by a thermal incineration emission control device shall install, calibrate, operate, and maintain a monitoring device that continuously measures and records the temperature of the control device exhaust gases and shall comply with the following requirements:

(1) The continuous monitoring device shall be calibrated annually and have an accuracy of ±0.75 percent of the temperature being measured or ±2.5° C, whichever is greater.

(2) During the performance test, the owner or operator shall determine and record the average temperature of the control device exhaust gases. After the performance test, the owner or operator shall determine and record, in addition to the record made by the continuous monitoring device, the average temperature for each 3-hour clock period of printing operation when the average temperature of the exhaust gases is more than 28° C below the average temperature demonstrated during the most recent performance test.

(c) The owner or operator of an affected facility controlled by a catalytic incineration emission control device shall install, calibrate, operate, and maintain monitoring devices that continuously measure and record the gas temperatures both upstream and downstream of the catalyst bed and shall comply with the following requirements:

(1) Each continuous monitoring device shall be calibrated annually and have an accuracy of ±0.75 percent of the temperature being measured or ±2.5° C, whichever is greater.

(2) During the performance test, the owner or operator shall determine and record the average gas temperature both upstream and downstream of the catalyst bed. After the performance test, the owner or operator shall determine and record, in addition to the record made by the continuous monitoring device, the average temperatures for each 3-hour clock period of printing operation when the average temperature of the gas stream before the catalyst bed is more than 28°C below the average temperature demonstrated during the most recent performance test or the average temperature difference across the catalyst bed is less than 80 percent of the average temperature difference of the device during the most recent performance test.

(d) The owner or operator of an affected facility shall record time periods of operation when an emission control device is not in use.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060-0073)

§ 60.585 Reporting requirements.

(a) For all affected facilities subject to compliance with § 60.582, the performance test data and results from the performance test shall be submitted to the Administrator as specified in § 60.8(a).

(b) The owner or operator of each affected facility shall submit semiannual reports to the Administrator of occurrences of the following:

(1) Exceedances of the weighted average VOC content specified in § 60.582(a)(1);

(2) Exceedances of the average value of the exhaust vent VOC concentration as defined under § 60.584(a)(2);

(3) Drops in the incinerator temperature as defined under § 60.584(b)(2); and

(4) Drops in the average temperature of the gas stream immediately before the catalyst bed or drops in the average temperature across the catalyst bed as defined under § 60.584(c)(2).

(c) The reports required under paragraph (b) shall be postmarked within 30 days following the end of the second and fourth calendar quarters.

(d) The requirements of this subsection remain in force until and unless the Agency, in delegating enforcement authority to a State under Section 111(c) of the Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such States. In that event, affected sources within the State will be relieved of the obligation to comply with this subsection, provided that they comply with requirements established by the State.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

(Approved by the Office of Management and Budget under the control number 2060-0073)

[FR Doc. 84-17227 Filed 6-28-84; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Friday
June 29, 1984

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Mining and Reclamation Operations Under a Federal Program for Tennessee; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 942

Surface Mining and Reclamation Operations Under a Federal Program for Tennessee

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior proposes to promulgate a Federal program for regulation of coal exporation and surface coal mining and reclamation operations on non-Federal and non-Indian lands in the State of Tennessee. This includes the surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities because of the State Legislature's repeal of the Tennessee Coal Surface Mining Act and regulations effective October 1, 1984. OSM is also proposing to withdraw approval of the Tennessee regulatory program and to suspend Tennessee's Abandoned Mine Land Reclamation Plan. Approval of the State's regulatory program and Reclamation Plan on August 10, 1982, provided the State with exclusive responsibility for regulating surface coal mining activities and administering a reclamation program for restoring land and water resources adversely affected by past mining practices. The Federal Surface Mining Act, however, makes continued funding for the Reclamation Plan contingent on the state having an approved regulatory program.

DATES: Written comments will be accepted until 5:00 p.m. on August 8, 1984 at the administrative record address indicated below. A public hearing will be held on August 3, 1984 as indicated below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments must be mailed to: Administrative Record Room (R & I-21). Office of Surface Mining, 530 Gay St. SW., Knoxville, TN 37902.

The public hearing will be held at the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee 37901.

FOR FURTHER INFORMATION CONTACT: James A. Curry, Field Office Director, OSM, 530 Gay Street SW., Knoxville, TN 37902 (ph. 615-673-4504); and James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Rm. 222, 1951 Constitution Avenue, NW., Washington, DC 20240 (ph. 202-343-5361).

SUPPLEMENTARY IMFRORMATION:

Availability of Copies

Copies of the proposed Tennessee Federal regulatory program are available for inspection and may be obtained at the OSM offices listed above under **ADDRESSES.**

Public Comment Period

The comment period on this proposed program will extend until August 8, 1984. All comments must be received at the location listed above under **ADDRESSES** by the close of business on that date. All written comments received, summaries of public meetings held at the request of any person or organization to receive advice and recommendations concerning the program with representatives of OSM, and other documents comprising the administrative record on the Tennessee Federal program will be made available for public review during regular business hours at the OSM location listed above under **ADDRESSES.**

Comments should be as specific as possible, focus on the issues of this rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this rulemaking. Nor can OSM ensure consideration of comments received after the comment period ends or those delivered to an address other than that specified.

A rulemaking notice appeared on June 28, 1984, adding a new § 942.736 which established a public comment period of 40 days for a Tennessee Federal program. The rule established an exception to the requirement of 30 CFR 736.13(b) in light of the need to have the Tennessee Federal program in effect by October 1, 1984.

Public Hearing

A public hearing is scheduled for August 3, 1984 at the Hyatt House, 500 Hill Aveune SE., Knoxville, Tennessee 37901. The hearing will be divided into daytime and evening sessions. The daytime hearing will begin at 9:00 a.m. and will continue until all persons then in attendance during the day wishing to present testimony have had an opportunity to do so. The evening session will begin at 7:00 p.m. to allow persons to present testimony who are unable to attend the daytime hearing.

The hearing will be legislative in nature. Persons wishing to present testimony should contact the Field Office Director at least five (5) days before the hearing date. A written statement submitted with oral presentation would be helpful to the presiding OSM officials.

A rulemaking notice appeared on June 28, 1984, adding a new § 942.736 which provided that a public hearing will be held between 30 and 40 days after publication of a proposed Tennessee Federal program. The rule established an exception to the requirement of 30 CFR 736.13(b) in light of the need to have the Tennessee Federal program in effect by October 1, 1984.

To assist the reader, this preamble is arranged as follows:

I. Proposed Withdrawal of State Program Approval
- A. Withdrawal of Regulatory Program
- B. Suspension of Abandoned Mine Land Plan

II. Federal Programs Generally

III. Tennessee Federal Program
- A. Federal/State Program Interface and Transition
- B. Content and Organization of the Program
- C. Detailed Discussion of Program
  - Option 1
  - Option 2

IV. Other Information

I. Proposed Withdrawal of State Program Appoval

A. Withdrawal of Regulatory Program Approval

On August 10, 1982, the State of Tennessee received conditional approval of its permanent regulatory program. 47 FR 34753. Because of problems identified in the State's implementation, maintenance and enforcement of its program, the Director of OSM on April 8, 1983, notified the Governor of the problems and sought corrective measures pursuant to 30 CFR Part 733. See the notice of public hearing at 48 FR 22541 (May 19, 1983). The State failed to adequately indicate its intent and capability to implement, maintain and enforce its regulatory program. By final rulemaking notice published on April 18, 1984, 49 FR 15496, OSM assumed direct Federal enforcement of the inspection and enforcement portions of the Tennessee regulatory program pursuant to 30 CFR 733.12 because of the State's failure to adequately implement certain parts of its program. The State's statute and pertinent program regulations that OSM would be enforcing appeared in the Federal Register on May 18, 1984, 49 FR 21140.

By action of the State Legislature on May 16, 1984, most of the Tennessee Coal Surface Mining Law of 1980, Tennessee Code Annotated §§ 59-8-301-59-8-339, was repealed effective October 1, 1984. The legislation also repealed the implementing regulations for the regulatory program effective the same date.

With the action of the State Legislature, Secretarial withdrawal of state regulatory program approval would be a formality. Under Section 503(a)(1) of the Surface Mining Control and Reclamation Act of 1977 ("SMCRA" or the "Act"), 30 U.S.C. 1253(a)(1), to achieve and retain primacy a coal-producing state must have a law which provides for the regulation of surface coal mining and reclamation operations in accordance with the Act. The State's failure to have a surface mining law cannot be cured by substitution of Federal enforcement. Pursuant to 30 CFR 733.12(g), the Secretary is to withdraw program approval if the failure of the state to administer or enforce its program cannot be remedied by substitution of Federal enforcement of the program.

Therefore, OSM proposes to withdraw approval of the Tennessee permanent regulatory program in full effective October 1, 1984. On and after that date, OSM would be the regulatory authority in Tennessee.

B. Suspension of Abandoned Mine Land Plan

Title IV of the Surface Mining Act establishes an Abandoned Mine Land (AML) program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under state or Federal law. Title IV provides that a state with an approved surface mining regulatory program may have an AML plan approved which gives it the responsibility and primary authority to implement the plan. On August 10, 1982, Tennessee's plan was approved. 47 FR 34757

Section 405(c) of the Act provides that the Secretary shall not approve, fund or continue to fund a state AML unless that state has an approved state regulatory program pursuant to Section 503 of the Act. Regulation implementing this provision are found in 30 CFR 884.16 and 886.18. Upon withdrawal of regulatory program approval, the Director of OSM must suspend the AML plan.

If the Director determines that a state reclamation plan should be suspended and the AML grants terminated, the Director must notify the state by mail of the proposed action. The notice must state the reasons for the proposed action and provide the state 30 days to show caue why such action should not be taken. The Director will afford the state an opportunity for consultation, including a hearing, if requested, and performance of remedial action prior to suspension. The Director will notify the State of the proposed suspension of its Reclamation Plan. The State was informed that no further projects would be funded after assumption of Federal enforcement of the regulatory program. 49 FR 15505.

Formal suspension of a state's Reclamation Plan will have the following consequences: 1) the state will not longer be eligible to receive its 50% allocation of the AML funds collected within the state; 2) funds which have been allocated to the state but have remained unexpended for three years may be withdrawn by the Director and used in any eligible area in the country; and 3) OSM will conduct only limited reclamation efforts in the state addressing only the highest priority problems which threaten the public health and safety.

II. Federal Programs Generally

Under Section 504(a) of the Act, 30 U.S.C. 1254(a), the Secretary of the Interior (the Secretary) is required to promulgate a Federal program in a state for, among other reasons, the failure of a state granted primary regulatory responsibility to adequately implement, enforce or maintain its program. Upon promulgation of a Federal regulatory program, the Secretary becomes the regulatory authority. *Id.*

Once a decision is made that a Federal regulatory program is necessary for a state, the Secretary must make several determinations in promulgating a program. Section 504(a) of the Act requires that the Secretary take into consideration the nature of the state's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also set forth in the regulations for the promulgation of Federal programs, 30 CFR Part 736. The Act (Section 505(b)) and the regulations (30 CFR 736.22(a)(1)) also provide that if a state has more stringent land use and environmental protection laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of section 505(b) can best be met by identifying any state laws and regulations which may impose more stringent environmental controls and by then listing them in the Federal program. If the state's laws or regulations establish more stringent standards than those of the Act or the Secretary's regulations in 30 CFR Chapter VII, or if the state regulates any aspect of the environment which neither the Act nor the Secretary's regulations protect, the Secretary would then specifically preserve those state standards in the Federal program. By identifying any state laws as more stringent than Federal surface coal mining statutory and regulatory standards, however, the Secretary would not be assuming any responsibility to enforce such state laws.

Also, in promulgating a Federal program, section 504(g) of the Act specifies that any state statutes or regulations which regulate surface mining and reclamation operations are to be identified by the Secretary and will be superseded and preempted to the extent that they interfere with the achievement of the purposes and requirements of the Act and Federal program. This provision is reinforced by section 505(a) which states that only inconsistent state laws shall be superseded by any provision of the Act or regulation. State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as do the Federal law and regulations are considered to interfere with achievement of the purposes of the Act. Accordingly, they must be identified and preempted.

Federal programs are based on the Secretary's permanent program regulations. 30 CFR Subchapters A, F, G, H, J, K, L, and M. The permanent program regulations implement five essential aspects of the surface coal mining regulatory program: permitting, performance standards, designation of lands as unsuitable for mining, bonding, and inspection and enforcement. These rules form the benchmark for state regulatory programs. In order for a state to have a regulatory program approved, section 503(a)(7) of the Act requires that the state's rules and regulations be consistent with the Secretary's regulations.

The permanent program rules refer to the "regulatory authority." Under a Federal program, that is the Secretary. Act, section 701(22). The Secretary has delegated all of his authority under the Act to the Assistant Secretary for Land and Minerals Management. Secretarial Order No. 3013 (Nov. 9, 1977); Order No. 3039 (Dec. 22, 1983). With limited exceptions, the Assistant Secretary has in turn redelegated all of this authority under the Act to the Director of OSM. 216 Departmental Manual 1 (November 9, 1977). Thus, the Director of OSM is the official directly responsible for the

implementation of a Federal regulatory program.

The parts of the permanent regulatory program rules that must be included in a Federal program are listed in 30 CFR 736.22(b). They include the general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands as unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), small operator assistance (Subchapter H), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provisions in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who, in the instance of a Federal regulatory program, are directly enforcing the Act.

Federal programs are promulgated by means of cross-referencing the permanent program rules which set the substantive standards. The proposed Federal regulatory program for Tennessee would replace the current 30 CFR Part 942. In the new program, sections on various topics would cross-reference the counterpart permanent program rules on those topics. For example, for general requirements for permits and permit applications, the proposed § 942.771 of the Tennessee Federal regulatory program would cross-reference 30 CFR Part 771 of the permanent program rules by stating that 30 CFR Part 771 shall apply to any person who makes application for a permit to conduct exploration of surface coal mining operations. Cross-referencing avoids duplication of the full text of the permanent regulatory program rules for each Federal program.

If a particular permanent program regulation needs to be modified for use in a Federal program, an additional paragraph of the Federal program rule would be added to modify the permanent regulatory program standard for the that Federal program state or to add additional requirements or standards. If more than one standard needs to be modified in any particular permanent program rule, additional paragraphs would be added to the Federal program section. For example, if an additional permit application requirement is identified for the Tennessee Federal program, a paragraph (b) would be added to the proposed § 942.771 to accomplish this. This is one means of implementing the mandate of Section 504(a) of the Act this in promulgating a Federal program the Secretary take into consideration relevant conditions in the state.

One effect of cross-referencing in a Federal program is that if a permanent program rule is revised, the corresponding Federal program rule would be similarly revised. Howerver, the notice of proposed rulemaking would invite comments not only on the proposed rule generally, but also on how it might affect a particular Federal program. If certain changes were needed for a Federal program, then a separate provision would be added to the Federal program provision which is the counterpart to the permanent program rule.

Several provisions of the permanent program rules are already applicable to all Federal programs because they were fully promulgated for application to all regulatory programs and, therefore, need not be cross-referenced. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. 30 CFR Part 764—Designating Lands Unsuitable for Surface Coal Mining is included in this proposed Federal program by cross-reference under § 942.764 to provide a petition process on non-Federal lands in Tennessee. Also, Part 760 is not included because its provisions do not provide any substantive requirements. Instead, it imposes requirements on the Secretary and his delegates which need not be incorporated in each Federal program. Part 765 is not included because it is directly applicable to a Federal program state without being cross-referenced. Parts 810 and 840 are also not included because they are unnecessary to a Federal program.

III. Tennessee Federal Program

A. Federal/State Program Interface and Transition

The Federal program for Tennessee would be the first such permanent program for a state in which approval of the state regulatory program would be withdrawn. Previously, Federal programs have been promulgated for states which have chosen not to submit programs. See, e.g., the Washington Federal program, 48 FR 7883 (Feb. 24, 1983). In promulgating the previous Federal programs, state statutes and regulations which regulated an aspect of surface coal mining and reclamation were examined to determine whether there were any provisions which would either interfere with a Federal program or set more stringent environmental protection standards. In the case of Tennessee, however, except for retaining very limited authority to regulate (as explained below) surface coal mining and reclamation activities, the State, by passage of the repealing legislation, has chosen to remove itself from any regulatory function in that area. Therefore, on general review of state statutes and regulations has been undertaken in promulgating this proposed Federal regulatory program.

The Tennessee legislation repealing the state regulatory program statute and regulations establishes several areas of limited state jurisdiction. Criminal penalties are established for any person who willfully and knowingly mines more than 25 tons of coal in any 12 successive calendar months without first obtaining a permit from the "primary regulatory authority pursuant to [the Federal Act] or without a permit for such mine obtained * * * prior to [October 1, 1984] * * *." Exceptions are then set for the extraction of coal incident to government-financed construction and construction operations affecting less than one acre where coal removal is an incidental part of the project.

Under section 528(1) of the Federal Act, a landowner may remove coal for his noncommercial use free from regulation. Under section 528(2) of the Act, surface coal mining operations affecting two acres or less are not subject to the Act. Also, under section 528(3), the extraction of coal as an incidental part of government-financed construction is exempt from regulation. Because of these exemptions in the Act, OSM cannot exercise any jurisdiction over such operations. Therefore, OSM does not propose to preempt the State with respect to surface coal mining activities which remove more than 25 tons of coal during a 12 successive calendar month period, which affect areas larger than one acre and which are not part of government-financed construction projects. However, the provision in the repealing legislation mentions the "primary regulatory authority." The term is not defined. Presumably, on October 1, 1984, the Secretary, acting through OSM, would become the "primary" regulatory authority. But since OSM cannot exert jurisdiction over surface coal mining activities affecting two acres of less, government-financed construction projects incidently removed coal or extraction by a landowner for his noncommercial use, it cannot issue

permits for any such activities. Therefore, only those operations which have obtained a permit under the Tennessee program and come within the exceptions of section 528 of the Act could conceivably be allowed to continue without being in violation of the repealing legislation sanctions. Enforcement, nevertheless, would be a matter for the State to pursue where the operation is exempt under the Act. However, OSM retains the right to determine, on a case-by-case basis, whether any surface coal mining operation is affecting more than two acres, is incidental to a government-financed construction project or is conducted by a landowner for his noncommercial use. Furthermore, the Federal program would require a permit for any operations affecting more than two acres. Failure to have such a permit would be a violation of the Federal program and would be subject to enforcement action by OSM. The Secretary concludes preliminarily, subject to public comment on this proposed program, that the provisions of the repealing legislation discussed here would not interfere with achievement of the purposes of the Federal program. Therefore, they are not proposed to be preempted or superseded.

After promulgation of this Federal program, the State would also continue to regulate water quality under the National Pollution Discharge Elimination System (NPDES). Section 508(a)(9) of the Federal Act requires an applicant to demonstrate how he will comply with, *inter alia*, applicable water quality laws, and section 702(a)(3) provides that the Act shall not affect the Federal Water Pollution Control Act or any state laws enacted pursuant to that law. In the permanent program rules on water quality, 30 CFR 816.41(e) provides for surface water monitoring reporting consistent with the NPDES. Also, 30 CFR 816.42 requires compliance with applicable state and Federal water quality standards and effluent limitations set by the Environmental Protection Agency.

The State Board of Reclamation Review would continue to hear cases before it. Tenn. Code Ann. § 59-8-321. The repealing legislation modified its authority in only a limited way.

Under the repealing legislation, the Board retains jurisdiction over (1) all persons who conducted surface coal mining prior to May 3, 1978 and who have not had their bond fully released, and (2) all persons who have permits issued by the State and who have had bond forfeiture initiated against them. However, the legislation provides with respect to the latter category that if the Secretary exercises jurisdiction over such forefeitures, the retention of jurisdiction is removed. For the first category, OSM has no authority to assert jurisdiction; therefore, Tennessee jurisdiction would not constitute interference with the achievement of the Federal program's purposes. With respect to the second category, however, the assumption of Federal enforcement announced on April 18, 1984, 49 FR 15496, indicated that Federal inspectors would be conducting inspections on sites on which bond forfeiture had been initiated. In view of the fact that the State retains a bond made payable to it or has collateral in its possession, OSM will not assume jurisdiction over such sites for purposes of bond forefeiture so long as the State continues to proceed with bond collection and to undertake any reclamation work. Continued administrative action by the Board with respect to bond forfeitures would not interfere with the purposes of a Federal program.

For those interim program bonds for which the Tennessee Department of Health and Environment has not commenced forfeiture, OSM is considering whether it can assume any responsibility with respect to them. There is no requirement under the Act for a reclamation bond until a permament program permit is to be issued. SMCRA § 509(a). Therefore, OSM may lack authority to require an assignment of the bond. Nevertheless, such operations are subject to the interim program performance standards, as is being made clear by a proposed rule at § 942.701 and OSM will continue to inspect such sites. Should a violation be detected, the appropriate enforcement action will be taken. If the decision is made that the Act does authorize the regulatory authority to assume responsibility with respect to interim program bonds, then an assignment of those bonds to the United States would be required in order for OSM to take any action under them. The final rule notice will indicated what action, if any, OSM will take.

One important consequence of the promulgation of a Federal program is the triggering of Federal laws and regulations which are made applicable through Federal agency action. One such law is the National Environmental Policy Act (NEPA), 42 US.C. 4321 *et seq.* For certain OSM actions taken after the promulgation of the program NEPA compliance is required. Promulgation of program itself is exempt from compliance under section 702(d) of the Act. In addition to NEPA, OSM must comply with other Federal laws. Those laws are identified in 30 CFR 773.12. Compliance with the those laws, as well as NEPA, may require obtaining information from a permit applicant in addition to that specified in 30 CFR Chapter VII, Subchapter G. A provision is proposed to be added to § 942.773 to allow OSM to require a permit applicant to furnish any additional information. OSM invites comment on whether proposed § 942.773 should provide more specificity for those requirements.

Section 504(d) of the Act directs the Secretary to undertake, immediately after promulgation of a Federal program, the review of permits issued under the state program. With the assumption of Federal enforcement of the state program, intensive oversight of the State's permitting activities was initiated. Upon publication of the final rulemaking notice, that effort would be converted into a full review of each outstanding permit. OSM anticipates that discussions with the State will result in making all state records available to OSM to aid in the process. Should the decision be made that a permit revision is required, the permittee will be given adequate notice of the required change. The Federal rules in 30 CFR 774.11 now call for the review of a permit at least mid-way during its term. 30 CFR 773.11(a) establishes a procedure for review in the instance of promulgation of a Federal program. Therefore, a rule is proposed to be added at § 942.776 which would cover more specifically the review of the permits issued by Tennessee under its permanent regulatory program. However, for those permittees who have posted a reclamation bond made payable to the State of Tennessee only, OSM may require immediately upon the effective date of the Federal program that the payee be changed to include the United States.

Under the soon-to-be repealed State Coal Surface Mining Law of 1980, Tenn. Code Ann. § 59-8-335, operators in Tennessee were required to comply with the performance standards upon the effective date of the statute and regulations adopted pursuant to the statute. This scheme is different than that in the Act which requires operators to adhere to permanent program standards upon the issuance of permits, Act sections 515(a) and 516(b), which, depending on the delay in issuance of permanent program permits, can and has occurred much later than Secretarial approval of the regulatory program. Until final promulgation of a Federal program, OSM will enforce the performance standards of the Tennessee

program whether or not an operator has been issued a permanent program permit, as long as such an operator has filed an application timely. However, on and after the effective date of a Federal program, the permanent program performance standards will be applicable to those surface coal mining operations in Tennessee which have been issued permits—either by OSM or the State. Permanent program permits issued by Tennessee will be reviewed as indicated above and operators will be given adequate notice and opportunity to revise their permits should OSM determine that such revision is necessary. If there are any operators in Tennessee conducting surface coal mining and reclamation operations who have filed complete applications and have not had permits issued to them, then notwithstanding the provision of the repealed § 59-8-335 the permanent program performance standards will not be applicable to them until permit issuance. Nevertheless, the Federal interim program standards, 30 CFR Chapter VII, Subchapter B, will be applicable. A rule is proposed to be added at § 942.701 to make clear that the interim program rules are applicable to operations which do not have permanent program permits.

For operators who have posted reclamation bonds with the State under its permanent regulatory program or who have given the State collateral to guarantee reclamation, OSM will be reviewing the adequacy of those bonds in the permit review process. If it is determined that a bond amount is inadequate, the operator would be notified that additional bond must be posted. If notice has not previously been that the payee must be changed to include the Federal government, OSM will require that the permittee either post a new bond which is payable to "The United States or the State of Tennessee" or to provide an executed document from the surety adding the United States as payee. It was indicated in the decision to assume Federal enforcement of the program that all bonds accepted by the State after the Federal assumption of enforcement would have to be made payable to "The United States or the State of Tennessee." 49 FR 15505. This would continue to be a requirement in the meantime and during the Federal program in the event that the State reassumes primary regulatory authority. For all operators who have posted bonds with the State and against which forfeiture has not been initiated prior to October 1, 1984, they would have to execute assignments of the bonds or have to post new bonds. A provision is proposed to be added at § 942.800(b) to establish these requirements. OSM is considering making it mandatory upon the effective date of the Federal program that permittees change the payee of already-posted reclamation bonds to include the United States.

OSM will administer the Small Operator Assistance Program (SOAP) under Subchapter H, Part 795, of the permanent program rules which are proposed to be cross-referenced in § 942.795. See 48 FR 2272 (Jan. 18, 1983) and 48 FR 44780 (September 30, 1983). Complete assumption of administration of the SOAP is expected to occur no later than October 1, 1984. The State has already indicated that it would like OSM to assume Federal administration of the SOAP. A notice may appear in the Federal Register announcing OSM assumption of the state SOAP pursuant to the proceeding under 30 CFR Part 733. Even if that assumption does not take place, OSM expects that all prior SOAP contracts awarded by the State will be completed by that date. OSM plans to be in a position to receive applications for assistance after August 30, 1984. Applications for assistance can be secured from the Knoxville Field Office Director. Completed applications should also be submitted to that office. Should any small operator be notified through the OSM permit review that their permit needs revision in conection with the determination of the probable hydrologic consequences or the results of test borings, thay may apply for assistance in having the work done.

The State has considered and decided two petitions to designate lands as unsuitable for surface coal mining. One petition was granted, the other denied. However, both are under administrative review. The Federal Act provides no guidance on the extent to which a decision by a state on a petition must be recognized by OSM in the situation at hand. Comment is specifically invited on whether OSM should defer to the decisions on the petitions, especially in light of their present lack of administrative finality.

Final decisions have not been made as yet on many of the details of a Federal program for Tennessee, particularly administrative and other matters which need not be included in a regulation. By the time of final rulemaking notice, some of the decisions will have been made. The final rulemaking notice will provide as much information as possible on the details that have been resolved by that time. However, questions in the meantime should be directed to the Knoxville Field Office indicated above under **FOR FURTHER INFORMATION CONTACT.**

B. Content and Organization of the Federal Program

The content and organization of the Federal program for Tennessee follows the permanent program regulations. But, as discussed above, instead of the full text appearing, each section includes only a reference to the pertinent permanent program regulatory part. No provisions of Tennessee state law (other than those in the soon-to-expire Coal Surface Mining Law) have been identified as being more stringent than the Federal standards, and no state laws or rules have been identified as interfering with achievement of the purposes of the Federal program. However, several Tennessee laws are identified in § 942.762(b) which the Office will rely upon in considering petitions to designate or terminate lands as unsuitable for surface coal mining. Comment is specifically invited on whether there may be such state laws and regulations. If any are identified, the final rulemaking notice may add subsections to § 942.700 specifically preserving or preempting the state laws and regulations.

In instances where additional standards may provide concrete direction to an operator, the Tennessee surface coal mining regulations have been examined in order to determine where and how the State chose to establish additional standards. Only one such standard, involving revegation success standards for bond release, is proposed to be added. See § 942.816(b) and .817(b). Options for the addition of other standards are proposed to several performance standards and to the definition of the term "support facilities." Other such additions may be advocated by commenters or they may urge modification of the permanent program standard which is being adopted by cross-reference in the Federal program. If such changes are to be made in the final rule, the result would be an addition to the permanent program rule indicating additional or modified requirements applicable only to the Tennessee Federal program. Where additions are proposed to the permanent program rules in this program, the term "Office" is used. It means the Office of Surface Mining Control and Reclamation Enforcement—OSM.

The content and organization of the proposed Tennessee Federal program are based on the following provisions of the Federal permanent program regulations, 30 CFR Chapter VII:

Subchapter A—General

Subchapter F—Areas Unsuitable for Mining

Subchapter G—Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Systems under Regulatory Program

Subchapter H—Small Operator Assistance

Subchapter J—Bond and Insurance Requirements for Bonding of Surface Coal Mining and Reclamation Operations

Subchapter K—Permanent Program Performance Standards

Subchapter L—Permanent Program Inspection and Enforcement Procedures

Subchapter M—Training Program for Blasters and Members of Blasting Crews, and Certification Programs for Blasters

Technical literature cited by OSM in the preambles to the permanent regulatory program (44 FR 14901–15309, March 13, 1979) and the regulatory reform rulemaking notices ending September 30, 1983, was relied upon in developing the Tennessee Federal program. The reader is referred to those preambles for a discussion of the basis and purpose of the permanent program rules referenced in the Tennessee program without substantive change.

The numbering system of the permanent program regulations has been incorporated into the numbering system for the Tennessee Federal program. Subchapter I in 30 CFR Chapter VII has been established to include regulatory programs by state in alphabetical order. Each state is assigned a part number; the regulatory program for Tennessee is assigned Part 942. The Federal program would replace the current contents of the part once promulgated in final. Program elements have been categorized under headings similar to the subchapter titles of the permanent program CFR parts.

C. Detailed Discussion of Program

Options

Two options are offered for public comment in the proposed Federal program. The first option consists of cross-referencing the Federal permanent program rules with a number of additions made to those rules as specified under each of the subject headings of the program parts. The second option consists of the first option with several additions made to those rules. The additions would add a limitation to the term "coal loading facility" for purposes of regulating support facilities in Tennessee and several detailed performance criteria on diversion desing, sedimentation ponds, underdrains in excess spoil fills, and timing for backfilling and grading. The second option appears in the rules section of this notice the first. Only those portions of the rules to be added are published. These options are proposed of soliciting public comment. OSM may adopt either option; some combination or steps between the options; or Option 2 with additions.

Option 1

General. Section 942.700 contains four subsections. They contain general statements on the scope and applicability of the program. No Tennessee laws are identified as setting standards which are either more stringent than those in the Federal permanent program regulations or which interfere with achievement of the purposes of a Federal program. If any such laws are identified they would be listed in separate additional paragraphs of this section.

A paragraph (b) is proposed to be added at § 942.701 to make clear that unless an operation has a permanent program permit, issued either by Tennessee or OSM, compliance with the interim program standards, Subchapter B of Chapter VII, is required. Compliance with the interim program standards can only be required under the Act until a permanent program permit is issued. SMCRA §§ 515(a) and 516(b). Although, as explained above, the Tennessee statute and regulations were made applicable to all operations upon program approval, there is no authority under the Act for OSM applying the permanent program standards until a permanent program permit is issued.

Section 942.701(d) requires OSM to make records available locally to the public at the county courthouse or other appropriate public office within the county of the surface coal mining operation. This requirement also applies to Sections 942.776(b) and 942.782(b).

Areas Unsuitable for Mining. Sections 942.761 through 942.764 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter F, Areas Unsuitable for Mining. The effective date for implementing the petition process for designating lands unsuitable for surface mining or for terminating designations has already passed. Section 504(a) of the Act, which defers applicability of Sections 522(a), (c) and (d), is inapplicable since a state regulatory program was implemented in Tennessee. 30 CFR 736.15(b)(2). No separate section for Federal lands is proposed because 30 CFR Part 769 is directly applicable and need not be made a part of a Federal program.

A paragraph is proposed to be added to § 942.762 to indicate that the Office would consider lands in Tennessee placed on the State's Natural Areas Registry, designated Natural Areas or Scenic Areas and lands adjoining Scenic Rivers in considering a petition to designate lands as unsuitable for surface mining or termination of such a designation. The consideration would be given in the context of lands as defined as "fragile" under 30 CFR 762.5.

A paragraph has been proposed in § 942.764 to ensure that the State is notified on the designation of areas as unsuitable or for which designations are terminated. This notification would be provided as a courtesy since agencies in the State apparently will be regulating limited aspects of surface coal mining operations.

Permits and Coal Exploration Approvals. Sections 942.770 through 942.795 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures Systems Under Regulatory Programs. Section 942.770 cross-references 30 CFR 770. Section 771.12 of the permanent program rules lists other laws with which the Secretary will coordinate permitting activities. That coordination is required pursuant to section 504(h).

In addition to the requirements under the permanent program rules, additional provisions are added for OSM permit review. More detail is necessary when OSM is the regulatory authority in order to provide direction to the permit applicant.

The proposed rule at § 942.773(b) would establish a procedure for the handling of permit applications. This is considered necessary in order to dispose of applications which are grossly deficient early in the processing, to provide a formal procedure for obtaining additional information, and to indicate the procedure for determinations of completeness.

The proposed rule at § 942.773(c) would authorized the Office to obtain additional permit information than that required under 30 CFR 773. Such additional information would be required in order to meet the obligations imposed on the Office under the Federal laws identified under 30 CFR 773.12. It would also allow the Office to obtain information in order to comply with the National Environmental Policy Act, as discussed above.

The proposed rule at § 942.774(b) would indicate that a significant revision of the permit is one requiring public notice and is subject to formal hearing if one is requested. Section 774.13(b) directs the regulatory authority to establish guidelines for a permit revision. Section 511(a)(2) of the Act authorizes the regulatory authority to establish such guidelines, but also provides that any significant alteration in the reclamation plan shall be subject to formal revision. The proposed rule provides that a change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as set in the approved plan.

The proposed rule at § 942.774(c) would specify a period of 30 days within which to submit written comments on an application for approval of a transfer, assignment or sale of a permit. There is no period set in 30 CFR 774.17

A section applicable only to the Tennessee Federal Program is proposed to be added at § 942.776 for the review of existing permanent program permits issued under the Tennessee state regulatory program. It is based on section 504(d) of the Act. Section 773.11(d) of the permanent program rules, in part, implement the provision in the Act. However, there is no specific procedure set out in that regulation; nor is there a provision for the permittee who is notified that a revision is required to obtain administrative review of that determination. There is also no provision for the permittee who fails to conform his or her operation to the Federal program requirements to have that permit revoked or suspended. The proposed rule would specify generally that a state-issued permit is valid, that such permits will be reviewed and if determined not to be in conformity with the Act, a notice will be given and a period of time set for conforming the operation to the requirements of the Act. It would also generally specify what a permittee could do to have such a determination reviewed and the procedure for the Office suspending or revoking the permit.

The proposed rule at § 942.776(a) would also specify the performance standards with which a permittee would have to comply. Such a provision is necessary in light of the repeal of the Tennessee statute and regulations under which the permit was issued. The rule would provide that if the permit specifies standards with which compliance is required, then that would control. However, if the permit is silent, then the Federal program standards would apply. For example, if the state-issued permit specified the seeding rate for revegetating reclaimed land, then that standard would be prevail. If, however, the permit does not so specify, then the standards set in the Federal program would be applicable. Such standards would be applicable unless and until they are modified through the permit review undertaken by OSM.

The permanent program rules for granting variances from approximate original contour requirements in 30 CFR 785.16 provide in paragraph (f) that variances may be granted only if the regulatory authority has established specific rules to govern them. The rules in 30 CFR 816.133(d) provide the specific criteria required by § 785.16(f). Therefore, no additional criteria are needed or proposed.

A permit fee is required under section 507(a) of the Act and 30 CFR 771.25. Section 942.771 cross-references the latter regulation. However, no fee schedule has been set for Federal programs generally, and one is not being proposed at this time for Tennessee. A rulemaking notice is expected to appear in the near future to set a fee schedule for Tennessee, other Federal programs and Federal lands permits.

OSM is currently developing permit application forms for use in Tennessee. In the meantime, a prospective permit applicant should contact OSM in order to determine the format for an application.

Small Operator Assistance. Section 942.795 would establish the same standards for the small operator assistance program as are found in Part 795 of the permanent program rules. OSM expects during its administration of the SOAP in Tennessee that Federal funds will be sufficient to provide for the authorized services, and does not expect to exercise its option at 30 CFR 795.11(b). That option allows OSM to establish a formula for allocating limited funds to provide the services pursuant to Part 795.

OSM will award SOAP contracts to qualified laboratories utilizing a streamlined procurement system that complies with the Federal Aquisition Regulations. Prior to issuing a Request for Proposal, OSM will announce its intention through publication in the Commerce Business Daily. Unlike the procedures currently used by Tennessee to develop an independent list of qualified labs, OSM will qualify labs as part of its contracting process.

Bonding. Section 942.800 establishes the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations.

A provision would be added as paragraph (b) of § 942.800 specifying the procedure that the Office would follow in reviewing the bonds posted by operators in order to obtain a permanent program permit from Tennessee. If a bond amount is determined to be inadequate, notice would be given and the operator would have the option of replacing the existing bond with an adequate one or of posting an additional bond for the amount of the shortfall.

OSM is considering adding a provision which would require all permittees within a period of time after the program effective date to submit an assignment of the bond which would include the United States. If added to the final rule, no actual notice would be given to an operator. By rule, in order to continue mining past a specified date, the operator would have to submit a document indicating that the United States was a payee of the bond, as well as the State. This would foreclose sending notice to operators as it is assumed that only those operators who would have obtained permits from the State after April 18, 1984, would have posted a bond made payable to the United States or the State.

Performance Standards. Except where specifically modified for the Tennessee Federal program, §§ 942.815 through 942.828 establish the same provisions, where applicable, as 30 CFR Chapter VII, Subchapter K, Permanent Program Performance Standards. An addition to those standards is proposed at §§ 942.816 and 942.817 with respect to the standards for revegetation success. Options are offered for other performance standards on which the Office is soliciting comment under Option 2.

The proposed addition for revegetation success is considered necessary because 30 CFR 816.116(a)(1) requires that the regulatory authority establish standards for success and statistically valid sampling techniques for measuring success. Proposed § 942.816(b) would set forth success standards and sampling techniques for use at the time of bond release for each major post-mining land use. For grazing land or pasture the Office is proposing a standard of 90% ground cover. In addition to satisfy this ground cover requirement, the production of living plants must be equal to or greater than the average county yield as determined by the U.S. Department of Agriculture soil survey. The 90% standard is a provision of the Tennessee regulatory program and is usually considered to be

the minimum acceptable level of cover for pasture land. A production standard is also being proposed because ground cover alone may not always indicate the capability of reclaimed land to support livestock.

For areas developed as cropland, the Office is proposing that average county yield be used as the standard for determining reclamation success. Such information would be taken from the U.S. Agriculture Department soil survey. Adjustments for local yield variation within the county would be made for disease, pests and weather-induced variations and differences in crop management practices. The Office is proposing that actual crop yields be used to demonstrate the restoration of cropland soils because there is insufficient research and experience to establish the reliability of other methods. The proposed rule would require crops to be grown on only a representative portion of the permit area that would be sufficient in size to demonstrate successful soil restoration. For the purposes of this rule, hayland would be included in the definition of cropland.

Another subparagraph of paragraph (b) would require 80% ground cover for areas developed for wildlife habitat, recreation, or forest products. The stocking requirement for woody plants would be approved by the Office on a case-by-case basis and specified in the mining and reclamation plan. In approving stocking rates, the Office would rely heavily upon recommendations of the State agencies responsible for the administration of forestry and wildlife programs. The Office believes that case-by-case approval would allow the flexibility necessary to accommodate the specialized requirements of various wildlife and forest management plans. Eighty percent ground cover is believed to be necessary to control erosion on steep terrain that is common to eastern Tennessee coal fields. In applying this and other ground cover standards, the Office would use the definition of ground cover that is in the permanent program rules at 30 CFR 701.5. By the definition, ground cover includes both the aerial parts of living vegetation and litter that is produced naturally on site.

Another subparagraph of paragraph (b) would adopt the existing requirement of Tennessee permanent program rules which prohibits bare areas larger than one-sixteenth of an acre in size and that total more than 10% of the area seeded. The Office believes that such a provision is necessary to avoid releasing bond on lands that meet the overall cover requirements of 80 or 90% ground cover, but still have localized areas that are not yet stabilized from soil erosion.

The next subparagraph of paragraph (b) would require the distribution of woody plants within the permit area to be consistent with the post-mining land use. This is to ensure that all growing space is effectively utilized for land uses such as timber production. It would require mine operators to replant areas where the survival of woody plants was uneven.

The final subparagrph of paragraph (b) would adopt by reference the sampling techniques for measuring wood plant stocking and ground cover that are contained in the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluation of Surface Mine Revegetation in OSM Regions I and II." It would also allow for alternative sampling techniques to be used if approved by the Office. The Office notes that the sampling techniques described in the above publication were developed by the Tennessee Valley Authority for use on mining operations common to the Appalachian region and are, therefore, believed to be well-suited to mines in eastern Tennessee. The proposed rule also provides for the use of quadrants and total crop yields where cropland is the post-mining land use.

The same standards would be added to paragraph (b) of § 942.817 for underground mining.

The Office specifically invites comments on any aspect of these proposed revegetation success rules.

The options provided in Option 2, discussed below, would add additional performance standards. OSM specifically invites comments on whether additional provisions of specificity should also be added to the performance standards. Such additions may be necessary because OSM is the regulatory authority and a greater level of detail could be helpful in adequately informing interested parties.

Inspection and Enforcement Procedures. Sections 942.842, 942,843 and 942.845 establish the same provisions as 30 CFR Chapter VII, Subchapter L, Permanent Program Inspection and Enforcement Procedures. No changes are proposed in those procedures for the Tennessee Federal program.

Blaster Training and Certification. Section 942.850 cross-references 30 CFR Part 850. However, there are no substantive standards for a Federal program for blaster training and certification at present. OSM has been developing such a program and will in the future be proposing one which, upon its adoption in final, would be applicable to the Tennessee Federal program.

Option 2

Option 2 would add several provisions to Option 1. The first would place a limitation on the definition of "Coal loading facilities" in the definition of "support facilities" in 30 CFR 701.5. The others would add specific detail to performance standards.

The limitation on the term "coal loading facilities" would make clear to all operators of such facilities whether they would be subject to regulation. If an operator of a tipple in Tennessee accepts raw coal from a mine, then the operation would be subject to regulation. The Act in Section 701(28)(A) defines "surface coal mining operations" as consisting of the loading of coal for interstate commerce at or near the mine site. The permanent program rules in § 701.5 define the term "support facilities" as those resulting from or incident to a surface coal mining operation. But there is no further indication of the outer parameters of OSM's jurisdiction. The functional test of the first or initial loading facility—one which does not process coal—would provide a limitation upon which an operator would be able to determine whether he was subject to OSM's jurisdiction.

As an alternative to the option of the first loading facility from a mine, OSM solicits comments on placing a geographic distance limitation for purposes of whether a tipple is subject to regulation. The definition in the Act indicates that a coal loading facility must be at or near the mine site, but no particular distance is specified. The definition of "support facility" indicates that the phrase "resulting from or incident to" connotes an element of proximity. Thus, OSM could set a particular distance from a mine as the limitation for asserting jurisdiction over coal tipples. OSM could also adopt a geographic limit in conjunction with the adoption of the functional test in the option.

The performance standards under Option 2 seek comment on the possible addition of detailed standards in four areas: Diversions, sedimentation ponds, underdrains in excess spoil fills, and backfilling and grading timing requirements. The revision of the permanent program rules resulted in flexibility being added to the rules. This affords the regulatory authority latitude in setting standards in its rules. The

regulatory authority also has the option of not adding any particular design criteria to its program rules and deferring to the qualified, registered professional engineer who is to certify many of the designs in the permit application. Thus, OSM would like to receive comment on the possible addition of the design criteria in three areas—ones which are considered important in surface mining operations.

The proposed criteria for diversions, sedimentation ponds and underdrains for excess spoil fills are for the most part taken from the Tennessee program regulations. In large part, those regulations are based on the previous Federal permanent program regulations. Borrowing the Tennessee regulations is appropriate since they would at least have had to meet the previous Federal rules and may have been modified for particular conditions in the State. Further, adoption of such rules would provide a measure of continuity from the state to the Federal program.

As an alternative to the adoption of the criteria set out in Option 2 §942.816(c), (d) and (d) OSM is considering not providing any additional standards in the rules than the revised permanent program rules, but instead issuing technical guidelines. If such guideline were issued, an operator or engineer could rely on the guidelines for the design of a structure. Having designs other than those in the guidelines would be approved on a case-by-case basis if the engineering is sound. Specific comment is solicited on the adoption of this alternative instead of the addition of design criteria.

These alternatives—diversions, sedimentation ponds and underdrains—would also be made applicable to the underground mining rule. § 942.817

A fourth performance standard is offered under § 942.816(f) of Option 2. It would set timing requirements for backfilling and grading. They would be the same standards as the previous unrevised Federal permanent program rules in § 816.101(a). See 44 FR 15395 (March 13, 1979). They would establish the requirement for contour mining backfilling and regrading of 60 days or no more than 1,500 linear feet. This would be the most important for Tennessee operators. The current Federal program rule which would be cross-referenced in § 942.816 under Option 1 in § 816.102 does not establish particular timing requirements. The Act in section 515(b)((16) requires reclamation to proceed as contemporaneously as practicable with mining. A definite standard would remove any doubt as to the contemporaneous requirement. Comment is sought on the addition of such a timing requirement or of any other standards for the timing of backfilling and regrading. This option is not proposed to be added to the underground mining section, § 942.817 No timing requirement is necessary for underground mining.

IV Other Information

OSM has examined these proposed rules according to the criteria of Executive Order 12291 (46 FR 3193, February 19, 1981) and has determined that they do not consititute a major rule. There would be no major economic impact through adoption of this rule. The coal mining industry in Tennessee is already subject to the regulatory standards similar to those the proposed Federal program would impose.

OSM has examined these proposed rules pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that they will not have a significant impact on a substantial number of small entities. The impact is no different than the effect of the approval of the state regulatory program.

Section 702(d) of the Act provides that promulgation of a Federal program shall not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. Thus, no Environmental Assessment is required for this rulemaking.

Office of Management and Budget Review

The recordkeeping and reporting requirements of this rule are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507

Any forms which are developed by OSM for the Tennessee Federal program will be submitted to OMB for clearance under the Paperwork Reduction Act.

Drafting Information

These proposed regulations were drafted principally by David Jones, Office of the Solicitor, Interior Department.

List of Subjects in 30 CFR 942

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

Accordingly, 30 CFR Part 942 is proposed to be amended as set forth herein.

Dated: June 22, 1984.

Leona A. Power,

Acting Assistant Secretary, Land and Minerals Management.

30 CFR Chapter VII is amended by revising Part 942.

Option 1 for New Part 942

1. Part 942 is revised to read as follows:

PART 942—TENNESSEE

Sec.

942.700 Tennessee federal program.
942.701 General.
942.707 Exemption for coal extraction incident to government-financed highway or other construction.
942.761 Areas designated unsuitable for surface coal mining by act of Congress.
942.762 Criteria for designating areas as unsuitable for surface coal mining operations.
942.764 Processes for designating areas unsuitable for surface coal mining operations.
942.770 General requirements for permit and exploration procedure systems under regulatory programs.
942.771 General requirements for permits and permit applications.
942.772 Requirements for coal exploration.
942.773 Requirements for permits and permit processing.
942.774 Revision, renewal, and transfer, assignment, or sale of permit rights.
942.775 Administrative and judicial review of decisions.
942.775 Review of Tennessee Permanent Program permits.
942.777 General content requirements for permit applications.
942.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
942.779 Surface mining permit applications—minimum requirements for information on environmental resources.
942.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
942.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
942.783 Underground mining permit applications—minimum requirements for information on environmental resources.
942.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
942.785 Requirements for special categories of mining.
942.795 Small operator assistance.
942.800 Bond and insurance requirements surface coal mining and reclamation operations.
942.815 Performance standards—coal exploration.
942.816 Performance standards—surface mining activities.
942.817 Performance standards—underground mining activities.

Sec.
942.819 Special performance standards—auger mining.
942.823 Special performance standards—operations on prime farmland.
942.824 Special performance standards—mountaintop removal.
942.827 Special performance standards—coal preparation plants not located within the permit area of a mine.
942.828 Special performance standards—in situ processing.
942.842 Federal inspections.
942.843 Federal enforcement.
942.845 Civil penalties.
942.8509 Blaster training and certification.

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

§ 942.700 Tennessee Federal program.

(a) This part contains all rules that are applicable to surface coal mining operations in Tennessee which have been adopted under the Surface Mining Control and Reclamation Act of 1977

(b) Certain of the rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a cross-referenced rule is in the permanent program rule cited under the relevant section of the Tennessee Federal program.

(c) The rules in this part apply to all surface coal mining operations in Tennessee conducted on non-Federal and non-Indian lands. To the extent required by Part 740 of this chapter, this part also applies to operations on Federal lands in Tennessee.

(d) The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance No. ——

§ 942.701 General.

(a) Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to coal exploration and surface coal mining and reclamation operations in Tennessee.

(b) Surface coal mining and reclamation operations in Tennessee which do not have a valid permanent program permit on the effective date of this program shall comply with subchapter B of this chapter until issuance of a permit under this program.

(c) Records required by § 700.14 of this chapter to be made available locally to the public shall be retained at the county recorder's office or another appropriate public office in the county in which an operation is located, and at the nearest OSM Field Office.

§ 942.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction, shall apply to surface coal mining and reclamation operations.

§ 942.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, Areas Designated by Act of Congress, shall apply to surface coal mining and reclamation operations.

§ 942.762 Criteria for designating areas as unsuitable for surface coal mining operations.

(a) Part 762 of this chapter, Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations, shall apply to surface coal mining and reclamation operations.

(b) In addition to the lands defined as fragile in § 762.5 of this chapter, the Office will consider lands included on the Tennessee Natural Areas Registry under Tennessee Code Annotated (TCA) § 11–14–112, Natural Areas designated by the Tennessee General Assembly under TCA 11–14–103, areas adjoining Tennessee Scenic Trails designated under TCA 11–13–101, and Scenic Trails under that same law.

§ 942.764 Process for designating areas unsuitable for surface coal mining operations.

(a) Part 764 of this chapter, State Process for Designating Areas Unsuitable for Surface Coal Mining Operations, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mining and reclamation operations.

(b) The Secretary shall notify the Tennessee Department of Health and Environment of any area designated unsuitable or for which such designation has been requested or terminated.

§ 942.770 General requirements for permit and exploration procedure systems under regulatory programs.

Part 770 of this chapter, General Requirements for Permit and Exploration Procedure Systems Under Regulatory Programs, shall apply to surface coal mining operations and exploration.

§ 942.771 General requirements for permits and permit applications.

Part 771 of this chapter, General Requirements for Permits and Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.772 Requirements for coal exploration.

Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any permits for surface coal mining and reclamation operations.

(b) In addition to the requirements of 30 CFR Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a new permit shall submit seven copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office shall:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings, or

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted, or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 943.773(b)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant of its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) The Office shall visit the proposed permit area to determine whether the mining and reclamation plan is consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, and other significant features contained in the application marked by flagging.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C.

4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed for approval. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

§ 942.774 Revision, renewal, and transfer, assignment, or sale or permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved mining or reclamation plan will be subject to review and approval by the Office. A significant revision to the reclamation plan will be subject to the public notice and hearing provisions of the program prior to approval and implementation. A change in the reclamation plan will be considered significant if it has the potential to affect the achievement of reclamation as outlined in the approved plan.

(c) In addition to the requirements of 30 CFR Part 774, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty (30) days of either the publication of the newspaper advertisement required by 30 CFR 774.17(b)(2) or receipt of an administratively complete application, whichever is later.

§ 942.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 942.776 Review of Tennessee Permanent Program permits.

(a)(1) All permits issued under the approved State regulatory program by the Tennessee Department of Conservation or the Department of Health and Environment prior to the effective date of this program shall be valid, but subject to further action by OSM.

(2) The permittee shall comply with the specific terms of the permit. Where the permit does not specify specific standards with which compliance is required the permittee shall comply with the standards of the Federal program.

(b)(1) The Office will review all permanent program permits issued by the State of Tennessee beginning on the effective date of this program. If the Office determines that any State permit was granted contrary to the requirements of the Act, the permittee will be notified and periods of time specified within which to revise the permit and to conform any ongoing surface coal mining operations to the requirements of this part and the Act.

(2) If the permittee wants to have the decision that the State permit was granted contrary to the requirements of the Act reviewed, he or she shall file a petition for review with the Office of Hearings and Appeals pursuant 43 CFR 4.1280 within 30 days of notification.

(3) If a permittee fails to revise the permit and conform operations to the requirements of this part and the Act within reasonable periods of time as specified by the Office, the permittee will be issued an order to show cause as to why the permit should not be suspended or revoked. The notice shall be filed in accordance with 30 CFR 843.14. The Director shall promptly file a copy of the order to show cause with the Office of Hearings and Appeals. The permittee may file an answer to the order and request a hearing under 43 CFR Part 4. If a hearing is requested, the procedures provided in 43 CFR Part 4 for show cause hearings shall be applicable.

§ 942.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 942.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

Part 780 of this chapter, Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 942.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who makes application to conduct underground coal mining and reclamation operations.

§ 942.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources, shall apply to any person who makes application to conduct underground coal mining and reclamation operations.

§ 942.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan, shall apply to any person who makes application for a permit to conduct underground coal mining and reclamation operations.

§ 942.785 Requirements for special categories of mining.

Part 785 of this chapter, Requirements for Special Categories of Mining, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations as specified therein.

§ 942.795 Small operator assistance.

Part 795 of this chapter, Small Operator Assistance, shall apply to any person making application for assistance under the small operator assistance program.

§ 942.800 Bond and insurance requirements for surface coal mining and reclamation operations.

(c) Except as provided in the following paragraph, Part 800 of this chapter, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations Under Regulatory Programs, shall apply to any person conducting surface coal mining and reclamation operations.

(b)(1) The Office shall review the adequacy of the bonds for those operators who posted reclamation bonds with the State of Tennessee under its permanent regulatory program prior to the effective date of this program or who gave the State collateral to guarantee reclamation.

(2) The Office shall notify any permittee that additional bond is required where it is determined that the bond amount is inadequate and shall require, within a reasonable period of time as specified, that any permittee either—

(i) Post a new bond in sufficient amount made payable to "The United States or The State of Tennessee"; or

(ii) Provide an executed assignment of the bond may payable to "The United States or The States of Tennessee" and an additional bond or bonds made payable in the same manner.

§ 942.815 Performance standards—coal exploration.

Part 815 of this chapter, Permanent Program Performance Standards—Coal Exploration, shall apply to any person who conducts coal exploration.

§ 942.816 Performance standards—surface mining activities.

(a) Part 816 of this chapter, Permanent Program Performance Standards—Surface Mining Activities, shall apply to any person who conducts surface coal mining and reclamation operations.

(b) The following success standards and sampling techniques shall be used by the Office for determining bond release.

(1) For areas developed for use as grazing land or pasture, the ground cover shall be at least ninety percent (90%) and production of living plants shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal the rate specified in the approved mining and reclamation plan.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" unless alternative techniques are approved by the Office. Quadrats or actual crop yields shall be used to determine production.

§ 942.817 Performance standards—underground mining activities.

(a) Part 817 of this chapter, Permanent Program Performance Standards—Underground Mining Activities, shall apply to any person who conducts underground coal mining and reclamation operations.

(b) The following success standards and sampling techniques shall be used by the Office in determining bond release.

(1) For areas developed for use as grazing land or pasture, the ground cover shall be at least ninety percent (90%) and production of living plants shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(2) For areas developed for use as cropland, crop production shall be equal to or greater than the average county yield as stated in the U.S. Department of Agriculture soil survey for the county in which the permit area is located.

(3) For areas developed for wildlife habitat, recreational or forest products, the ground cover shall be at least 80 percent (80%) and the stocking of woody plants shall be at least equal to the rate specified in the approval mining and reclamation plan.

(4) Bare areas shall not exceed one-sixteenth (1/16) acre in size and total not more than ten percent (10%) of the area seeded.

(5) Distribution of woody plants within the permit area shall be consistent with the post-mining land use.

(6) Sampling techniques for measuring woody plant stocking and ground cover shall be in accordance with the Office's publication "Technical Guides on Use of Reference Areas and Technical Standards for Evaluating Surface Mine Revegetation in OSM Regions I and II" unless alternative techniques are approved by the Office. Quadrats or actual crop yields shall be used to determine production.

§ 942.819 Special performance standards—auger mining.

Part 819 of this chapter, Special Permanent Program Performance Standards—Auger Mining, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 942.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, Special Permanent Program Performance Standards—Operations on Prime Farmland, shall apply to any person who conducts surface coal mining operations on prime farmland.

§ 942.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, Special Permanent Program Performance Standards—Mountaintop Removal, shall apply to any person who conducts surface coal mining and reclamation operations constituting mountaintop removal.

§ 942.827 Special performance standards—coal preparation plants not located within the permit area of a mine.

Part 827 of this chapter, Permanent Program Performance Standards—Coal Preparation Plants Not Located Within the Permit Area of a Mine, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of a coal preparation plant not located within the permit area of a mine.

§ 942.828 Special performance standards—in situ processing.

Part 828 of this chapter, Special Permanent Program Performance Standards—In Situ Processing, shall apply to any person who conducts surface coal mining and reclamation operations which include the in situ processing of coal.

§ 942.842 Federal inspections.

Part 842 of this chapter, Federal Inspections, shall apply to all exploration and surface coal mining and reclamation operations.

§ 942.843 Federal enforcement.

Part 843 of this chapter, Federal Enforcement, shall apply when enforcement action is required for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.845 Civil penalties.

Part 845 of this chapter, Civil Penalties, shall apply when civil penalties are assessed for violations on coal exploration and surface coal mining and reclamation operations.

§ 942.850 Blaster training and certification.

Part 850 of this chapter, Programs for Blaster Training and Certification, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

Option 2 for New Part 942

2. Proposed Part 942 as set forth under Option 1 is further amended by adding §§ 942.701(d), 942.816 (c), (d), (e), and (f), and 942.817 (c), (d), and (e) to read as follows:

§ 942.701 General.

* * * * *

(d) For purposes of the definition of the term "support facilities" in § 701.5 of this chapter, "Coal loading facilities" shall be limited to all facilities on a permit area and the first handling facility for raw coal after it leaves the permit area of the mine.

§ 942.816 Performance standards—surface mining activities.

* * * * *

(c) In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of § 816.71(b)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regrading of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(5) Topsoil shall be handled in compliance with § 816.22 of this chapter.

(d) In lieu of the requirements of §§ 816.46(c)(1)(ii) through 816.46(c)(iii)(D) of this chapter, sedimentation ponds shall:

(1) Be located as near as possible to the disturbed area and one-hundred (100) feet from streams or streams with a biologic community; and be located on the flattest slope practicable, but in no case on a slope greater than 20 degrees.

(2) Provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per distributed acre.

(3) Provide adequate detention time to allow the effluent from the pond to meet the State and Federal effluent standards. Sedimentation ponds shall be designed to provide the required theoretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Provide a minimum surface area based on the following criteria:

(i) Physical properties of water at 4 degrees centigrade,

(ii) Particles with a diameter of 10 microns (1×10^{-5} meters), and

(iii) Particles with a specific gravity of 1.8. The Office may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Provide a nonclogging dewatering device or conduit spillway approved by the Office for the water storage resulting from inflow. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume and shall provide the detention time to allow the effluent from the pond to meet State and Federal effluent limitations.

(e) In lieu of the requirements of § 816.71(f)(3) of this chapter, underdrains shall consist of durable rock, be designed and constructed using current, prudent engineering practices, and meet the following design criteria: In constructing the underdrains, no more than ten percent (10%) of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five percent (25%) of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd	Sandstone	16	8
Do	Shale	16	16

Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter.

(f) In lieu of the requirements of § 816.101(a) of this chapter, backfilling and grading shall proceed in accordance with the following timing requirements:

(1) *Contour mining.* Rough backfilling and grading shall follow coal removal by not more than 60 days or 1,500 linear feet. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through a detailed written analysis under § 780.18(b)(3) of this chapter, that additional time is necessary.

(2) *Open pit mining with thin overburden.* Rough backfilling and grading shall occur in accordance with the time schedule approved by the Office, on the basis of the materials submitted under § 780.18(b)(3) of this chapter, which shall specifically establish in stated increments the period between removal of coal and completion of backfilling and grading.

(3) *Area strip mining.* Rough backfilling and grading shall be completed within 180 days following coal removal and shall not be more than four spoil ridges behind the pit being worked, the spoil from the active pit being considered the first ridge. The Office may grant additional time for rough backfilling and grading if the permittee can demonstrate, through the detailed written analysis under § 780.18(b)(3) of this chapter, that additional time is necessary.

§ 942.817 Performance standards—underground mining activities.

* * * * *

(c) In lieu of the requirements of § 816.43(a)(4) of this chapter, diversion design shall incorporate the following:

(1) Channel lining shall be designed using standard engineering practices to pass safely the design velocities. Riprap shall comply with the requirements of

§ 816.71(b)(3) of this chapter, except for sand and gravel.

(2) Freeboard shall be no less than 0.3 feet. Protection shall be provided for transition of flows and for critical areas such as swales and curves. Where the area protected is a critical area as determined by the Office, the design freeboard may be increased.

(3) Energy dissipators shall be installed when necessary at discharge points, where diversions intersect with natural streams and exit velocity of the diversion ditch flow is greater than that of the receiving stream.

(4) Excess excavated material not necessary for diversion channel geometry or regarding of the channel shall be disposed of in accordance with §§ 816.71 through 816.74 of this chapter.

(5) Topsoil shall be handled in compliance with § 816.22 of this chapter.

(d) In lieu of the requirements of §§ 816.46(c)(1)(ii) through 816.46(c)(iii)(D) of this chapter, sedimentation ponds shall:

(1) Be located as near as possible to the disturbed area and one-hundred (100) feet from streams or streams with a biologic community; and be located on the flattest slope practicable, but in no case on a slope greater than 20 degrees.

(2) Provide a minimum storage volume equal to 0.2 acre feet per disturbed acre draining to the basin. The Office may approve lesser sediment storage volumes equal to the sediment calculated to enter the pond between planned cleanout intervals upon submission and approval of a plan for removing sediment from the pond which includes a description of the equipment to be used. The minimum sediment storage volume shall be equal to 0.1 acre feet per disturbed acre.

(3) Provide adequate detention time to allow the effluent from the pond to meet the State and Federal effluent standards. Sedimentation ponds shall be designed to provide the required theroretical detention time for the water inflow or run-off entering the pond from a ten (10) year, twenty-four (24) hour precipitation event (design event).

(4) Provide a minimum surface area based on the following criteria:

(i) Physical properties of water at 4 degrees centigrade,

(ii) Particles with a diameter of 10 microns ($1x10^{-5}$ meters), and

(iii) Particles with a specific gravity of 1.8. The Office may approve designs utilizing higher specific gravities based on the presentation of site specific data which supports the proposed value.

(5) Provide a nonclogging dewatering device or conduit spillway approved by the Office for the water storage resulting from inflow. The dewatering device shall not be located at a lower elevation than the maximum elevation of the sedimentation storage volume and shall provide the detention time to allow the effluent from the pond to meet State and Federal effluent limitations.

(e) In lieu of the requirements of § 816.71(f)(3) of this chapter, underdrains shall consist of durable rock, be designed and constructed using current, prudent engineering practices, and meet the following design criteria: In constructing the underdrains, no more than ten percent (10%) of the rock may be less than twelve (12) inches in size and no single rock may be larger than twenty-five percent (25%) of the width of the drain. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain, in feet	
		Width	Height
Less than 1,000,000 yd	Sandstone	10	4
Do	Shale	16	8
More than 1,000,000 yd	Sandstone	16	8
Do	Shale	16	16

Underdrains shall consist of non-degradable, non-acid or toxic-forming rock such as natural sand and gravel, sandstone, limestone, or other durable rock that will not slake in water and will be free of coal, clay or shale. The underdrain system shall be designed to carry the anticipated seepage of water due to rainfall from the excess spoil fill and from seeps and springs in the foundation of the disposal area and shall be protected from piping and contamination by an adequate filter.

[FR Doc. 84-17035 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-05-M

Federal Register

Friday
June 29, 1984

Part V

Nuclear Regulatory Commission

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste; Notice

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the Federal Register, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the Federal Register on or about June 30, to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

States	Part 71	Part 73
Alabama	Col. Byron Prescott, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261-4378*	Same.
Alaska	Dr. Richard A. Nevé, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 925 South 52nd Street, Suite 2, Tempe, AZ 85281, (602) 255-4845, After hours: (602) 998-4662.	Same.
Arkansas	E. F. Wilson, Director, Radiation Control and Emergency, Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	E. E. Kynaston, Chief, California Highway Patrol, P.O. Box 989, Saramento, CA 95804, (916) 445-6211.	Same.
Colorado	Captain Lonnie J. Westphal,* Officer in Charge, Staff Services Branch, Colorado State Patrol, 4201 E. Arkansas Denver, CO 80222, (303) 757-9422.	Same.
Connecticut	The Honorable Stanley J. Pac, Commissioner, Department of Environmental, Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06115,* (203) 566-2110.	Same.
Delaware	Edward J. Steiner,* Secretary, Department of Public Safety, Highway Administration Building, P.O. Box 818, Dover, DE 19903, (302) 736-4321.	Same.
Florida	Harlan Keaton,* Public Health Physicist Manager, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 299-0580*	Same.
Georgia	Ken M. Copeland, Director of the Office of Permits and Enforcement, Georgia Department of Transportation, 940 Virginia Avenue, Hapeville, GA 30354, (404) 656-5435.	Same.
Hawaii	George R. Anyoshi, Governor, State of Hawaii, State Capitol, Honolulu, HI 96813, (808) 548-5420.	Same.
Idaho	Robert D. Funderburg, Manager, Radiation Control Section, Department of Health & Welfare Division of Environment, 450 W. State, 5th Floor, Statehouse, Boise, ID 83720, (208) 334-4107, After hours: (208) 362-5260.	Same.
Illinois	Don Etchison,* Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 546-8100.	Same.
Indiana	John T. Shettle, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8248 (24 hours).	Same.
Iowa	John D. Crandall, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 233-9253, Ext. 321.	Same.
Kentucky	Donald R. Hughes, Sr., Supervisor, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Col. Wiley D. McCormick,* Head, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70896, (504) 925-6112.	
Maine	Chief of the State Police,* Maine Dept. of Public Safety, Statehouse—Station #42, Augusta, ME 04333, (207) 289-2155.	Same.
Maryland	Lt. Colonel J. G. Lough, Chief, Field Operations Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 7th Floor, Boston, MA 02111, (617) 727-6214.	Same.
Michigan	Gene A. Rooker, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 337-6100.	Same.
Minnesota	Deidre M. A. Krause, Operations Officer, Minnesota Division of Emergency Services, B5 State Capitol, St. Paul, MN 55155, (612) 296-0453, After hours: (612) 778-0800.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39216, (601) 352-9100*	Same.
Missouri	Richard C. Rice, Director* State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-2321. After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Chief, Occupational Health Bureau, Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3671.	Col. Carlyn L. Gilbertson, Administrator, Disaster & Emergency Services, Department of Military Affairs, P.O. Box 4789,* Helena, MT 59604, (406) 444-6911.*
Nebraska	Col. Elmer J. Kohmetscher, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406 or (402) 471-4545.	Same.
Nevada	John Vaden, Supervisor, Radiological Health, Division of Health, Consumer Health Protection Services, 505 East Kinkead Street, Room 103, Carson City, NV 89710, (702) 885-4750.	Same.
New Hampshire	Francis J. Donahue,* Sergeant, New Hampshire State Police, Hazen Drive, Concord, NH 03305, (603) 271-3636.	Same.
New Jersey	Frank Cosolito, Special Assistant, Division of Environmental Quality, Room 1109, CN-027, Trenton, NJ 08625, (609) 984-1503.	Same.
New Mexico	Thomas Buhl,* Health and Environment Department, P.O. Box 968, Santa Fe, NM 87504-0968, (505) 984-0020, ext. 279. After hours: (505) 471-0121*	Same.
New York	Donald A. Devito, Director, Disaster Preparedness Program, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Lt. Walter K. Chapman, Operations Officer, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-4030. After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, North Dakota State Department of Health, 1200 Missoun Avenue, Bismarck, ND 58501, (701) 224-2348.	Same.
Ohio	James R. Williams, Chief of Staff,* Disaster Services Agency, 2825 Granville Road, Worthington, OH 43085, (614) 889-7157.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

States	Part 71	Part 73
Oklahoma	The Honorable Paul W. Reed, Jr., Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. Eastern Avenue, Oklahoma City, OK 73111, (405) 424-4011.	Same.
Oregon	William T. Dixon,* Administrator Siting and Regulation, Oregon Department of Energy, 102 Labor & Industries Building, Salem, OR 97310, (503) 378-6469.	Same.
Pennsylvania	Kenneth R. Lamison, Director of Response and Recovery, Pennsylvania Emergency Management Agency, B-151 Transportation and Safety Building, Harrisburg, PA 17120, (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 758-7568, After Hours: (803) 758-5531.	Same.
South Dakato	Robert D. Gundercon, Division Director, Emergency and Disaster Services, Capital Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	J. A. Bill Graham, Radiological Physicist, Division of Radiological Health, Department of Public Health, 150 Ninth Ave., N., Terra Building, Nashville, TN 37219, (615) 741-7812.	Same.
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiological Health, 1100 West 49th Street, Austin, TX 78756, (512) 835-7000.	Col. James B. Adams, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director,* Bureau of Radiation Control, 150 W. North Temple, P.O. Box 2500, Salt Lake City, UT 84110, (801) 533-6734.	Same.
Vermont	Patrick J. Garahan,* Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virgina	Norman McTague, Office of Emergency and Energy Services, Operations Director, 7700 Midlothian Turnpike, Richmond, VA 23235, (804) 323-2300.	Same.
Washington	Nicholas D. Lewis, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490.	Same.
West Virginia	Lieutenant Colonel W. F. Donahoe,* Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	Carol Z. Hemersbach, Administrator, State of Wisconsin/Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Chief,* Radiological Health Services, Department of Health & Social Services,* Hathaway Building, Cheyenne, WY 82002, (307) 777-7956.	Same.
Distnct of Columbia	Herbert T. Wood, Ph.D., Senior Public Health Advisor,* Department of Consumer and Regulatory Affairs, Room 1014, 614 H. Street, NW, Washington, DC 20001, (202) 724-7195, After hours: (202) 529-3349.	Same.
Puerto Rico	Pedro A. Gelabert, Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 725-8898 or (809) 725-5140.	Same.
Guam	Ricardo J. Bordallo,* Governor of Guam, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, 472-8931 or 472-8933.	Same.
Trust Territory of the Pacific Islands	R. Kent Harvey,* Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9364*	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Honorable Peter Coleman, Governor of American Samoa, Territorial Capital, Pago Pago, American Samoa 96799, 633-4116.	Same.
Commonwealth of the Northern Manana Islands.	Nicolas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Manana Islands Government, Saipan, CM 96950, #9830 or #9834.	Same.

*Indicates amended material.

Questions regarding this matter should be directed to Mindy Landau at 301-492-9380.

Dated at Bethesda, Maryland this 20th day of June, 1984.

For the Nuclear Regulatory Commission.

G. Wayne Kerr,

Director, Office of State Programs.

[FR Doc. 84-17425 Filed 6-28-84; 8:45 am]

BILLING CODE 7590-01-M

Federal Register

Friday
June 29, 1984

Part VI

Department of the Interior

Bureau of Land Management

43 CFR Parts 3100 and 3110

Oil and Gas Leasing and Noncompetitive Leases; Amendment to Simultaneous Oil and Gas Leasing Program; Final Rule

Availability of Revised Automated Simultaneous Oil and Gas Lease Application Form; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Circular No. 2546]

43 CFR Parts 3100 and 3110

Oil and Gas Leasing and Noncompetitive Leases; Amendment to Simultaneous Oil and Gas Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking will improve the simultaneous oil and gas leasing program by incorporating changes to correct problems that surfaced last year and led to the suspension of the simultaneous oil and gas leasing program. The changes should reduce the amount of speculation presently associated with the program.

EFFECTIVE DATE: July 30, 1984.

ADDRESS: Suggestions and inquiries should be sent to: Director (620), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Valliere Cacy, (202) 653-2190, or Robert C. Bruce, (202) 343-8735

SUPPLEMENTARY INFORMATION: A proposed rulemaking changes in the simultaneous oil and gas leasing program was published in the Federal Register on March 15, 1984 (49 FR 9752), with a 30-day comment period. During the comment period, comments were received from 150 sources: 116 from individuals; 23 from corporations; 3 from attorneys, 7 from Federal agencies; and 1 from an association.

The vast majority of the comments, particularly those from the individuals, opposed the requirement for payment of the first year's rental in advance. Those opposing the requirement for payment of the first year's rental based their objection mainly on the point that this change would reduce the ability of the small filer to participate in the simultaneous oil and gas leasing program, leaving the field to wealthy individuals and large corporations. Most of the comments stated the view that the change would "destroy the opportunity of the 'little guy' to hit it big," which most felt was one of the aims of the program. This view represents a general misunderstanding of the simultaneous oil and gas leasing program on the part of individuals. The Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and existing regulations provide for noncompetitive leasing for oil and gas of the public lands not located within any known geological structure of a producing oil and gas field. The simultaneous oil and gas leasing program provides an orderly method for reoffering public lands not in any known geological structure that were within relinquished, cancelled or terminated leases for lease to a broad spectrum of the public. The simultaneous oil and gas leasing program was developed to allow any qualified person or entity to file an application for lands posted for that purpose. However, the Secretary of the Interior will not exercise his discretionary authority and issue a lease until he is satisfied that the successful applicant has met the requirements of the Act and the regulations.

Many of the misconceptions relating to the operation of the simultaneous oil and gas program have arisen from a misinterpretation of the value of the parcels offered, sometimes resulting from the misrepresentations made to the public by disreputable individuals and firms who market their assistance in the program for a fee. The Department of the Interior has never guaranteed the value of any tract offered under the simultaneous oil and gas leasing program. The involvement of unscrupulous individuals and firms over the years has required changes in the porogram in order to maintain the program's intergrity as a valuable tool in the development of oil and gas resources on the public lands. It is unfortunate that the program must undergo these changes, but they have been required to prevent manipulation of the program by the few individuals and firms who engage in fraudulent practices and to assure that applicants are aware of the actual costs of obtaining a lease and are able to pay those costs.

Several of the comments applauded the Department of the Interior's efforts to police the program and make it operate in the way it was intended. However, some of those same comments questioned whether the policing of the program is the responsibility of the Department of the Interior or that of other agencies of the Federal Government, such as the Department of Justice and the the Federal Trade Commission. The Department of the Interior has the responsibility of providing an efficiently and fairly operated program and protecting its integrity, as well as cooperating with law enforcement agencies in their efforts to root out those that would subvert the program. A final comment on this subject indicated that the same purpose might be served by increasing the filing fee. Increasing the filing fee would not accomplish the goal of assuring that applicants are aware of the actual costs of obtaining a Federal lease and are willing and able to pay those costs. None of these suggested changes has been adopted by the final rulemaking.

Several modifications of the change requiring the payment of the first year's rental in advance were suggested by the comments. One suggested modification was to require submittal of the rental, but holding it until the selection process has been completed and depositing only the remittance of the successful applicant, returning the checks of those that were not selected. One of the comments that supported this modification suggested that the final rulemaking require that a postage paid envelope accompany each application form so that the rental check could be returned expeditiously. The Department of the Interior, as the receiving agency, is required by Department of the Treasury instructions to deposit within 24 hours all monies received. This Treasury requirement prevents the implementation of this suggestion and it has not been adopted.

One comment suggested that the Department of the Interior require the submission of a guaranteed remittance with each application. The procedure that will be put in place with the adoption of this final rulemaking removes the necessity for using a guaranteed remittance. There will be sufficient time between the time an application is received and the selection of the successful applicant is made to determine if the remittance is acceptable. If the remittance is uncollectable, the application that is covered by that remittance will be considered unacceptable and removed prior to the selection process. The requirement to obtain a guaranteed remittance is an unnecessary burden that need not be imposed on the public. This suggestion has not been adopted by the final rulemaking.

Several comments suggested establishing deposit or rollover accounts for all applicants, accounts that would be similar to the copy fee accounts that are presently maintained in many of the Bureau of Land Management State offices. A deposit of a minimum amount sufficient to cover the largest parcel that might be offered was suggested in the comments. There is no existing mechanism for handling accounts in this volume and these amounts, nor does the Bureau intend to establish such accounts. If such accounts were to be established, their maintenance would require many more hours of administrative effort than currently

involved with copy fee accounts to keep them current, and administrative effort that would be greater than that imposed by the handling of first year's advance rental checks for each applicant. This suggestion has not been adopted by the final rulemaking.

Several comments made suggestions regarding the posting of lease parcels, with some suggesting that no parcel offered should be larger than 640 acres and one suggesting that the Bureau of Land Management should offer only those public lands that have a possibility of being successfully developed. The sections of the existing regulations covering parcel size and offering were not included in the proposed rulemaking and cannot be made part of this final rulemaking because the public has not been given an opportunity to comment on these substantive changes. Finally, the policy of the Department of the Interior has been to consolidate small parcels into larger offerings, offerings that developers indicate are more attractive for development possibilities. If small parcels are offered, then the developer usually consolidates the parcels into an area large enough to justify development. For the reasons discussed above, the suggested changes have not been adopted by the final rulemaking.

A few comments used this proposed rulemaking to discuss changes made by the final rulemaking of March 27, 1984 (49 FR 11636), with particular emphasis on the issue of making subsequent payments to the Minerals Management Service and questions about the maintenance of the status file on current leases. The issues raised in these comments were not the subject of the proposed rulemaking and cannot be properly included in this final rulemaking. However, the language of the proposed rulemaking amending § 3103.1 has been deleted from the final rulemaking because it was included in the final rulemaking of March 27, 1984, and needs no further change.

Several comments were made on filing services, with suggestions about how they should be handled. One comment suggested that filing services should be licensed by the Federal Government, another suggested that filing services be limited to the furnishing of information services only, with each applicant being required to submit his/her application and check. Another suggested that each filing service be required to pay a $5,000 fee annually to be used to cover the cost of policing the services. One comment went so far as to suggest that steps be taken to abolish filing services.

The policy of the Department of the Interior has been to avoid direct involvement in the question of the necessity or availability of filing services. This is based upon a policy that the Federal Government should not involve itself in the licensing of businesses, such as filing services, unless the Federal Gvoernment has a direct interest in the operation of the business. The simultaneous oil and gas leasing program was intended to be a program where individuals and entities filed applications on their own behalf. Filing services have grown over the years to meet a need by those who did not wish to take the time and effort to personally file their applications. The filing services have apparently furnished a service that has been accepted by the public or they would not have continued to exist. The problem has been that a few of the filing services have engaged in unethical activities, raising questions about the propriety of the filing services in general. The law enforcement branches of the Federal Government and some States have increased their efforts to find and remove from the public arena those filing services that have engaged in unlawful activities.

Some of the comments suggested various changes to the simultaneous oil and gas leasing program, including the creation of an oral offering system. Another comment suggested provisions that would limit the filing of applications by partnerships, with several comments wanting a return to monthly offerings. The issue of creation of an oral bidding system and the limitation on filing of applications are issues that were not raised in the proposed rulemaking and cannot be made a part of the final rulemaking because they are substantive issues that the public has not had an opportunity to consider. The question of whether or not the offerings should be made on a monthly basis has again been reviewed and the final rulemaking has not adopted it. The administrative burden of monthly offerings, particularly the utilization of the computer time, makes the adoption of this suggestion unlikely now or in the foreseeable future.

Many of the comments raised the issue of payment of interest by the United States on the advance rental payments that are retained until the completion of the selection process. The Department of the Interior has neither the authority nor the appropriations with which to pay interest on these advance rental payments. As a result, the final rulemaking makes no provision for the payment of interest.

A few of the comments raised questions about the process that would be used to make the refunds of the advance rental payments to the unsuccessful applicants. The refunds will be handled by an automated system. When the checks are received, the names of those submitting the checks will be entered into the computer and the checks deposited in the Treasury of the United States. Once the selection process is completed, the computer will be preprogrammed to generate a repayment list that will be submitted to the office of the Department of the Treasury in San Francisco, California, for execution of individual repayment checks for unsuccessful applicants. A separate check will be issued for each part B application form. Once the selection process is completed, there should be very little delay in the issuance of the refund checks. The delay, if any, will come in the removal of unacceptable applications and the completion of the selection process, a process that will be handled as expeditiously as possible. The above described process is an internal administrative operation that is not appropriately the subject of rulemaking and has not been included in this final rulemaking. Another comment on this subject, requested that the final rulemaking provide a procedure under which an applicant might direct that the refund check be sent to a third party. This would provide a method under which refund checks could be sent to the financial institution that an applicant used as a source of credit. This suggestion would impose a substantial administrative burden on the Bureau of Land Management, a burden that would increase the cost of operation of the program to the taxpayers.

The procedure and the Department of the Interior s policy for identifying known geological structures was the subject of a number of comments. The proposed rulemaking did not include the provisions of the existing regulations that cover identification of a known geological structure, even though it was a basis for the recently imposed suspension of the simultaneous oil and gas leasing program. The question of identification of known geological structures has been carefully examined during the suspension and steps have been taken to resolve questions raised concerning the identification of known geological structures. The final rulemaking does not include any action on the comments on this issue.

Several of the comments requested that the language of § 3112.2–2 of the proposed rulemaking be clarified. Many

of those making comments expressed the view that the language of the proposed rulemaking seemed to indicate that a separate part B application was needed for each parcel. The final rulemaking has been changed to make it clear that a part B application form may cover several parcels, but that each part B application form must be accompanied by a single remittance for an amount equal to the total of the nonrefundable filing fee and the first year's rental for each parcel applied for on the part B application form.

One comment pointed out that § 3112.6–1 of the existing regulations, which was not included in the proposed rulemaking, would, unless changed, be in conflict with the changes made by the proposed rulemaking. The fact that § 3112.6–1 needed to be changed in order to conform to the other changes made by the proposed rulemaking was overlooked. The final rulemaking amends § 3112.6–1 by removing all pertinent references to the requirement for payment of the first year's rental at the time the lease is executed. The change made by the final rulemaking in paragraph (b)(1) is not intended to prevent an attorney-in-fact, or any other person, from submitting a part B application form and paying the first year's rental on an applicant's behalf.

Editorial and grammatical corrections as needed have been made.

The principal author of this final rulemaking is Valliere Cacy, Division of Fluid Mineral Leasing, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291. It could have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In accordance with the requirements of the Regulatory Flexibility Act, a final regulatory flexibility analysis of the impact of the rulemaking on small entities was prepared and is available upon request from the above address.

An initial regulatory flexibility analysis was prepared and made available for public review and comment at the time the proposed rulemaking was published in the Federal Register. The comments on the initial regulatory flexibility analysis have been carefully reviewed as part of the decisionmaking process on this final rulemaking. No substantial evidence was presented that showed the impact on small entities to be any different than that set out in the initial regulatory flexibility analysis.

The final rulemaking contains no additional information collection requirements requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects

43 CFR Part 3100

Administrative practice and procedure, Environmental protection, Mineral royalties, Oil and gas reserves, Public lands—classification, Public lands—mineral resources, Surety bonds.

43 CFR Part 3110

Administrative practice and procedure, Mineral royalties, Oil and gas exploration, Oil and gas reserves, Public lands—mineral resources.

Under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–359), the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 760 et seq.), the Act of May 21, 1930 (30 U.S.C. 301–306), the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35), the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a), the Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.), and the Attorney General's Opinion of April 3, 1941 (40 Op. Atty. Gen. 41), Parts 3100 and 3110, Group 3100, Subchapter C, Chapter II of Title 43 is amended as set forth below.

Dated: May 31, 1984.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

§ 3102.4 [Amended]

1. Section 3102.4 is amended by removing the period at the end of the first sentence and inserting the phrase ", except that applications filed under Subpart 3112 of this title shall not be deemed unacceptable for the failure to be dated.

2. Section 3103.2–1 is amended by renumbering paragraph (b) as paragraph (c) and inserting a new paragraph (b) to read:

§ 3103.2–1 Rental requirements.

* * * * *

(b) Each application filed under subpart 3112 of this title shall be accompanied by full payment of the first year's rental based on the total acreage appearing in the Notice of Land Available for Oil and Gas Simultaneous Applications.

* * * * *

3. Section 3112.1–3 is revised to read:

§ 3112.1–3 Posting of parcel list notice.

At the start of business on the first working day of February, April, June, August, October and December, a list of lands for which applications will be received shall be posted in the proper BLM office. Any change in the bi-monthly schedule of offerings shall be announced by publication in the Federal Register at least 30 days in advance of the date of posting. Copies of the posted notice may be purchased from the proper BLM office.

§ 3112.2–1 [Amended]

4. Section 3112.2–1 is amended by:

A. Revising paragraph (c) to read:

"(c) The application shall be signed and dated in accordance with § 3102.4 of this title. If signed by someone other than the applicant, the application shall show the relationship of the signatory to the applicant."; and

B. Amending paragraph (g) by removing the phrase ", dated"

5. Section 3112.2–2 is revised to read:

§ 3112.2–2 Filing fees and rentals.

Each Part B application form shall, when filed, be accompanied by a single remittance. The remittance shall consist of an amount sufficient to cover for each parcel included on the Part B application form a nonrefundable filing fee of $75 and the first year's rental payment. Failure to submit either a separate remittance for each Part B application form or an amount sufficient to cover all the parcels on each Part B application form, or both, shall cause the entire filing to be deemed unacceptable.

§ 3112.3 [Amended]

6. Section 3112.3 is amended by:

A. Amending paragraph (c) by removing the phrase "an unacceptable remittance" and replacing it with the phrase "a remittance not meeting the requirements of § 3103.1–1 of this title"; and

B. Amending paragraph (h) by inserting after the phrase "the filing fee" the phrase ", the first year's rental".

§ 3112.6–1 [Amended]

7 Section 3112.6–1 is amended by:

A. Amending paragraph (a) by removing from the first sentence the phrase "together with a request for payment of the first year's rental", by removing the third sentence in its entirety and by removing from the fourth sentence the phrase "and rental payment"; and

B. Amending paragraph (b)(1) by removing the phrase "and pay the first year's rental"

[FR Doc. 84–17467 Filed 6–28–84; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Revised Automated Simultaneous Oil and Gas Lease Application Form

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Revised (April 1984 edition) Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B).

SUMMARY: The subject form has been revised and replaces the previous June 1981 edition of the Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B). The revised form institutes improvements ordered by the Secretary of the Interior in the simultaneous oil and gas leasing program. Therefore, the June 1981 edition of the Automated Simultaneous Oil and Gas Lease Application is declared obsolete.

EFFECTIVE DATE: The revised application form shall be effective on the same day as the effective date of the forthcoming final rulemaking for 43 CFR Parts 3100 and 3110, Noncompetitive Leases; Amendment to Simultaneous Oil and Gas Leasing Program.

ADDRESS: Inquiries or suggestions should be sent to Director (621), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240. Information with reference to where copies of the revised form may be obtained is located in the last two paragraphs of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jean Austin or Lois Mason at (202) 653–2190.

SUPPLEMENTARY INFORMATION: The Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B) was approved by the Office of Management and Budget on September 1, 1983, and assigned clearance number 1004–0065, with an expiration date of August 31, 1986, in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The subject form (April 1984 edition) is revised to reflect the required new expiration date and replaces the obsolete June 1981 edition of the form. Further, the revised form institutes improvements ordered by the Secretary of the Interior in the simultaneous oil and gas leasing program. The changes resulted from a general review of the program that took place during the most recent suspension of the program. In order to reduce the excessively speculative nature of the program and to correct problems that surfaced During 1983, changes are incorporated in the revised form that require an applicant to submit, for each parcel applied for, the first year's rental together with the nonrefundable filing fee. The instructions on the revised form also require that a separate remittance be submitted with each Part B application form for the total amount required for all parcels applied for on each separate Part B form rather than one remittance with a group of Part B forms. The Bureau of Land Management's experience in the operation of the simultaneous oil and gas leasing program has been that a mistake of a few dollars in the remittance submitted with a group of application forms has resulted in the disqualification of a considerable number of applications due to the insufficient payment rendering the entire group of forms disqualified. This revision should reduce the number of applications that are disqualified for each drawing, increasing the total number of acceptable applications.

Additional minor revisions clarify the instructions contained on both Part A and Part B, including removal of the single instruction reference to the requirement for the Social Security Number and substituting in its place an instruction reference to use of a nine-digit identification number. This identification number can be either a Social Security Number, or an Employee Identification Number, or a Bureau of Land Management-assigned applicant number.

Where the Form 3112–6 (Part A) previously filed with the Bureau of Land Management Wyoming State Office is still current and correct with respect to an applicant's name, address, and proper identification number, a replacement revised Form 3112–6 (Part A, April 1984 edition) need not be filed again in the Wyoming State Office. However, all future application filings must be submitted on the revised April 1984 edition of Form 3112–6a (Part B). The June 1981 edition of Form 3112–6 (Part A) and 3112–6a (Part B) is hereby declared obsolete and will not be acceptable for future participation in the Automated Simultaneous Oil and Gas Leasing Program.

A *maximum* of 5 copies each of the revised application form (Part A or Part B) per individual or entity are available on a one-time basis only from the Bureau of Land Management State Offices (see 43 CFR 1821.2–1 for office locations).

Larger quantities of the revised (April 1984 edition) Automated Simultaneous Oil and Gas Lease Application Form 3112–6 (Part A) and 3112–6a (Part B) are available for purchase directly only from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402. Part A and Part B each are available from the United States Government Printing Office in quantities of 100 per package at a charge of $5 per package. Orders made to the United States Government Printing Office must identify the specific stock number: Form 3112–6 (Part A) Stock Number 024–011–00159–0; 3112–6a (Part B) Stock Number 024–011–00160–3.

Dated: June 27, 1984.

Robert F. Burford,

Director.

[FR Doc. 84-17403 Filed 6-28-84; 8:45 am]

BILLING CODE 4310-84-M

Federal Register

Friday
June 29, 1984

Part VII.

Department of Defense

32 CFR Parts 1-39
Defense Acquisition Circulars; Final Rules

DEPARTMENT OF DEFENSE

32 CFR Parts 1-39

[DAC 76-48]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-48. Some of the changes include: limitations on price increases (spare parts); set-aside procedures; small business access to Federal procurement information; patent rights—small business firms and domestic nonprofit organizations; rights in technical data and computer software, and patent rights for contracts awarded under Pub. L. 97-219; contractor industrial labor relations; contract cost principles (Goodwill); novation agreements and change of name agreements; DAR Appendix O; and editorial changes. Also included in this document are the following items issued for information and guidance: (1) Information with respect to availability of DOD FAR Supplement; (2) reprint of a memorandum from the Deputy Under Secretary (Acquisition Management), dated 19 September 1983, which furnishes guidance in the phase-out of CWAS; (3) reprint of a memorandum from the Deputy Under Secretary (Acquisition Management), dated 19 September 1983, Subject: Fast Pay Procurements; and (4) reprint of a memorandum from the Deputy Secretary of Defense, dated September 29, 1983, Subject: Emphasis on Indian Business.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1-106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE (M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The July 1, 1983 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-44.

The Department of Defense announced the promulgation of the 1979 CFR edition in the Federal Register of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the Federal Register.

Defense Acquisition Circular 76-48

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-48, issued 25 January 1984. The following is a summary of the amendments:

Limitations on Price Increases (Spare Parts). In accordance with Section 1215(c) of the DOD Authorization Act, a new paragraph (e) is added to DAR 1-313 to provide policy with regard to limitations on price increases in the purchase of spare or replacement parts.

Set-Aside Procedures. Section 795 of the FY 1984 DOD Appropriation Act (Pub. L. 98-212) requires architectural and engineering services and construction design contracts for military construction projects in the amount of $85,000 and over, be open to all firms regardless of size. Changes have been made to DAR Section I, Part 7, to implement this requirement.

Small Business Access to Federal Procurement Information, Pub. L. 98-72. Pub. L. 98-72 requires changes to the manner in which the Government publicizes notices of intended procurement actions; establishes minimum periods before making contract awards; requires additional steps be taken in the approval of sole source contract awards; and requires additional approvals of contract awards based on unsolicited proposals. The act also defines "sole source contract" and "unsolicited proposals" for the purposes stated above. The act requires that the provisions of DAR 3-102 and 4-910(b)(3) be effective with respect to procurement actions initiated on or after 1 October 1983. The balance of the coverage is effective with respect to procurement actions initiated on or after 10 November 1983. To implement Pub. L. 98-72, changes have been made to Section I, most significantly at Part 10; to Sections II and III; to Section IV, Parts 9 and 11; and to Section XXI, as well as to 18-202(b).

Contractor Acquisition of Automatic Data Processing Equipment (ADPE). DAR 3-1100.2(a)(ii) is revised to reflect the correct address for Headquarters, Defense Logistics Agency.

Overseas Military Activities and Federal Supply Schedules. DAR 5-100 is revised to allow overseas military activities to place orders directly against Federal Supply Schedules, and that Services and Defense agencies may limit their respective overseas activities from exercising this option.

Davis-Bacon Act Regulations. Final new regulations (29 CFR Parts 1 and 2), implementing the Davis-Bacon Act and related acts, were published by the Department of Labor (DOL) in the Federal Register of 29 April 1983, and became effective 28 June 1983. Appropriate changes made to the DAR were disseminated by the Departments on 30 June 1983. Although certain changes to the institutional text in DAR Section XVIII are not yet in final DAR format, the material which has been approved is published to facilitate incorporation by reference of the lengthy contract clauses. These clauses are not expected to change, and publication in this DAC will simplify preparation of affected contract documents. Guidance and procedures below relative to DAR Section XVIII, Part 7, are to be followed in implementation of these changes. Publication of these clauses and text changes supersedes the direction issued previously by the Departments.

DAR 18-704.2(a)(5): In addition to requirements cited in this provision, if any modification to the general wage determination is published in the Federal Register subsequent to bid opening, award shall be made within 90 days after bid opening. In the event a situation arises where award cannot be made within 90 days after bid opening, the Departmental labor relations advisor must be contacted for guidance or assistance in obtaining an extension to the 90-day period.

Note: Contracting officers will not incorporate general wage determination modifications published subsequent to bid opening.

DAR 18-704.2(b) (2) and (3). Installation and individual (project) wage determination will be effective for 180 days, rather than 120 days.

DAR 18-704.2(g)(3). In addition to requirements cited in this provision, the contracting officer shall now include in the contract file a written statement why the modification was not incorporated in the solicitation. A copy of the statement shall be furnished DOL upon request.

DAR 18-704.4. DOL now has the final approval authority on additional classification(s) requests. Additional classifications will continue to be processed as provided for in this DAR provision; however, the contracting officer shall modify the approval portion of the DD Form 1565 as follows: "Approved, subject to Department of Labor review." DOL will approve,

modify, or disapprove every additional classification action within 30 days of receipt or will notify the contracting officer within the 30-day period that additional time is necessary.

DAR 18–704.12(b). The underpayment reporting amount is increased from $500 to $1,000.

DAR 18–704.13. This paragraph is revised to permit cross-withholding from any moneys payable because of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor of such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages.

DAR 18–704.16. The threshold for waiver or adjustment of liquidated damages is increased from $100 to $500.

Patent Rights—Small Business Firms and Domestic Nonprofit Organizations. Chapter 38 of Pub. L. 96–517, as implemented by OMB Bulletin 81–22, occasioned publication of Item I of DAC 76–29, dated August 31, 1981. OMB Bulletin 81–22 was superseded by OMB Circular A–124, effective March 1, 1982. Differences between the bulletin and the circular have necessitated changes in DAR Sections VII and IX.

Rights in Technical Data and Computer Software, and Patent Rights for Contracts Awarded Under Pub. L. 97–219, Small Business Innovation Development Act of 1982. Pub. L. 97–219 established the Small Business Innovative Research (SBIR) Program. To implement the provisions of the act, the DAR Council has developed two clauses for use in SBIR contracts: DAR 7–104.9(q), Rights in Technical Data and Computer Software (SBIR Program); and DAR 7–302.23(i), Patent Rights—Small Business Firm or Domestic Nonprofit Organization (SBIR Program). Except for the title, the clause at 7–302.23(i) is identical in content and terminology to the clause at 7–302.23(h).

Contractor Industrial Labor Relations. Sections XII and XVIII are revised to properly align the DLA industrial labor relations mission between DLA CAS and DLA Executive Directorate for Contracting (DLA–P). Mission responsibility related to labor relations in the buying areas will be those of the Executive Director for Contracting (DLA–P); responsibilities concerning contract administrative services will be the function of the Executive Director for Contract Management (DLA–A). Changes are also made to reflect the proper address for the Air Force in matters relating to labor relations.

Contract Cost Principles (Goodwill). A new cost principle at DAR 15–205.53 has been developed to provide that any costs for amortization, expensing, write-off, or write-down of goodwill are unallowable. DAR 15–205.50(a) has also been revised to provide that the cost of money resulting from including goodwill in the facilities capital employed base is unallowable.

Novation Agreements and Change of Name Agreements. DAR 26–402(b) is revised to add an example to clarify the application of the policies and procedures in Section XXVI, Part 4, to the situation when the transfer of ownership of a contractor through a stock purchase transaction or by other means is determined to significantly affect the Government's rights and interests under existing and future contracts. The revision serves to assure the means for protection of the Government's rights and interests in such situations. The additional example requires a determination by the Secretary (as defined in DAR 1–201.15) concerned.

Appendix O—Cost Accounting Standards. Appendix O is revised to add Interpretation No. 1, Cost Accounting Standard 403, which was inadvertently omitted from Appendix O when it was published in DAC 76–44, dated March 25, 1983. Also included is supplementary information with regard to comments accompanying promulgation of Interpretation No. 1.

Editorial Change. DAR 21–106(b) is revised to add the words "or A," which were inadvertently omitted when changes to Section XXI were published in DAC 76–46, dated August 24, 1983.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on receipt in accordance with DAR 1–106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–48. The number at the top of each page (for example, 1:31) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none above, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1983, edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume I	
1-313(c) (added)	1:31-A, 1:32.
1-705.5(a)	1:129.
1-709.1(b)	1:140.
1-709.1(m) (added)	1:142-A.
1-709.5(a)(4) (added)	1:142-C, 1:142-D.
1-1001	1:166.
1-1002.4	1:167.
1-1003.1(a)	1:157.
1-1003.1(b)	1:167, 1:168.
1-1003.1(c) (1)–(2)	1:169, 1:169-A.
1-1003.2	1:163-A.
1-1003.3	1:163-A.
1-1003.4(b)	1:63-B.
1-1003.5	1:163-B.
1-1003.6(a)	1:169.
1-1005.1(a)	1:175.
1-1005.1(b)(1)	1:175.
1-1107.1(c)(2)	1:169.
1-1203.2(a) (last sentence deleted).	1:107.
2-202.1(a)	2:18.
2-202.1(b)	2:18.
2-303.1(a)	2:44.
3-102(a)	3:1.
3-102(c)	3:1.
3-102(e) (1) and (2) (added)	3:1, 3:1-A.
3-102.(f) (added)	3:1-A.
3-107	3:2.
3-410.2(a)(4)(A)	3:57.
3-410.2(a)(4)(B) (added)	3:57.
3-510 (added)	3:70.
3-604.2(a) (last sentence added).	3:70-A.
3-605.2(a)	3:79.
3-605.2(b) (added)	3:79.
3-1102.2(a)(1)	3:173.
4-804(a)	4:42.
4-810(b)(1).	4:46.
4-810(b)(3) (added)	4:46-A.
4-1104.4(a)(1)	4:61.
4-1104.4(a)(2)(ii)	4:62.
4-1104.4(a)(3)(i)	4:62.
4-1104.4(a)(4)	4:63.
4-1104.4(a)(5)	4:63.
4-1104.6(a)	4:64.
5-100	5:2
Volume II	
7-103.16(a)	7:16, 7:17.
7-103.16(e) (added)	7:18.
7-104.9(q) (added)	7:47, 7:47-A through 7:47-J.
7-302.23(a)	7:214, 7:218.
7-302.23(a) (ii) cl clause) (added).	7:218-A.
7-302.23(b)	7:219-A, 7:222.
7-302.23(b) ((i) cl clause) (added).	7:223-A.
7-302.23(c)	7:224, 7:227.
7-302.23(c) (ii) cl clause) (added)	7:223.
7-302.23(h)	7:229, 7:230 through 7:230-G.
7-302.23(h) ((i) cl clause) (added).	7:231.
7-302.23(i) (added)	7:231 through 7:231-J.
7-602.20(a)(i)	7:231, 7:232, 7:233.
7-602.23(a)(ii)	7:233, 7:234.
7-602.23(a)(iii)	7:234, 7:235, 7:235-A.
7-602.23(a)(iv)	7:235-A through 7:235-C.
7-602.23(a)(v)	7:235-D.
7-602.23(a)(vi)	7:235-D.
7-602.23(a)(vii)	7:235-D, 7:235-E
7-602.23(a)(viii)	7:235-E.
7-602.23(a)(ix)	7:235-E.
7-602.23(a)(x) (added)	7:235-E.
7-602.23(a)(xi) (added)	7:235-F.
7-602.23(c) (added)	7:235-F.
9-701	9:61.
9-701.3(a)(2)	9:63.

DAR paragraph	Replacement pages
9-702	9:70, 9:71.
9-702.1	9:71.
9-702.2(a)	9:71.
9-702.2(g)	9:72.
9-702.3(a)	9:72, 9:73.
9-702.3(b)	9:73, 9:74.
9-702.3(d)	9:75.
9-702.6	9:76.
9-702.7	9:76.
9-702.8	9:76, 9:77.
9-702.9 (a) and (b)	9:79.
12-101.3(b)	12:4.
12-102.4(e)	12:9.
12-103.2(b)	12:11.
12-806.2(b)	12:29.
12-807.2(a)(2)*b*	12:32.
12-807.6	12:33.
12-808(e)(2)	12:34.
12-810(b)	12:36.
12-1002.6	12:40.
15-205.50(a)(5) (added)	15:52.
15-205.53 (added)	15:52-C.
Volume III	
18-202(b)	18:9.
18-702.2	18:35.
18-704.2(c)	18:38.
18-704.2(d)(2)*a*	18:40.
18-704.2(d)(2)*d*	18:40.
18-704.12(b) (3) and (4)	18:52.
21-106(b)	21:11.
21-106.2	21:12.
26-402(b)(iii) (added)	26:8, 26:9.
26-402(b) ((iii) to (x) changed to (iv) to (xi)).	26:9.
Appendix O	0:127, 0:127-A.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

M. S. Healy,

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

June 27, 1984.

BILLING CODE 3810-01-M

question would be contrary to good conscience and equity Generally, retention by the contractor or subcontractor shall not be considered contrary to good con science and equity, and thus a voluntary refund shall not be requested, unless the overcharged or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor The decision to solicit a voluntary refund shall be made by the Secretary concerned

(c) *Disposition of Voluntary Refunds*

(i) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund In such a case, the amount of the refund shall be credited to the ap plicable appropriation cited in the contract

(ii) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the office designated for contract administration and shall be for warded immediately to the comptroller of the appropriate Depart ment, or other Departmental officer responsible for the control of funds When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited

1-313 Procurement of Parts

(a) Any part, subassembly or component (hereinafter called "part") for mili tary equipment, to be used for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in (b) below However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in (c) below. Centrally managed replenishment parts for military systems and equipment (except replenishment parts acquired under other specifically defined initial support pro grams or acquired through local purchase) are governed by Supplement 6, the Replenishment Parts Breakout Program.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement pur poses (or can be made so available in keeping with the policies in Section IX, Part 2) are to be procured on a competitive basis In general, such parts are of a stan dard design configuration They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufac tured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in Section IX Part

2) to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and in terchangeability characteristics required for specific critical applications To illus trate, acceptable tolerances for a commercial television part may be far less strin gent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even ap parently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time

(e) *Limitations on Price Increases.*

(1) Pursuant to the 1984 DoD Authorization Act, Public Law 98-94, and except as provided in (2) below, the contracting officer shall not award a contract for any centrally managed spare or replacement part when the price of such part has increased by 25 percent or more at any time within the most recent 12-month period.

(2) The purchase of such part is permitted not withstanding a price increase of 25 percent or more; *Provided*, the contracting officer certifies in writing to the Head of a Contracting Activity before the pur chase is made that:

(i) the contracting officer has evaluated the price of such part and concluded that the increase in the price of such part is fair and reasonable; or

(ii) the national security interests of the United States require that such part be purchased despite the increase in price of such part.

(3) If necessary to augment a price history for the requirements of this paragraph (e), purchasing offices may require that vendors supply price and quantity data for previous orders of the spare or re placement part, if any, as part of their response to a solicitation.

(4) The fact that a particular price has not increased by 25 percent in no way relieves the con tracting officer of the responsibility for obtaining a fair and reasonable price.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 25927

1-314 Disputes and Appeals.

(a) *General.* The Contract Disputes Act of 1978 (Public Law 95-563, 41 U S C 601-613) establishes procedures and requirements for asserting and resolving claims by or against contractors relating to a contract subject to the Act In addition, the Act provides for the payment of interest on contractor claims, for the certification of contract claims in excess of $50,000, and a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact

(b) *Definition*

(1) As used herein, "claim" means a written demand on one of the contracting parties seeking, as a matter of right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or related to the contract However, a written demand by the contractor seeking the payment of money in excess of $50,000 is not a claim unless or until certified as required by (L) below

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim under Section 6(a) of the Act as provided in (h) below

(g) If, subsequent to the request for a COC but prior to the SBA's final action on it, new additional facts so warrant, the negative determination as to responsibility of the apparent low bidder or offeror shall be reversed and the contract awarded. The PCO shall promptly inform the SBA field office of his action.

(h) When the contracting officer has questioned only one of the general standards of responsibility of a small business offeror, but the SBA has declined to issue a COC due to its findings concerning the offeror's capability to perform under a different standard of responsibility, the responsible SBA office will inform the contracting officer of the basis for its decision The information furnished by SBA to the contracting officer will generally consist of a copy of the letter sent to the offeror in question, explaining why SBA declines to issue a COC. This information will be considered by the contracting officer in making an award of the contract.

1-705.5 *Contracting With the Small Business Administration.*

(a) *Authority.* Pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) the SBA is empowered to enter into contracts with the Departments for supplies, services, and construction (but see 1-706 1(m)) In any case in which the SBA certifies to any officer of the Government having contracting authority that the SBA is competent and responsible to perform any specific Government contract, such officer shall be authorized in his discretion to let such contract to the SBA upon such terms and conditions as may be agreed upon between the SBA and the contracting officer Such offers to contract with the SBA are conditioned upon the matter, in the event of a disagreement, being submitted for determination to the Secretary of the appropriate department by the Administrator of the SBA Notification of a proposed referral to the head of the department or agency by the SBA must be received by the contracting officer within 5 days after the SBA is formally notified of the contracting officer's decision Thereafter the SBA must provide the request for determination to the head of the department or agency within 15 days If timely notice of appeal or an appeal is not made, the offer is rescinded The SBA is further empowered to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for supplies, services, or construction as may be necessary to enable the SBA to perform such contracts.

(b) Policy.

(1) General. It is the policy of the DoD to enter into contracts with the SBA to foster business ownership by individuals who are both socially and economically disadvantaged and promote the competitive viability of firms owned by such individuals in order that they may have the opportunity to full participation in the free enterprise system.

(2) Business Development Expense. In contracting with the SBA, any costs to DoD which are in excess of the estimated current fair market price anticipated under normal contracting procedures shall be funded by the SBA. These costs, hereafter referred to as business development expenses, include start-up, make ready, training, or similar initial investment or learning costs in excess of those that would normally be incurred by established firms engaged in the same type of business. Upon request by SBA, data used by the contracting officer to make a determination as to the estimated current fair maket price shall be made available to that agency. The estimated current fair market price shall be predicated on the basis of "likely costs" under normal competitive conditions rather than on the basis of the "lowest possible cost." When there is agreement between SBA and the PCO as to the estimated current fair market price of a proposed 8(a) requirement, the responsibility for reviewing, validating, approving, and funding any business development expense shall be assumed by SBA.

(3) *Contract Assistance* To the extent consistent with DoD capability and resources, SBA contractors furnishing defense requirements shall be afforded production assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable

(4) Contract Negotiations. Any small business concern selected by the SBA to perform a contract to be let under these provisions shall, when practicable, participate in any negotiations of the terms and conditions of the contract between SBA and the contracting office. When it is mutually agreeable between the SBA and the contracting activity, SBA may authorize the contracting activity to negotiate the proposed subcontract schedule provisions with the 8(a) subcontractor. Any agreements which may be reached as the result of such negotiations must be approved by the SBA prior to award of the contract.

(5) SBA Waiver of Bonds. A small business concern shall not be required to provide any amount of any bond in performance of an 8(a) contract, if the Administrator of the SBA determines in accordance with Section 8(a)(ii) of the Small Business Act that such amount is inappropriate for the concern in performing the contract.

(ii) If the total proposed 8(a) contract price exceeds the estimated current fair market price (*i e*, it includes a business development expense), such expense shall not be funded by DoD SBA has stated that it does not generally expect to assume business development expenses for construction If SBA elects to pay such expenses, as an exception to its general rule, it will issue an SBA reimbursable order for the agreed amount to the DoD PCO in advance of contract award If SBA requests audit assistance in determining the reasonableness of the proposed 8(a) price, such assistance will be furnished by the DoD to the extent available. In the event SBA elects not to fund the business development expense, award will not be made to SBA unless the proposed contract price is reduced by the amount of such expense.

1-705.6 *Small Business and Disadvantaged Business Goals.*

(a) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(b) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command

(c) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(d) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department Such reports shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26329

1-706 Set-Asides (Except Small Business-Small Purchase Set-Asides (1-702(c)).

1-706 1 *General*

(a) Small business and labor surplus area (LSA) set-asides should be considered in the following order of precedence:

(i) Combined small business/LSA set-aside (1-706.7);
(ii) Partial set-aside for LSA firms (1-804.2);
(iii) Total set-aside for small business firms (1-706.5);
(iv) Partial set-aside for small business (1-706.6).

(b) Subject to the order of precedence established in (a) above, and the exception at (m) below, any individual acquisition or class of acquisitions, or any appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is determined to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, or (iii) insuring that a fair proportion of Government acquisition is placed with small business concerns.

(c) Proposed acquisitions over $5,000 that are not subject to simplified small purchase procedures, and all proposed acquisitions over $10,000, shall be specifically reviewed for set-aside for exclusive participation by small firms in accordance with 1-706.5 In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides (1-702(c)) will be considered for small business set-asides in accordance with 1-706 5 If necessary, the screening for set-asides will be accomplished before entering such requirements into the system

(d) The contracting officer is responsible for either setting aside a requirement or documenting, in accordance with departmental procedures, why a set-aside is inappropriate. The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set aside and for taking action in accordance with 1-706.3 as appropriate.

(e) The determination to make a set-aside may be unilateral or joint A unilateral determination is one which is made by the contracting officer A joint determination is one which is recommended by the SBA representative and concurred in by the contracting officer Insofar as practicable, unilateral determinations rather than joint determinations shall be

(vii) a class set-aside of the item or service concerned has been made at some other contracting activity; or

(viii) the item will be described by "brand name or equal."

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U S.-Canadian Defense Development Sharing Program shall not be set aside for small business Supplies covered by the Program shall be identified by the cognizant Department.

(l) See 6-1403 1(a)(2) regarding purchases from qualifying country sources (see 6-001) where small business set-asides are involved.

(m) Architectural and engineering services and construction design contracts in the amount of $85,000 and over for military construction projects shall not be set aside for small business.

1-706 2 *Contract Authority* Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d)) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii)) or 10 U S C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination

1-706 3 *Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals*

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e g , because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or
(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706 3(h)

(d) All cases involving the noninitiation of a set aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706 3(e)

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

(f) Any contracting action which has been appealed by the SBA representative shall be suspended pending the decision of the Chief of the Contracting Office If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with (e) above, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (e) above), or (ii) the matter is determined by the Secretary of the Department concerned. However, this procedure shall not apply to any particular contracting action that the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification approved at a level above the contracting officer. The contracting officer shall promptly give written notice to the SBA representative of any such contracting action initiated.

(g) The Secretary of the Department concerned will have 30 working days to either sustain or deny the appeal for set aside action Should it be determined that a decision cannot be made within this time, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(h) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set aside determination, the small business specialist may appeal in writing to the appointing authority (see 1-704 3(a)) for decision A memorandum of the decision by the appointing authority shall be placed in the contract file After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 1-704.2.

(i) A signed memorandum of nonconcurrence in a recommended set aside action or of any withdrawal or modification shall be made and retained in the contract file

1-706 4 *Reporting for Department of Commerce Procurement Synopsis.* See 1-1003 8.

1-706.5 *Total Set Asides*

(a)(1) Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual acquisition or class of acquisitions, including contracts for architectural and engineering

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26931

services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-asides (1-702(c)), shall be set aside for exclusive small business participation (1-701 1) if the contracting officer determines that there is a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices (1-706 3(a)). Total set-asides shall not be made unless such a reasonable expectation exists (but see 1-706 6 as to partial set asides) Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(2) Every proposed acquisition for construction, including maintenance and repairs, in excess of $5,000 and under $2 million (except dredging under $1 million), shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 1-706.3 shall apply

(3) Every proposed acquisition of $2 million or more for construction, or $1 million or more for dredging, shall be considered on an individual acquisition basis under (1) above

(4) Every proposed acquisition for A&E services and construction design for military construction projects under $85,000 shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 1-706 3 shall apply

(b) Contracts (including small purchases not otherwise reserved under 1-702(c)) for total small business set-asides may be entered into by conventional negotiation or by a special method of contracting known as "Small Business Restricted Advertising " The latter method shall be used wherever possible (see also 3-201 3). Where multiyear contracting procedures are appropriate (see 1-322), total set-asides may be made in connection therewith Solicitations shall be restricted to small business concerns Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Section II, except that bids and awards shall be restricted to small business concerns Bids received from firms that do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected

(c) In acquisitions involving total set-asides for small business, each solicitation shall contain the clause in 7-2003.2 The applicable size standards shall be set forth in Section C of the solicitation

1-906 Subcontractor Responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor Determinations concerning prospective subcontractor's responsibility shall generally be a function performed by the prospective prime contractor (But see 1-604.3) A prospective prime contractor may be required to (i) indicate, in writing, the responsibility of proposed subcontractors, or (ii) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (i) medical items, (ii) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (iii) supplies or services, a substantial portion of which will be subcontracted The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor

1-907 Disclosure of Pre-Award Data Except as provided in 1-329, data including information obtained from a pre award survey, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations (see 1-329 3(c)(5)) Such data may be disclosed to, or summarized for, other elements within the Government on their request, and shall be made available to Department of Defense procurement personnel upon request in accordance with 1-905 1 Prior to making a determination of responsibility, such data may be discussed with the prospective contractor as determined necessary by the purchasing office After an award, the findings of the pre award survey may be discussed by the contracting officer with the company surveyed as provided in 2-408 and 3-508, or if appropriate, by the head of the contract administration office or his designee

Part 10—Publicizing Procurement Actions

1-1001 General Policy. It is Department of Defense policy to increase competition by publicizing procurements which offer contracting opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs

1-1002 Dissemination of Information Relating to Invitations for Bids and Requests for Proposals

1-1002.1 *Availability of Invitations for Bids and Requests for Proposals at the Contracting Office* A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the *Commerce Business Daily*, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. However, for any contract to be let by any department, it shall provide to any small business concern upon its request: (i) a copy of bid sets and specifications with respect to such contract; (ii) the name and telephone number of an employee of such department to answer questions with respect to such contract; and (iii) adequate citations to each major Federal law or departmental rule with which such business concern must comply in performing such contract. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of an acquisition, requests for proposals shall be mailed or otherwise provided upon request for firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances; but see 4-106.2. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pick up at the contracting office, to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest therein (for construction, see 18-205(c)); otherwise the contracting office will make copies available to members of the public pursuant to Appendix L. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally

do not require voluminous specifications or drawings. With regard to classified acquisitions, the foregoing instructions apply to the extent consistent with Departmental security instructions and procedures.

1-1002.2 *Limited Availability of Certain Specifications, Plans, and Drawings* When the purchasing activity is not in possession of complete sets of specifications, plans, and drawings (as in some procurements of airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with 1-1002 is impracticable, the solicitation shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined (see 1-1203)

1-1002.3 *Reserved*

1-1002.4 *Displaying in Public Place* A copy of each solicitation for an unclassified procurement in excess of $5,000 which provides at least 10 calendar days for submission of offers shall be displayed at the contracting office and, if appropriate, at some additional public place from the date issued until 7 days after bids or proposals have been opened (But see 3-603 1(j) for small purchases.)

1-1002.5 *Information Releases to Newspapers and Trade Journals* A brief announcement of the proposed purchase may be made available to newspapers, trade journals, and magazines for publication without cost to the Government.

1-1002.6 *Paid Advertisements in Newspapers and Trade Journals* See Section IV, Part 8

1-1003 Synopses of Proposed Procurements.

1-1003.1 *General*

(a) Except for procurements described in (b) and (c), every proposed procurement action including modifications to existing contracts when new funds are obligated for additional supplies and services made in the United States, its possessions, and Puerto Rico which may result in an award of $10,000 or more shall be publicized promptly in the *Commerce Business Daily* "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards." When an item is assigned or is within a Federal Supply Class assigned for procurement in Section V, Part 12, and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 5-1201.1 or 5-1201.2(a). Modifications to an existing contract resulting from price changes, engineering changes, overruns, definitization of letter contracts, and other similar transactions need not be publicized in the *Commerce Business Daily*.

(b) Only those classified procurements, where the information necessary to be included in the Synopsis cannot be worded in such a manner so as to preclude the disclosure of classified information, or where the mere disclosure of the Government's interest in the area of the proposed procurement would violate security requirements, shall not be publicized in the Synopsis. All other classified

procurements shall be publicized in the Synopsis, even though access to classified matter might be necessary in order to submit a proposal or to perform the contract (see 1-1003 9(f)(3)) The intent of the exception for classified procurement in the synopsis requirements of P L 98-72 is not to exempt every classified procurement from publicizing, but to provide a safeguard against violating security requirements

(c) The following need not be publicized in the Synopsis:

(i) the procurement for security reasons is of a classified nature (see (b) above);

(ii) procurement of perishable subsistence when made by placement of an order under a contract covered by 3-409;

(iii) procurement is for utility services and only one source is available;

(iv) procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at 1-1003 2;

(v) procurement to be made by an order placed under an existing contract covered by 3-409 or as required by 5-102;

(vi) procurement to be made from another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply, such as an agency for the blind under the blind-made products program;

(vii) procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;

(viii) procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;

(ix) when it has been determined in writing by the Secretary with the concurrence of the Small Business Administration, that advance notice is not appropriate or reasonable

1-1003.2 ***Time of Publicizing*** When synopsis is required, contracting offices shall not issue a competitive solicitation until at least 15 days after the date of publication of a proper notice of the procurement action in the *Commerce Business Daily; Provided,* That in the case of research and development procurements, the interval shall be 30 days from the date of publication Contracting officers may presume that the notice has been published 5 days (2 days if electronically transmitted) following transmittal of the synopsis to the *Commerce Business Daily.*

1-1003.3 ***Pre-Invitation / Solicitation Notices*** **Where pre-invitation notices (see 2-205 6) or pre solicitation notices (see 3-106 2) are used, a synopsis of the** pre-invitation or pre-solicitation information which complies with 1-1003 2 and 1-1003 9(b) shall be included in the *Commerce Business Daily* unless exempt under 1-1003 1(c). This information need not be republished when the solicitation is issued However, if the pre-invitation notice contains a set-aside provision which is later canceled (e g., because of a lack of small business response), then the procurement shall be resynopsized in accordance with 1-1003 2

1-1003 4 ***Special Synopsis Situations***

(a) *Research and Development* Advance notices of an agency's interest in a given field of research and development shall be published in the *Commerce Business Daily* in accordance with 1-1003 9(e) whenever the contracting officer considers that existing bidders mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication Advance notices will enable potential sources to learn of research and development programs and provide these sources with an opportunity to submit information which will permit evaluation of their research and development capabilities Potential sources which respond to advance notices shall be added to the appropriate bidders mailing list for the subsequent solicitation Those sources which do not appear on the agency bidders mailing lists established in accordance with 2-205 1 shall be requested to submit Standard Form 129, Bidder's Mailing List Application. In those situations where responding sources are on established

lists, they may be requested to submit amended applications in order to reflect their current capabilities Each specific procurement of research and development shall be publicized in the *Commerce Business Daily* unless one of the exceptions in 1-1003 1 is applicable

(b) *Architect Engineer Services* Unless a situation described in 1-1003 1 is applicable, requirements for architect engineer services shall be publicized as follows:

(1) *Fees of $10,000 or More* Each procurement to be made in the United States, its possessions, or Puerto Rico, for which the total fee (including phases and options) is expected to be $10,000 or more, shall be synopsized in accordance with 1-1003 9(h)

(2) *Fees Less Than $10,000 or Overseas* A notice of procurements with fees expected to be less than $10,000 or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily*

For procurements with an estimated total fee of $300,000 and which require notification to Congress in accordance with 10 USC 2807, no public announcement shall be made until two weeks after Congress has been notified

(c) *Commercial and Industrial Type Activities* When no known sources are available, the requirement shall be synopsized in accordance with 4-1203

1-1003.5 *Publication of Procurements Less Than $10,000* When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements less than $10,000 may be publicized in the *Commerce Business Daily*

1-1003.6 *Synopsis of Subcontract Opportunities*

(a) *By Contracting Officers*

(1) To broaden the opportunity in negotiated procurement over $100,000 for subcontracting by small business concerns and others, contracting officers, shall, unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms to whom requests for proposals are to be issued, *provided* that no more than five firms are to be solicited. This procedure will offer opportunity to small business concerns and others interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement An addition to the regular synopsis prepared in accordance with 1-1003.9 shall be made as set forth in 1-1003.9(g).

(2) Contracting officers shall, for procurements over $100,000 unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms

which have submitted acceptable technical proposals in the first step of two step formal advertising and will therefore be issued invitations for bids in the second step (see 2-503) Such lists should be followed by a statement substantially as follows:

It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms

(b) *By Prime Contractors and Subcontractors* Prime contractors and subcontractors should be encouraged to use the *Commerce Business Daily* to publicize opportunities in the field of subcontracting stemming from their defense business Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U S Department of Commerce, *Commerce Business Daily*, P O Box 5999, Chicago, Illinois, 60680, under the heading "Subcontracting Assistance Wanted" and in the form of the following example

XYZ CO. ATTN JOHN Z SMITH TELE. NO 123-456-1111, 102 FIRST AVE., CHICAGO ILL., 60607, seeks Subcontractor on items to be used in connection with Contract No ..... awarded ....(*date*)
COILS INDUCTION DWG NO 10-742.....10,000 ea. (name, description, and quantity of other items or services may be included as long as contract assistance is desired under the same contract number)—If interested, make inquiry before .....(*date*) to above contractor.

1-1003.7 *Information Regarding Specifications, Plans, and Drawings*

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained (See 1-1203)

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement, the synopsis shall contain notice of this fact.

(c) Notices of the situation in (a) and (b) above shall be prepared in accordance with 1-1003 9(f)

1-1003.8 *Responsibility of Small Business Specialists* Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this paragraph 1-1003 In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing

1-1003.9 *Preparation and Transmittal*

(a) Each purchasing office shall transmit a synopsis of proposed procurements. Synopses shall be transmitted daily via AUTODIN or first class mail addressed to:

U.S Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, Illinois 60680

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 25935

(b) Each synopsis shall be prepared as described below:

(1) *Description of Procurements* Prepare the text of synopses in the sequential format described below or one that closely parallels it. Use conventional typing with both upper and lower case letters and standard punctuation symbols The description shall be clear, concise, and in such detail that it will be understood by potentially interested parties and shall not be unnecessarily restrictive of competition If the synopsis is for a sole source contract (see 3-102(a)), the synopsis shall include reference to Numbered Note 22. The numbered note will appear in the *Commerce Business Daily* as follows:

Note 22 This procurement is for supplies or services for which the Government intends to solicit and negotiate with only one source Interested persons are invited to identify their interest and capability to respond to the requirement or to submit proposals in response to this notice This notice of intent is not a request for competitive proposals. A determination by the Government not to open the requirement to competition based upon responses to this notice is solely within the discretion of the Government. Information received as a result of the notice of intent will normally be considered solely for the purpose of determining whether to conduct a competitive procurement Nevertheless, the sole source may not presume that the solicitation will be amended in the event that competitive proposals are received if the solicitation, as issued, is sufficient to support a competitive procurement In that case, award may be made pursuant to the solicitation's terms In accordance with P L. 98-72, the contracting officer will not commence negotiations for award of a contract until at least 30 days have elapsed from the date of this notice

(2) *Spacing* Double spaced lines will be used in the text Each procurement shall be described in a separate paragraph

tion, shall be referred to the Secretary of the Department concerned, and the appropriate legislative liaison office shall be informed When a proposed reply is to be so referred to a Secretary, an interim reply shall be made to the congressional request indicating the action being taken

(b) *Inclusion on Bidders Mailing Lists* Any member of any Committee or Subcommittee of the Congress which is interested in procurement matters shall, upon request of the Committee or Subcommittee Chairman, be placed on applicable bidders mailing lists to receive automatic distribution of bid and proposal information in the specified area of interest

1-1005 Publicizing Award Information

1-1005 1 *Synopsis of Contract Awards*

(a) *General* Except for classified awards, all awards in excess of $25,000 which are likely to result in the award of subcontracts shall be promptly published in the *Commerce Business Daily* "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards "

(b) *Preparation and Transmittal*

(1) Purchasing offices shall prepare and forward single copies of synopses of contract awards daily, as prescribed in 1-1003 9.

(2) The synopsis of contract awards shall contain the following information:

(i) the name and address of purchasing office;
(ii) the classification code (4-digit) applicable to the procurement action;
(iii) a clear and concise description of the supplies or services being procured, including a national stock number or a service stock number when assigned, such description to be followed by the con tract number and date and, in parentheses, by the applicable number of the invitation for bids or requests for proposals;
(iv) the quantity of each item;
(v) the dollar amount of the award;
(vi) the name, size status ((S) for small business and (L) for large business), and the full address of the contractor;
(vii) for FOB destination procurement when total shipments from a point of origin to a point of destination will exceed 200,000 pounds and destinations are firm—
(A) origin point of shipment when different from (vi) above;
(B) CONUS destination of shipment (see 1-1003 9(b)(6)); and
(C) scheduled delivery period (beginning and ending dates); and

(viii) when requested by the prime contractor, a statement of the industries, crafts, processes or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England

1-1005.2 *Announcement of Awards.*

(a) *Public Announcement* Information on proposed contractual actions over $3 million shall be submitted in writing in accordance with Departmental/Agency procedures Report Control Symbol DD LA(AR) 1279 applies Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affairs) by the close of business the day before contract award is proposed, so that this data may be announced to the press at 1600 hours Washington, D C time on the day of award Contracts excluded from this reporting requirement include (i) those placed with the Small Business Administration under Section 8(a) of the Small Business Act, and (ii) those placed with foreign firms when the place of delivery or performance is outside the United States or its possessions Awards or release of information on proposed contracts shall not be made prior to the public release time of 1600 hours Washington, D C time

(b) *Congressional Notification* In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senators and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $3 million concurrent with the public announcement described in (a) above

1-1005.3 *Local Announcements of Awards Over $25,000* Contract awards may also be the subject of local press release or other public announcements When such press releases or public announcements are made, for procurements of $25,000 or more, they shall include the following information

(i) for awards after formal advertising, state that the contract was awarded after competition by formal advertising and include the number of bids solicited and the number received, and state in general terms the basis for selection, *e.g.*, the lowest responsible bidder,

(ii) for awards after procurement by negotiation, include the information contained in the notice prescribed by 3-508.3 and where the award was made after competitive negotiation (either price or design competition), include a statement to this effect and state in general terms the basis for selection

1-1006 Reserved

1-1007 Public Release of Long Range Procurement Estimates.

1-1007.1 *General* To assist industry in planning its efforts, and to locate additional sources, it may be desirable to announce to the public long range procurement estimates on certain items, groups or types of items, materials, or research and development projects and tasks procured by the Department of Defense Procurement estimates with respect to proposed purchases may be provided to industry as far in advance as possible under the conditions contained in 1-1007.3, 1-1007.4 and 1-1007.5.

(i) the list has been prepared for use by or for the Government in the acquisition of products covered by the specification and such listing of a product is not intended to and does not connote indorsement of the product by the Department of Defense;

(ii) all products listed have been qualified under the requirements for the product as specified in the latest effective issue of the applicable specification;

(iii) the list may be revised or amended as necessary, and subject to change without notice;

(iv) the listing of a product does not release the supplier from compliance with the specification requirements; and

(v) use of the information for advertising or publicity purposes is permitted, *provided* that such publicity or advertising does not state or imply that the product is the only product of that type so qualified or that the Department of Defense in any way recommends or endorses the manufacturer s product

1-1105 Opportunity for Qualification Upon determination that a product is to be covered by a qualified products list, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product Appropriate notice of such determination shall be furnished to the U S Department of Commerce, *Commerce Business Daily*, P O Box 5999, Chicago, Illinois 60680, requesting publication in the daily "Synopsis of U S Government Proposed Procurement, Sales and Contracts Award" The publicity given to the requirement for qualification testing shall include the following:

(i) an intention to establish a qualified products list for a product,

(ii) the specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

(iii) notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a qualified products list

Lists shall always be kept open for inclusion of products from additional suppliers, including suppliers from qualifying country sources (see 6-001).

1-1106 Clarification of Qualification Requirements. When there is any question concerning qualification requirements in a specification, the activity that prepared the specification will furnish clarification when requested by the contracting activity

1-1107 Acquisition of Qualified Products.

1-1107.1 *General*

(a) Whenever qualified products are to be obtained by the Government as end items, only bids or proposals offering products which are qualified for listing on the applicable Qualified Products List at the time set for opening of bids or award of negotiated contracts shall be considered in making awards

(b) Whenever a qualified product is to be obtained by a prime contractor as a component of an end item, the prime contractor shall be required to furnish a

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26937

component which has been tested and qualified for inclusion in the applicable Qualified Products List by the time of award of the subcontract. Delay resulting from the prime contractor awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

(c) Procurements involving qualified products shall be governed by (1) through (4) below

(1) Synopses of proposed procurements shall be published by purchasing activities, in accordance with 1-1003, promptly upon receipt of purchase requests

(2) The maximum time consistent with delivery requirements shall be allowed between issuance of the solicitation and the opening of bids or the award of a negotiated contract As a minimum, contracting officers shall comply with 2-202.1, 3-102 or 3-107, as appropriate Advance notice of procurement involving qualified products may be given suppliers through the use of preinvitation notices Such notices shall identify the specification requiring qualification

(3) In procuring qualified products by formal advertising, invitations for bids will be distributed to suppliers in the same manner as if a qualified product were not involved, and will not be restricted to suppliers whose products have been qualified

(4) Contracting officers shall forward requests from suppliers concerning qualification of products to the specification preparing activity

1-1107 2 *Contract Provisions*

(a) When qualified end products are to be procured, insert the provision in 7-2003 6

(b) When qualified products are to be procured as components of end items, insert the clause in 7-2003 7

1-1107 3 *Effect of Debarment or Suspension* Notwithstanding any other provision of this Part, the inclusion of a product on the qualified products lists may be denied, and the qualification of a listed product may be withdrawn, by the Department concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to Section I, Part 6 With reference to Type B listings, the provisions of this paragraph shall be applicable only if the qualified product is in the category prescribed by the Secretary of Labor (see 1-603)

1-1108 Waiver of Qualification Requirement. When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived only by the activity that prepared the specification In appropriate cases, when requested by the contracting officer, the preparing activity may waive qualification requirements A notice, issued by the preparing activity, directing a waiver of the qualification requirement, constitutes adequate authorization for

producer, or distributor. Where feasible, all known acceptable brand name products should be referenced Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced

(b) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government For example, where interchangeability of parts is required, such requirement should be specified Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(i) complete common generic identification of the item required;
(ii) applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and
(iii) name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known)

(c) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office

1-1206.3 *Invitation for Bids — Brand Name or Equal Purchase Descriptions*

(a) Except as provided in (c) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:
Manufacturer's Name .. .. Brand No

(b) In addition, the clause in 7-2003 10 shall be included

(c)(1) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (b) above to such component parts would be impracticable, the requirements of (a) above shall not apply with respect to such component parts In such cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal does not apply to the following component parts:
(List the component parts as to which the clause does not apply)

26938 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

(2) In the alternative, if the contracting officer determines that the clause in (b) above should apply to only certain such component parts, the requirements of (a) above shall apply to such component parts and a statement substantially as follows also shall be included:

The clause entitled Brand Name or Equal applies to the following component parts: (List the component parts to which the clause applies)

(d) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products

1-1206 4 *Bid Evaluation and Award — Brand Name or Equal Purchase Descriptions*

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in 7-2003 10 that the offered products are equal in all material respects to the products referenced Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use

(b) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid Included in this requirement are those instances where (i) the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item and (ii) the clause in 7-2003 10 was applicable to such component parts or accessories (see 1-1206 3(c))

1-1206.5 *Procedure for Negotiated Procurements*

(a) The policies and procedures prescribed in 1-1206 2 through 1-1206 4 for formally advertised procurements shall be generally applicable to negotiated procurements

(b) The clause in 7-2003 10 may be adapted for use in negotiated procurements If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced

1-1207 Alternate Articles or Qualities. Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or qualities of material, *e g* , where two or more articles will be equally acceptable to the Government depending upon relative price However, the alternate articles or qualities must be precisely described to assure that the same degree of competition is obtainable on the alternate bids or offers as is obtained on the basic articles described

(2) The master solicitation shall not include non-essential or infrequently used provisions

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation may include Section VII clauses

(4) Copies of a master solicitation shall be made available upon request.

(5) Each individual solicitation shall reference the date of the current master solicitation and any changes thereto Significant revisions or a significant number of revisions should result in a reissuance of the entire master solicitation

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result Approval by the Head of the Contracting Activity is required.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26939

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202 1 *Bidding Time*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e , the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids Bidding time shall be no less than 30 calendar days when synopsis is required by 1-1003.1 For potential sources in participating countries, see 6-1403 1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) The restriction regarding bidding time in (a) above does not apply to the second step of two-step formal advertising When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203 1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1(c)(2); and for construction contracts, see 18-202(b)

2-202 2 *Telegraphic Bids* As a general rule, telegraphic bids will not be authorized However, when in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003 29

2-202 3 *Bid Envelopes* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid

2-202 4 *Bid Samples*

(a) *Definition* The term "*bid sample* ' means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items

(b) *Policy* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure acquisition of an acceptable product It may be appropriate to require bid samples for example, where the acquisition is of products that must be suitable from the standpoint of balance, facility of use, general "feel " color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable

Part 5—Two-Step Formal Advertising

2-501 General Two-step formal advertising is a method of procurement designed to expand the use and obtain the benefits of formal advertising where inadequate specifications preclude the use of conventional formal advertising It is especially useful in procurements requiring technical proposals, especially those for complex items It is conducted in two steps:

(i) Step one consists of the request for, and submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered As used in this context, the word "technical" has a broad connotation and includes engineering approach, special manufacturing processes, and special testing techniques When it is necessary in order to clarify basic technical requirements, related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step Conformity to the technical requirements is resolved in this step, but matters of responsibility as defined in 1-903 are not.

(ii) Step two is a formally advertised procurement confined to those who submitted acceptable technical proposals in step one Bids submitted in step two are evaluated and the awards made in accordance with Parts 3 and 4 of this Section

Two-step formal advertising requires that the contracting officer work closely with technical personnel and that he utilize their specialized knowledge in determining the technical requirements of the procurement, in determining the criteria to be used in evaluating technical proposals, and in making such evaluation An objective of this method is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirement, including an adequate technical data package, so the subsequent procurements may be made by conventional formal advertising

2-502 Conditions for Use

(a) Two step formal advertising shall be used in preference to negotiation when all of the following conditions are present, unless other factors require the use of negotiation, *e g* , 3-213;

(i) available specifications or purchase descriptions are not sufficiently definite or complete or may be too restrictive, and the listing of the salient characteristics in a "brand name or equal" description would likewise be too restrictive, to permit full and free competition without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to insure mutual understanding between each source and the Government;

(ii) definite criteria exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance;

(iii) more than one technically qualified source is expected to be available;

(iv) sufficient time will be available for use of the two-step method; and

(v) a firm fixed price contract or a fixed price contract with economic price adjustment will be used.

(b) None of the following in itself precludes the use of two step formal advertising:

(i) A multi year procurement is being made

(ii) A first or subsequent production quantity is being procured under a performance specification

(iii) Government-owned facilities or special tooling is to be made available to the successful bidder

(iv) A total small business set aside is involved (see 1-706 5(b) and 1-706 2) A total small business set aside would not be appropriate in a procurement of a highly technical and complex item where it is anticipated that, in order to obtain adequate competition (1) a significant number of acceptable technical proposals must be received from firms with prior testing, developmental and production experience of the item, or major components thereof, and (2) the restriction of such procurement to small business firms would seriously limit the number of qualified firms eligible to submit proposals

2-503 Procedures.

2-503 1 *Step One*

(a) A request for technical proposals shall be distributed to qualified sources in accordance with 1-302.2 and the provisions of 2-202.1 apply to this step. In addition, the request shall be synopsized in accordance with Section I, Part 10. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(i) the best practicable description of the supplies or services required;

(ii) notification of the intent to conduct the procurement in two steps and the actions involved;

(iii) the requirements of the technical proposal, *i e* , the necessary details such as drawings, data, presentations, etc , to be submitted;

(iv) the criteria for evaluating the technical proposal (see 2-502(a) (ii));

(v) a statement that the technical proposals shall not include prices or pricing information;

(vi) the date or date and hour by which the proposal must be received and the Late Technical Proposals provision in 7-2002 3 (this replaces paragraphs 7 and 8 of Standard Form 33A);

(vii) a statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards; and that each bid in the second step must be based on the bidder's own technical proposals;

(viii) a statement that offerors are advised to submit proposals which are fully and clearly acceptable without additional explanation or information, since the Government may make a final determination as to whether a proposal is acceptable or unacceptable solely on the basis of the proposal as submitted and proceed with the second step without requesting further information from any offeror; however, if the Government deems it necessary to obtain sufficient acceptable

SECTION III

PROCUREMENT BY NEGOTIATION

Part 1—Use of Negotiation

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

3-101 General.

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

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

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

(d) Negotiated procurements shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be necessarily noncompetitive, the contracting officer is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action should include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements (1-305 2(a)), and possible breakout of components for competitive procurement. Except for procurement of electric power or energy, gas (natural or manufactured), water, or other utility services, and procurement of educational services from nonprofit institutions, contracts in excess of $25,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to assure compliance with this subparagraph

3-102 Additional Restrictions on Noncompetitive Procurements.

(a) For the purposes of this paragraph 3-102 only, "sole source contract" means a contract for the purchase of property, supplies or services which is entered into or proposed to be entered into after soliciting and negotiating with only one source.

(b) When a synopsis is required under 1-1003.1, the contracting officer may not commence negotiations for the award of a sole source contract until at least 30 days after publication of the synopsis with the required notice of intent to contract (see 1-1003.9(b)(1)).

(c) Except when covered by (d) below, the contracting officer may not commence negotiations for the award of a sole source contract (see also 4-910) with a value in excess

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26941

of $1 million in fiscal year 1984, $500,000 in fiscal year 1985, and $300,000 in fiscal year 1986 and each year thereafter unless:

(1) the head of the contracting activity or his deputy has approved the authority to enter into such contract (this authority is not delegable); and

(2) when synopsis is required under 1-1003.1, the contracting officer has evaluated the responses to the notice of intent to contract on a sole source basis (see 1-1003.9(b)(1))

(d) Paragraph (c) above does not apply to procurements made under the authority of Section 8(a) of the Small Business Act; the Small Business Innovation Development Act; and procurements for property, supplies or services for which a compelling or unusual emergency exists such that the Government would be seriously injured if the provisions of (c) above were complied with.

3-103 Records and Reports of Negotiated Contracts. In addition to the records and reports described in 1-308, 3-211 4, and 3-216 4, each Department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in Section III, Part 2 These records, and reports based thereon, are maintained through the Department of Defense Procurement reporting system described in 1-110 and Section XXI, Part 1

3-104 Aid to Small Business and Minority Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given to the size and minority status of the business concerns, and when subcontracting is consistent with the best interests of the Government, the extensive use of subcontractors shall be a favorable factor See Section I, Part 7, and 1-322

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

3-106 Presolicitation Notices and Conferences.

3-106 1 *General* This Part describes a procedure which may be used as a preliminary step to negotiated procurements where the cost of preparing a formal solicitation and response would be substantial for both the Government and industry This procedure is designed to develop sources for procurement; permit the Government to solicit for preliminary information based on a general description of the supplies or services involved; permit prospective offerors to submit proposals without undue expenditure of effort, time, and money; and to explain complicated specifications and requirements to interested firms The presolicitation conference shall not be used as a method for prequalification of offerors, and may be used only when approved at a level higher than the contracting officer.

3-106 2 *Presolicitation Procedure*

(a) When a presolicitation notice is used it shall be prepared by the contracting officer and forwarded to all known potential offerors It shall at least request an expression of interest in the contemplated procurement and shall designate a time for submission of responses In cases of complex procurement, it may also request information pertaining to management, engineering, and production

capabilities. Each notice shall define as explicitly as possible the information to be furnished by the offeror and shall indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation Detailed drawings, specifications, or plans shall not normally be included in a presolicitation notice The presolicitation notice shall be synopsized in accordance with 1-1003 See 1-309 for solicitations for informational or planning purposes; 2-205 6 for pre invitation notices in formally advertised procurements; and 2-207 and 3-504 for pre bid and pre proposal conferences, respectively

(b) All of those responding to the presolicitation notice shall be advised of the details of any pending presolicitation conference The presolicitation conference shall be conducted by procurement personnel, and attended by technical and legal personnel as appropriate All prospective offerors attending the conference shall be furnished copies of the solicitation, unless they decline to participate in the procurement If it is determined to proceed with the procurement without a conference, those responding to the presolicitation notice shall be furnished a formal solicitation, except those who decline to participate In addition, a copy of the solicitation shall be furnished to any prospective offeror who requests one (but see 1-604 and 1-609 6)

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

3-107 Offeror Response Time. When soliciting competitive proposals and the procurement is required to be synopsized in accordance with 1-1003 1, the contracting officer shall allow at least 30 days for receipt of proposals from the date of issuance of the solicitation:

(3) The Government shall neither make any final commitment nor authorize any work by the contractor pursuant to an order under a basic ordering agreement until prices have been established, unless the order establishes a monetary limitation on the obligation of the Government and either:

(i) the order is subject to provisions contained in the basic ordering agreement which set forth adequate procedures for arriving at prices as early in contract performance as practical, but in no event shall such procedures permit the price of the entire order to be established on a retroactive basis (however, incentive provisions consistent with this part are permitted); or

(ii) the need for the supplies or services is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date and when they could not be furnished by that date if the contractor is not allowed to proceed with work until prices have been established The circumstances listed in 3-202 2 are indicative of instances in which the contractor may be permitted to proceed with work prior to establishment of prices

As a general rule, prices should be established prior to authorizing the contractor to begin work However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause

(4)(A) Each order issued under a basic ordering agreement shall cite the applicable negotiation authority and shall be subject to such reviews, approvals, determinations and findings (including those pertaining to types of contracts), and other requirements (including those pertaining to synopsis of the proposed procurement and contract awards) specified in this Regulation as would be applicable if the order were a contract entered into apart from the basic ordering agreement

(B) When synopsis is required under 1-1003.1, orders shall not be issued until at least 30 days after either publication of the synopsis or issuance of a solicitation, as appropriate.

(5) A basic ordering agreement shall be modified only by a revision of the basic ordering agreement itself and shall not be modified or superseded by individual orders issued thereunder To minimize modifications, revisions to ASPR involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Orders Basic ordering agreements shall be reviewed at least annually, before the anniversary of their effective dates, and revised to conform with the current requirements of this Regulation Modifications shall not have retroactive effect

(6) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of (1) through (4) above.

Part 5—Solicitations of Proposals and Quotations

3-500 Scope of Part This part applies to all negotiated acquisition except that described by Part 6 of this Section III

3-501 Preparation of Request for Proposals or Request for Quotations

(a) *General* Forms used for requesting proposals or quotations on negotiated acquisition shall be as required by (b) and (c) below and by Section XVI, or if not required by such Section, as prescribed by Departmental regulations Generally, requests for proposals and requests for quotations shall be in writing However, in appropriate cases as prescribed in (d) below, proposals or quotations may be solicited orally, *provided* that the resulting definitive contract is prepared on the prescribed contract form for signature by both parties, except that in the acquisition of perishable subsistence, DPSC Form 300, Order for Subsistence, may be used Solicitations shall contain the information necessary to enable a prospective offeror or quoter to prepare a proposal or quotation properly All such information shall be set forth in full in the solicitation rather than incorporated by reference, except that:

(1) Standard and DD ASPR Forms consisting of general provisions (contract clauses) prescribed by Section VII may be incorporated by reference to the form number, form name, and edition date; *provided*, the instructions for use of the form do not prohibit the incorporation of the form by reference; and

(2) other contract clauses set forth in Section VII may be incorporated by reference if authorized by 7-001

No other contract clauses shall be incorporated by reference Written requests shall be as complete as possible and normally should contain the information in (b) and (c) below, as appropriate, if applicable to the acquisitions involved

(b) *Contract Forms and Uniform Contract Format*

(1) This paragraph (b) applies to all negotiated acquisitions except:

a small purchases and other simplified purchase agreements;
b basic agreements,
c pre invitation notices,
d the first step of two-step formal advertising;
e construction and architect engineer contracts,
f ship construction including shipbuilding, conversion and repair;
g acquisitions for which special contract forms inconsistent herewith are prescribed by Part 5 of Section XVI; and
h acquisitions of subsistence

Those acquisitions enumerated *f* through *h* need not be in the Uniform Contract Format, but must contain all applicable items The applicability of this paragraph to acquisitions outside the United States, its possessions and Puerto Rico is optional

(2) Requests for proposals shall be prepared on Standard Form 33, Solicitation, Offer and Award (see 16-102 3), or on forms prescribed by Departmental regulations; requests for quotations shall be prepared on Standard Form 18, Request for Quotations (see 16-102 1) or on forms prescribed by Departmental regulations Letter RFPs and RFQs may also be used provided they otherwise comply with the requirements of this regulation.

number of suppliers have been selected for additional discussion (see 3-805), the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of that fact to the source submitting the proposal Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508 3 below would suffice In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered

(b) In any procurement involving a small business set-aside (excluding those processed in accordance with 3-600), upon final completion of negotiations and determinations of responsibility but prior to award, the contracting officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of his proposal will not be considered, since no further negotiations are contemplated, and no further contact with the contracting officer need be made regarding the instant procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s) This notification procedure shall not apply to procurements exempt by 3-508 1 above or to any urgent procurement action which the contracting officer determines in writing must be awarded without delay to protect the public interest The contracting officer's determination shall be placed in the contract file

3-508.3 *Post-Award Notice to Offerors*

(a) Promptly after making all awards in any procurement in excess of $25,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where notice has been provided pursuant to 3-508 2(a) Such notice shall include:

(i) the number of prospective contractors solicited;
(ii) the number of proposals received;
(iii) the name and address of each offeror receiving an award;
(iv) the items, quantities, and unit prices of each award; *provided* that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and
(v) in general terms, the reasons why the offeror s proposal was not accepted, except where the price information in (iv) above readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror

(b) In procurements of $25,000 or less and subject to the exceptions in 3-508 1 above, the information described in (a) above shall be furnished to unsuccessful offerors upon request.

(c) Such information as is authorized to be released to unsuccessful offerors pursuant to (a)(i) through (iv) above may, upon his request, be provided to the successful offeror

3-508 4 *Debriefing of Unsuccessful Offerors*

(a) Offerors under negotiated procurements generally expend substantial time and effort in preparing their proposals Therefore, those offerors not selected for contract award have a significant interest in learning why they were unsuccessful Debriefing is the process by which purchasing offices provide unsuccessful offerors with the Government's evaluation of the significant factors contained in their proposals, citing determinative deficiencies and weaknesses An adequate debriefing can provide the basis upon which offerors may improve future proposals and, in addition, give assurance that the selection has been handled fairly, in accordance with applicable regulations and the provisions of the solicitation

(b) When a contract is awarded on some basis other than price, unsuccessful offerors shall be debriefed upon their written request, and furnished the basis for the selection decision and contract award Debriefings shall be provided at the earliest feasible time after contract award They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award

(c) It is essential that debriefings be conducted in a scrupulously fair, objective and impartial manner Debriefing information given offerors shall be factual and consistent with the evaluation While offerors should be informed of the areas in which their technical or management proposals were weak or deficient, point-by-point comparisons with the technical or management proposals of the other offerors shall not be made Furthermore, debriefings shall not reveal: (i) trade secrets; (ii) privileged or confidential manufacturing processes and techniques; (iii) commercial and financial information which is privileged or confidential, including cost breakdowns, profit, overhead rates, and similar information; or (iv) the relative merits or technical standing of competitors or the evaluation scoring

(d) A summary of the debriefing shall be made a part of the contract file

3-508 5 *Classified Information* Classified information shall be furnished only in accordance with regulations governing classified information

3-509 Protests Against Award Protests against awards of negotiated procurements shall be treated substantially in accordance with 2-407 8

3-510 Synopsis of Contract Awards. See 1-1005.1

26944 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

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

3-604 Competition and Price Reasonableness.

3-604.1 *Purchases Not in Excess of $1,000* Small purchases not exceeding $1,000 may be accomplished without securing competitive quotations if the prices are considered to be reasonable Such purchases shall be distributed equitably among qualified suppliers When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchases not in excess of $1,000 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects or has information (e.g., comparison to previous price paid, personal knowledge of the item involved) to indicate that the price may not be reasonable. In some cases, e g., first buy of new items, action to verify may also be required to determine whether or not the price is reasonable.

3-604.2 *Purchases In Excess of $1,000*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000 Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible See also Section I, Part 10, and 3-107 for procedures on synopsis and response time for procurement actions of $10,000 or more.

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

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

3-605 Blanket Purchase Agreement (BPA)

3-605.1 *General* A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply (see 12-302, 12-602 1 and 12-1001) Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents

3-605 2 *Limitation on Use*

(a) A blanket purchase agreement may not be used when a call exceeds $10,000, except that BPA calls up to $25,000 may be placed by Inventory Control Points and calls for subsistence are unlimited as to dollar value.

(b) When synopsis is required under 1-1003.1, calls of $10,000 and above shall not be issued until 30 days after either publication of the synopsis or issuance of a solicitation, as appropriate

3-605.3 *Establishment of Blanket Purchase Agreements*

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

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26945

(b) *Form*

(1) Except as provided in (2) below blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations) Either the General Provisions DD Form 1155r or the Reverse of Order for Supplies or Services/Request for Quotations—Foreign,' DD Form 1155r-1, as applicable, shall be used Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper. Clauses authorized in 3-608.2(b) which are mandatory for use in purchases over $10,000 shall be included in blanket purchase agreements that permit the placement of individual calls valued at more than $10,000 Additionally, the following provisions may be applicable:

(i) the Contract Work Hours and Safety Standards Act—Overtime Compensation clause in 7-103 16(a) shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) where the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause in 7-1903 41(a) or (b) shall be substituted for Clause 15 of the General Provisions and the procedures in 12-1005 complied with unless it is reasonably an ticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) where the agreement is for the intended purchase of supplies, the Walsh Healey Public Contracts Act clause in 7-103 17 shall be added, unless the agreement limits the aggregate total of orders to be placed thereunder to $10 000; and

(iv) where the agreement is for the intended purchase of supplies, the ap plicable equal opportunity clause in 7-103 18 shall be added

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

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

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

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

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

If for the purchase of subsistence:

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

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

Part 11-Acquisition of Automatic Data Processing Equipment

3-1100 Contractor Acquisition of Automatic Data Processing Equipment (ADPE).

3-1100 1 *General*

(a) This paragraph 3-1100 is applicable to all ADPE, as defined in 4-1102 1, except as components of end items to be delivered to the Government

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Section XIII

3-1100.2 *Review of Decision To Lease*

(a) If the total cost of leasing the ADPE is to be allocated to one or more Government contracts requiring the negotiation or determination of costs, the contracting officer shall, prior to approval of the proposed lease agreement:

(i) require the contractor to submit a request for leasing ADPE in writing Such request shall be in accordance with 3-1100 3;

(ii) survey the Defense Logistics Agency (HQ DLA, Attn: DARO) for availability of excess ADPE which could be issued as GFP (see 13-301) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(iii) determine whether, under 15-205 48, leasing is the appropriate method of acquisition from the Government's standpoint;

(iv) consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Section V, Part 9);

(v) if the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(vi) obtain approval of the ADPE leasing arrangement as provided by 4-1104 13(a)(2).

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to Government contracts requiring the negotiation or determination of costs, the administrative contracting officer should arrange for:

(i) an initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under 15-205 48, his existing ADPE capability and the need to continue leasing, irrespective of whether the term of the lease was renewed or otherwise ex-

tended by the contractor (see 3-1100 3 for documentation required; and

(ii) submission by the contractor to the ACO of any proposed lease of a new ADPE system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost (See 3-1100 3 for documentation required)

(A "*major change*" is any addition or substitution of ADPE which will have an annual cost in excess of $50,000) After the initial review and after each annual review, and also after review of any proposed lease of a new ADPE system or major change, the ACO should either enter into an advance understanding with the contractor pursuant to 15-107, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under 15-205 48 The Government shall approve or disapprove submissions of contractor data in a timely manner

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor

3-1100.3 *Contractor Documentation for ADPE Acquisition*

The documentation specified by this section is required only when the total cost of leasing is to be reimbursed under one or more Government contracts or the total annual cost of leasing exceeds $500,000 and 50 percent or more is charged to Government contracts The documentation is acceptable in the same format used by the contractor to make ADPE decisions When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if it is voluminous, reference to the submission is acceptable Documentation previously submitted does not have to be resubmitted; only updated as necessary The contractor's request for approval of a proposed lease agreement or to justify his leasing decisions under 15-205 48(d)(3) shall, as a minimum, consist of the following supporting data, prepared prior to acquisition

(1) Inventory and analysis of utilization of existing installed ADPE:

a List each computer component by manufacturer, type, and model number

b Give location of ADP system

c. Furnish acceptance date(s) by component

d Give type of ownership, i e , leased, purchased, Government-furnished, lease back

e Furnish operational use by component for the past 12 calendar months Also show nonproductive use separated into categories: preventive maintenance and remedial maintenance for the Central Processing Unit components which affect the ADPE system for the same period

f Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved

counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

(c) *Placing of Advertisements in Noncommissionable Media* Some media do not grant advertising agencies a commission or discount from the standard card or other published rates, with the result that the Government activity can obtain the same rate as the advertising agency If the advertising agency agrees to place advertisements in noncommissionable media as a no cost service to the Government, the basic ordering agreement shall so provide If the advertising agency will not agree to place these advertisements at no cost to the Government, the agreement shall provide that the Government may place orders for advertisements directly with such media; or the agreement shall set forth an amount which the Government will pay the advertising agency for its services in placing the advertisements

(d) *Art Work, Supplies and Incidentals.* The basic ordering agreement also may provide for the furnishing of art work, supplies and incidentals, including brochures and pamphlets but excluding the printing thereof, by the advertising agency upon the Government's priced or unpriced order. "Incidentals" may include expense for phone calls, telegrams, and postage incurred by the agency on behalf of the Government.

4-803.7 *Limitations* No advertisement of a proposed procurement in a newspaper shall be published and printed in the District of Columbia unless the supplies or services are to be furnished for use, or the labor is to be performed, in the District of Columbia or in the adjoining counties of Maryland or Virginia. Paid advertisements of proposed procurements shall be placed only when it is anticipated that effective competition cannot be obtained otherwise Paid advertisements to recruit civilian personnel shall be subject to the limitations in Section 332-1-9 of the Federal Personnel Manual

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26947

Part 9—Unsolicited Proposals

4-900 Scope of Part This Part sets forth policies and procedures concerning the receipt, evaluation, and acceptance of unsolicited proposals

4-901 General The unsolicited proposal is a valuable means by which unique or innovative methods or approaches which have originated or developed outside the Government can be made available to Government agencies for use in the accomplishment of their missions It is offered in the hope that the Govern ment will enter into a contract with the offeror for (i) research on or development of, the methods, approaches, or ideas it contains, or (ii) the conduct of the activity or services or the delivery of the items it proposes It should not be merely an advance proposal for a specific agency requirement which would normally be procured by competitive methods An unsolicited proposal should be prepared independent of Government supervision It often represents a substantial investment of time and effort by the offeror It should present the proposed work in sufficient detail to allow a determination that Government support could be worthwhile and that the proposed work could enhance, benefit, and/or provide valuable input to an agency's research and development mission or to some other area of agency responsibility

4-902 Policy It is the policy of the Government to foster and encourage the submission of unsolicited proposals

4-903 Agency Program Direction and Operation. Each agency shall adopt and publish policies and procedures which will encourage the submission of unsolicited proposals relating to the agency's mission Such policies and procedures shall be consistent with the requirements of this Part 9 They shall be developed with an objective to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

4-904 Definitions As used in this Part 9, the following terms have the meanings stated

(a) "*Unsolicited proposal*" means a proposal that is submitted to a Department on the initiative of the submitter for the purpose of obtaining a contract with the United States Government, and which is not in response to a formal or informal request (other than a Departmental request constituting a publicized general statement of need in areas of science and technology-based research and development that are of interest to the Department) Advertising material, commercial product offerings, contributions, or technical correspondence as defined in paragraphs (b) through (e) below which are submitted to an agency shall not be considered to constitute unsolicited proposals within the intent of this Part 9

(b) "*Advertising material*" means material designed to acquaint the Government with a prospective contractor's present off-the shelf products or potential capabilities, or designed to determine the Government's interest in buying such products

(c) "*Commercial product offering*" means offers of standard commercial products usually sold in substantial quantities to the general public and which the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item

(d) "*Contribution*" means concepts, suggestions or merely ideas presented to the Government for its use, and with no indication on the part of the offeror that

4-908 Agency/Department Point of Contact Each agency shall establish procedures within the agency to coordinate the receipt and handling of unsolicited proposals Since the early involvement of procurement personnel is essential to the proper processing, evaluation, and possible contract award, agencies should consider designating their procurement activities for this purpose

4-909 Receipt, Review, and Evaluation Each agency shall establish uniform procedures that provide for the coordinated control of the receipt, evaluation, and disposition of proposals Because of the sensitivity of the evaluation process, particular attention should be devoted to the conduct of evaluations The procedures shall be consistent with the provisions of 4-909 through 4-913 Agency procedures shall also address reproduction (duplicating) and disposition of proposal material, particularly data which the offeror has identified as subject to duplication, use, and disclosure restrictions (see 4-913(a))

(a) Unsolicited proposals shall be acknowledged as soon as possible by the office which has been assigned the coordination responsibility (see 4-908), and processed in an expeditious manner

(b) Prior to making a comprehensive evaluation of an unsolicited proposal, the coordinating office (see 4-908) shall determine that the document:

(i) contains sufficient technical and cost information to permit a meaningful evaluation; and

(ii) has been approved by a responsible official or authorized representative of the organization submitting the proposal, or a person authorized to contractually obligate the organization

(c) If the document does not meet the requirements in paragraph (b) above, the offeror shall be given the opportunity to provide the required data A comprehensive evaluation of an unsolicited proposal need not be made if the proposal is not within the purview of the mission of the agency (also see 4-912(a)) In such cases, the submitter shall be furnished a prompt reply, stating how the document is being interpreted by the agency, the reason(s) for not evaluating it, and the disposition or intended disposition of the material submitted The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which is responsive to such an initial agency determination

(d) Comprehensive evaluations shall be coordinated by the organizational entity designated in accordance with 4-908 Each unsolicited proposal that is circulated for a comprehensive evaluation within the agency shall have attached or imprinted a legend identifying it as an unsolicited proposal, and stating that it shall be used only for purposes of evaluation (see 4-913(c)) In evaluating an unsolicited proposal, agency personnel shall consider in addition to any other criteria, the following:

(i) unique, innovative, or meritorious methods, approaches, or ideas which have originated with or are assembled together by the offeror that are contained in the proposed effort or activity;

(ii) overall scientific, technical, or socio-economic merits of the proposed effort or activity;

(iii) potential contribution which the proposed effort is expected to make to the agency's specific mission, if pursued at this time;

26948 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

(iv) capabilities, related experience, facilities, or techniques, or unique combinations thereof which the offeror possesses and offers, and which are considered to be integral factors for achieving the scientific, technical, or socio economic objective(s) of the proposal; and

(v) qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal

(c) Upon completion of the comprehensive evaluation of an unsolicited proposal, agency evaluation personnel shall, in accordance with agency procedures, notify the coordinating office (see 4-908) of their conclusions together with recommendations for further action

4-910 Method of Procurement

(a) A favorable comprehensive evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror When a document qualifies as an unsolicited proposal (see 4-904(a) and 4-909(b)) but the substance (i) is available to the Government without restriction from another source, or (ii) closely resembles that of a pending competitive solicitation, or (iii) is otherwise not sufficiently unique to justify acceptance (see 4-909(b)), the unsolicited proposal shall not be acceptable When procurement is intended and competition is feasible, the proposal shall be returned to the offeror together with the reasons for the return (see 4-909(e)).

(b)(1) Except as provided in (2) and (3) below, a negotiated noncompetitive procurement is permissible when an unsolicited proposal demonstrates a unique or innovative research concept, cannot be synopsized without disclosing the originality of thought or innovativeness of the proposed research, and has received a favorable technical evaluation, unless it is determined that the substance thereof is available to the Government without restriction from another source, or a competitive procurement is otherwise appropriate The agency technical office sponsoring the procurement shall support its recommendation with a justification for noncompetitive procurement The justification shall be based on a comprehensive evaluation of the proposal The justification shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action Consideration shall include the evaluation factors listed in 4-909(d).

(2) When so limited by an applicable DoD Appropriation Act, contracts for studies, analyses, or consulting services (see 22-1101(a) and (b)), may be entered into on the basis of an unsolicited proposal only when the Head of the Contracting Activity or his designee (no lower than the Chief of the Contracting Office) determines that:

(i) as a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work; or

(ii) the purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source; or

(iii) the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support;

except that this limitation shall not apply to contracts in an amount of less than $25,000, contracts related to improvements of equipment that is in development or production, or contracts as to which a civilian official of the Department of Defense who has been confirmed by the Senate, determines that the award of such contract is in the interest of national defense

(3) Negotiations may not commence for the award of a contract that results from an unsolicited proposal with a value in excess of $1 million in fiscal year 1984, $500,000 in fiscal year 1985, and $300,000 in fiscal year 1986 and each year thereafter unless the head of the procuring activity or his deputy has approved the authority to enter into such contract (this authority is not delegable). This paragraph does not apply to procurements made under the authority of Section 8(a) of the Small Business Act; the Small Business Innovation Development Act; and procurements for property, supplies or services which are of such unusual and compelling urgency that the Government would be seriously injured if the provisions of this paragraph were complied with.

(c) When it is determined that the subject matter of an unsolicited proposal is acceptable for award on a noncompetitive basis, the unsolicited proposal will serve as the basis for negotiation

4-911 Prohibitions. Agencies shall not permit all or any part of an unsolicited proposal to be used as the basis, or portion of, a solicitation, or in negotiation with other firms unless the offeror is notified of and agrees to the intended use However, nothing herein precludes the Government from using any data, concept or idea which it could have used had the unsolicited proposal not been submitted With respect to data (see 4-913(a)) tendered in an unsolicited proposal, disclosure of information which concerns or relates to trade secrets, processes, operations, style of work, or apparatus, and other matters may result in the imposition of a criminal penalty pursuant to the provisions of 18 U.S C 1905

4-912 Interagency Coordination. When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26949

(i) equipment performance requirements;
(ii) equipment and software plug-to-plug compatible (functionally equivalent) purchase descriptions;
(iii) brand name or equal purchase description (see 1-1206.2); or
(iv) specific make and model brand name only purchase description
(This type of purchase description limits competition to the extent that its use shall be deemed a noncompetitive procurement and must be justified (see 4-1104 1(a)(11)).)

4-1104.4 *GSA Nonmandatory IRM/ADP Schedule Contracts.* FSS Schedule contracts and IRM/ADP Schedule contracts are provided by the Federal Supply Service (FSS) and the Office of Information Resources Management (IRM), GSA, respectively.

(a) Use of GSA ADP Schedule Contracts. A large number of items of ADPE, software, and maintenance services are available under nonmandatory IRM/ADP Schedule contracts, subject to the following:

(1) When a nonmandatory schedule contract is used, a specific Delegation of Procurement Authority from GSA is not required even though the order is for a noncompetitive requirement; however, the existence of nonmandatory ADP Schedule contracts shall not waive the requirement for maximum practicable competition in acquiring ADPE, software or maintenance services. Requirements shall be synopsized in accordance with Section I, Part 10 (see 4-1104 6). Also the availability of items under an ADP Schedule contract shall not detract from acquiring the items, including peripheral equipment or items for augmenting an existing system from a number of different sources if this action is in the best interest of the Government Suitable equipment must be considered whether or not this equipment is on an ADP Schedule contract All schedule contracts that might satisfy the requirement shall be considered; or, the acquiring activity may choose to prepare a solicitation to secure goods or services at lower overall costs to the Government Costs of the contracting process should be considered. If ADPE, software or maintenance services are acquired under an ADP Schedule at other than the lowest delivered price available for identical or similar items under any other ADP Schedule contract, DoD Components shall justify the action and retain the justification and supporting data in the contract file or submit them to GSA if a specific delegation of procurement authority is required (see 4-1104 1(a)(11)). The following are examples of factors that may be used in support of justifications:

(i) Special features of one item, not provided by comparable items, are required in effective program performance.

(ii) An actual need exists for special characteristics to accomplish identified tasks
(iii) It is essential that the item selected be compatible with items or systems already being used.
(iv) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.
(v) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce savings in the long run which are greater than the difference in prices

(2) Initial acquisition of ADPE Whether for purchase, lease or rental, orders for ADPE may be placed, *Provided* that:

(i) the purchase price of the items covered (even though they are rented or leased) does not exceed $300,000; ; and
(ii) the intent to place an order with a value of $10,000 or more is synopsized in the CBD in accordance with 1-1003 before placing the order and the contract file is documented with the results of the synopsis (see 3-102). If a written response is received from a responsible source(s) that expresses a desire to compete on the requirement, the file also shall be documented with evidence that use of the selected ADP Schedule contract, including the method of financing (e g , purchase, lease) is the lowest overall cost alternative, price and other factors considered. This process may require the issuance of a formal solicitation

(3) Continued lease or rental of installed ADPE and software IRM/ADP Schedule contracts may be used for the continued lease or rental of installed equipment and software, *Provided* that:

(i) the intent to place a renewal order is synopsized in accordance with 1-1003 prior to placing the order if the value of the order is $10,000 or more; and

(ii) a DPA is obtained before issuing the annual renewal if the ADP Schedule purchase price exceeds $300,000 and the synopsis results indicate that equipment is available from a source other than the schedule contract (If the original requirement was evaluated and priced on a systems life basis (i e , if the price of successive renewals was considered as an evaluated cost in the original acquisition selection), then renewals of installed equipment under an extended rental plan during the originally planned system life do not require synopsizing or a DPA from GSA)

(4) Conversion from lease to purchase of installed ADPE. A specific delegation of procurement authority must be obtained from GSA before issuing an order to purchase ADPE with a net value of more than $300,000 when identical; i e , specific make and model or suitable substitute equipment is available from a source other than the schedule contractor. Net value means purchase price less accrued purchase credits and/or discounts. Requirements shall be synopsized in accordance with 1-1003 if the net value of the purchase option is $10,000 or more

(5) Acquisition of software and maintenance services. Orders may be issued for these services, *Provided* that the intent to place an order with an estimated value of $10,000 or more is synopsized in the CBD in accordance with 1-1003, and the contract file is documented with the results of the synopsis (see 3-102 and 3-410 2(c)(4)(B)) The contract file documentation must support use of the Schedule contract as being in the best interest of the Government

(b) Use of ADP Requirements Contracts GSA makes selected ADPE and software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contracts. Copies of the contracts are distributed to recipients of the IRM/ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the General Services Administration (8BRC), Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In those cases, authorization shall be obtained from GSA (CDP), Washington, DC 20405, before placing an order. ADPE or software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (i) documents the contract file as to why the requirements contract could not be used, and (ii) obtains a delegation of procurement authority from GSA, unless the contract falls within the exceptions noted under 4-1103.1(b).

4-1104 5 *Reserved*

4-1104.6 *Publicizing Contract Actions.*

(a) To ensure that appropriate competition is obtained, synopses of proposed agency contracts for ADPE, software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of Section I, Part 10. A requirement which may result in an order against an IRM/ADP Schedule contract shall be synopsized in accordance with 4-1104 4 As a minimum, the synopsis shall include the description of the item(s) or services required, quantity, delivery date and location, period of lease/rental or performance, if applicable, and any other information to assist vendors in responding to the synopsis. The synopsis shall indicate that no contract award will be made on the basis of offers/proposals or other information received in response to the notice since the synopsis of intent to place a delivery order against a schedule contract cannot be considered a request for offers/proposals (see 1-1003.9(b)(1)). If, however, the only responses to a CBD notice of intent to place such an order are from vendors offering use of their schedule contracts and technical acceptability can be established by examination of contractor literature, then the contracting officer may place a delivery order in accordance with 4-1104.4(a) and 5-106 (but see 4-1104.6(b)). Publication of contract award information in the CBD, as set forth in 1-1005, is not required when an order is placed against any GSA ADP Schedule contract.

(b) The schedule order synopsis technique provides DoD Components with both the GSA negotiated schedule prices (derived from discounting prices in the competitive commercial marketplace) and additional product and cost information as might be submitted by prospective offerors in response to the CBD notification. It is critical that the synopsis process, if used to determine the feasibility of placing a delivery order against an ADP Schedule contract, elicit sufficient information for the contracting officer to determine the need to prepare a formal solicitation. If responses indicate that soliciting is desirable or required, the contracting officer:

(i) if solicitation is for the purpose of comparing proposals with ADP Schedule contracts, shall insure that terms and conditions of the solicitation are substantially the same as those contained in the Schedule contract(s) contemplated for use. The vendor(s) having the ADP Schedule contract(s) shall be included as an addressee(s) of the solicitation since it often is interested in furnishing required items by use of locally awarded contracts. This procedure will permit the vendor(s) to further discount Schedule prices since GSA does not consider this to be a

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 25351

SECTION V

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5–000 Scope of Section. This section deals with the procurement of supplies and services by the Departments from or through any other Government department or agency

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 1—Procurement Under General Supply Schedule Contracts

5–100 Applicability This part applies to procurement of supplies to be delivered or services to be performed in the contiguous United States including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments This part may be applied optionally in Alaska, Hawaii, and for overseas requirements when orders for such requirements are placed directly with a schedule contractor. Services and Defense Agencies may limit their respective overseas activities from exercising this option. This part does not apply in any event to items under the cognizance of the Defense Personnel Support Center or to items which are being purchased for resale

5–101 Federal Supply Schedule Contracts The Federal Supply Service, General Services Administration, establishes contracts for common use classes of supplies and services These contracts are summarized in Federal Supply Schedules which list the contractors and the supplies or services that may be purchased from them Purchasing offices shall order their requirements for supplies or services covered by these contracts as set forth in 5–102 and 5–103 Copies of the Federal Supply Schedules and the Federal Supply Schedule Check List (a quarterly publication indicating the status of all Federal Supply Schedules) are distributed by the General Services Administration to all purchasing activities. Copies of the Schedules and the Check List and the General Provisions of the Federal Supply Schedule contracts are available from the General Services Administration regional offices listed in 5–203 Requests for them should be submitted on GSA Form 457A, which is also available from the regional offices

5–102 Mandatory Federal Supply Schedules.

5–102.1 *General* Federal Supply Schedules under which procurement is mandatory on the Department of Defense are listed in 5–102 3 The pertinent contracts provide that for a definite period the contractor is obligated to deliver all supplies or services that may be ordered thereunder by Government agencies, subject to the stated minimum and maximum order limitations

5–102 2 *Exceptions to Mandatory Use*

(a) *Delivery Requirements* When the delivery period stated in a Federal Supply Schedule does not meet the delivery requirement of the purchasing office, use of the Federal Supply Schedule is not mandatory However, delivery dates shown in Federal Supply Schedules are based upon the average capability of the contractor and are usually conservative In most instances, contractors are able to make delivery within a shorter period of time Therefore, when delivery is required in a shorter time than the maximum shown in the Schedule, the contractor should be asked if the shorter delivery requirements can be met If the contractor offers to meet the earlier delivery requirements, they should be specified in the order with a reference to such offer If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiat-

26952 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

For contractor-certified claims in excess of $50,000, the Contracting Officer must decide the claim within sixty (60) days or notify the Contractor of the date when the decision will be made

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act

(g) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(b) The following paragraph shall be substituted for paragraph (h) of the clause in (a) above as required under the circumstances described in 1-314(k)(2) and (3).

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or related to the contract, and comply with any decision of the Contracting Officer. (1980 JUN)

7-103.13 *Reserved*

7-103.14 *Discounts*

DISCOUNTS (1968 JUN)

In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of clause)

When SF 33A is used, the above clause will be substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii))

7-103.15 *Certain Communist Areas* In accordance with 6-403, insert the following clause

CERTAIN COMMUNIST AREAS (1980 FEB)

(a) Unless he first obtains the written approval of the Contracting Officer the Contractor shall not acquire for use in the performance of this contract:

(i) any supplies or services originating from sources within the communist areas of North Korea, Vietnam or Cuba;

(ii) any supplies however processed, which are or were located in or transported from or through North Korea, Vietnam, or Cuba; or

(iii) ferrochromium or steel mill products in their basic shapes and forms which contain more than three percent (3%) chromium if they are produced outside of the United States and contain Rhodesian chromium

(b) The Contractor agrees to insert the provisions of this clause including this paragraph (b) in all subcontracts hereunder

(End of clause)

7-103.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation*

(a) In accordance with 12-301 and 12-302, insert the following clause

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (1984 JAN)

This contract to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333) is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder

(a) *Overtime requirements* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is greater.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of ten dollars ($10) for each calendar day for which such

individual was required or permitted to work in excess of eight (8) hours or in excess of the standard work-week of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause

(c) *Withholding for unpaid wages and liquidated damages* The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause

(d) *Subcontracts* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts The prime Contractors shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause

(End of clause)

(b) The following clause shall be used, in addition to the clause in (a) above, when firefighters or fireguards are to be used

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION — FIREFIGHTERS AND FIREGUARDS (1974 APR)

A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards under the following conditions:

(i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight (8) hours per day in a standby or on-call status; and

(ii) If the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and

(iii) *provided* that in determining the daily and weekly overtime requirements of the Act in any particular worksheet of any such employee whose established worksheet begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences the hours worked in excess of eight (8) hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked

(End of clause)

(c) Pursuant to 29 CFR 5 5(c), the following clause shall be used, in addition to the clause in (a) above, in any contract subject only to the Contract Work Hours and Safety Standards Act, and not to any other statute cited in 29 CFR 5.1:

PAYROLLS AND BASIC PAYROLL RECORDS (1984 JAN)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor The Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(c) The Contractor shall insert paragraphs (a) through (c) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(End of clause)

7-103.17 *Walsh Healey Public Contracts Act*

WALSH HEALEY PUBLIC CONTRACTS ACT (1958 JAN)

If this contract is for the manufacture or furnishing of materials supplies articles or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh Healey Public Contracts Act as amended (41 U S C 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect

(End of clause)

(c) The Contractor shall, within sixty (60) days after award of this contract identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness Upon request, a copy of such written procedures shall be furnished The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with (a) and (b) above

(e)(1) If the Contractor fails to make a good faith effort to institute the procedures of (a) and (b) above, any limited rights markings on technical data delivered under this contract may be canceled or ignored by the Contracting Officer The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been canceled or ignored, and thereafter may use such data with unlimited rights

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action If corrective action is not completed within the specified time restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the "Rights in Technical Data and Computer Software ' clause.

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause including this paragraph (g) shall be included in each subcontract under which technical data is required to be delivered. When so inserted ' Contractor" shall be changed to Subcontractor".

(End of clause)

(q) *Rights in Technical Data and Computer Software (SBIR Program)* The following clause shall be inserted in all contracts awarded under the Small Business Innovation Research Program (SBIR Program) when the contract requires that technical data or computer software be prepared, originated, produced, developed, generated or delivered. The clause shall be limited to use solely in SBIR Program contracts.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (SBIR PROGRAM) (1984 JAN)

(a) *Definitions.*

(1) *Technical Data* means recorded information regardless of form or characteristic, of a scientific or technical nature. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. Technical data does not include

computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration

(2) *Computer Software* - computer programs and computer data bases

(3) *Computer Program* - a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(4) *Computer Data Base* - a collection of data in a form capable of being processed and operated on by a computer.

(5) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(6) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(7) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (i) released or disclosed in whole or in part outside the Government, (ii) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (iii) used by a party other than the Government.

(8) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26955

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes; and

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract

(9) *License Rights* means rights to use, duplicate, or disclose technical data or computer software, in whole or in part and in any manner, for Government purposes only, and to have or permit others to do so for Government purposes only. License Rights do not grant to the Government the right to have or permit others to use technical data or computer software for commercial purposes.

(b) *Government Rights.*

(1) For a period of two (2) years (or such other period as may be authorized by the Contracting Officer for good cause shown) after the delivery and acceptance of the last deliverable item under this contract, the Government shall have limited rights and, after the expiration of the two-year period, shall have license rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental, or research work which was

specified as an element of performance in this contract or any subcontract hereunder.

(ii) computer software required to be originated or developed under this contract or any subcontract hereunder, or generated as a necessary part of performing this contract or any subcontract hereunder.

(iii) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modification or processes have been, or are being, developed under this contract or any subcontract hereunder in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(i) below).

(iv) technical data or computer software prepared or required to be delivered under this contract or any subcontract hereunder and constituting corrections or changes to Government-furnished data or computer software

(v) technical data pertaining to end-items, components or processes, prepared or required to be delivered under this contract or any subcontract hereunder for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and

function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.).

(vi) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes.

(vii) any other technical data prepared or required to be delivered under this contract or any subcontract hereunder, other than data furnished with limited rights pursuant to subparagraph (b)(2)(i) below.

License Rights shall be effective with respect to the technical data identified in (1)(i), (iii), (iv), (v), (vi), and (vii) above only if each piece of data is marked with the License Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered, the name of the Contractor and any subcontractor by whom the data was generated, and the period in which the data is subject to limited rights, and shall be effective with respect to the computer software identified in (1)(i), (ii) and (iv) above only if each unit of software is marked with an abbreviated License Rights Legend reciting that the use, duplication, or disclosure of the software is subject to the same license rights restrictions included in the same contract (identified by number) with the same Contractor (identified by name):

LICENSE RIGHTS LEGEND

Contract No. _____

Contractor or Subcontractor _____

For a period of two (2) years after the delivery and acceptance of the last deliverable item under this contract, this technical data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part

by the Government for manufacture, or (c) used by a party other than the Government. After the expiration of the two (2) year period, the Government may use, duplicate, or disclose the data, in whole or in part and in any manner, for Government purposes only, and may have or permit others to do so for Government purposes only. All rights to use or duplicate the data in whole or in part for commercial purposes are retained by the Contractor, and others to whom this data may be disclosed agree to abide by this commercial purposes limitation. The Government assumes no liability for use or disclosure of the data by others for commercial purposes. This legend shall be included on any reproduction of this data, in whole or in part.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (iv), (v), and (vi) above. The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited Rights shall be effective with respect to the technical data mentioned in (2)(i) above only if each piece of data is marked with the Limited Rights Legend below in which is inserted the number of the prime contract under which the data is to be delivered and the name of the Contractor and any subcontractor by whom the data was generated:

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26927

LIMITED RIGHTS LEGEND

Contract No _____

Contractor or subcontractor: _____

This technical data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or (c) used by a party other than the Government. This legend shall be included on any reproduction of this data, in whole or in part

(3) *Restricted Rights.* The Government shall have restricted rights in privately developed computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *Provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(8)(i) through (iv). Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No _____ with _____(Name of Contractor).

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction The license, limited or restricted rights provided for by this paragraph shall not impair

the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) *Copyright.*

(1) The Contractor is hereby granted permission to assert or establish claim to or ownership of copyright in any work of authorship prepared for or acquired by the Government under this contract. In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, irrevocable, paid-up license throughout the world of the scope set forth below, under any such copyright to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. All published works for which claim to or ownership of copyright has been asserted or established shall contain an appropriate credit line identifying Government support. With respect to technical data and computer software in which the Government has license rights, the license shall be of the same scope as the rights defined in (a)(9). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(7). With respect to computer software which the parties have agreed in accordance with (b)(3) will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also

26958 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

include the following statement which shall be placed thereon by the Contractor, or should the Contractor fail, by the Government:

This material may be reproduced by or for the U S. Government pursuant to the copyright license set forth in the Rights in Technical Data and Computer Software Clause in Contract No _____ with _____(Name of Contractor)

(d) *Removal of Unauthorized Markings* Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings; or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case the Government shall give written notice to the Contractor of the action taken.

(e) *Omitted Markings.* Technical data and computer software delivered to the Government without any of the legends or markings specified in paragraph (b) above or that are not copyrighted shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the use, duplication, or disclosure of such data and software. However, to the extent the data and software have not been disclosed without restriction outside the Government, the Contractor may request, within six (6) months after delivery of such data and software, permission to place restrictive legends on such data and software at the Contractor's expense and the Government may so permit if the Contractor:

(i) demonstrates that the omission of the restrictive legends was inadvertent;

(ii) establishes pursuant to paragraph (d) above that the use of the markings is authorized; and

(iii) acknowledges that the Government has no liability with respect to the use or disclosure of such data and software that was received prior to the addition of the restrictive markings.

(f) *Relation to Patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(g) *Acquisition of Data and Computer Software from Subcontractor.*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher-tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26959

7-104.10 *Ground and Flight Risk* In accordance with 10-404, insert the following clause.

GROUND AND FLIGHT RISK (1975 OCT)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause the Government, subject to the definitions and limitations of this clause assumes the risk of damage to or loss or destruction of, aircraft "in the open", during ' operation , and in 'flight as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage loss, or destruction the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule the term aircraft" means—

(A) aircraft (including (I) complete aircraft and (II) aircarft in the course of being manufactured disassembled or reassembled; *provided*, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

including all property installed therein or in the process of installation or temporarily removed from such aircraft; *provided* however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession care custody or control

(iii) The term flight means any flight demonstration flight test taxi test or other flight, made in the performance of this contract or for the purpose of safeguarding the aircraft, or previously approved in writing by the .. * With respect to land based aircraft flight ' shall commence with the taxi roll from a flight line on the Contractor s premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor s premises; with respect to seaplanes flight shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor s premises; with respect to helicopters, flight shall commence upon engagement of the rotors for the purpose of take-off from the Contractor s premises and continue until the aircraft has returned to the ground on the Contractor s premises and the rotors are disengaged; and with respect to vertical take-off aircraft flight shall commence upon disengagement from any launching platform or device on the Contractor s premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises *provided*, however, that aircraft off the Contractor s premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing other landings made in the performance of this contract or landings approved by .. .. .. * in writing

(iv) The term Contractor's premises means those premises designated as such in the Schedule or in writing by the ..... * and any other place to which aircraft are moved for the purpose of safeguarding the Aircraft

(v) The term operation means operations and tests other than on any production line, of aircraft when not in flight whether or not the aircraft is in the open or in motion during the making of any such operations or tests and includes operations and tests of equipment accessories and power plants only when installed in aircraft.

(vi) The term flight crew members means the pilot the co-pilot and unless otherwise specifically provided in the Schedule the flight engineer, navigator bombardier navigator and defensive systems operator, when required or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) (1) The Government s assumption of risk under this clause as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below Where the .... * finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time

(2) Upon receipt of such notice the contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled Disputes.

(3) If the.....* finds that the Contractor failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable an equitable adjustment shall notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk

thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine on the basis of information available to him the amount if any due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract

(e) Subject to the provisions of paragraph (c) above the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; *provided*, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which if the contract had been completed, would have been required to be furnished to the Government, including:

(i) completed or partially completed plans, drawings and information; and

(ii) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination the Contractor agrees to take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(End of clause)

(d) The clause in (b) above suitably altered to indicate the relationship between the prime contractor and subcontractor is suggested for use in subcontracts placed with educational institutions and when modified as prescribed in (c) above for use with other nonprofit institutions; *provided*, such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Section XV; and *provided further*, such subcontracts are placed on the no-fee or no-profit basis.

7-302.11 *Disputes* In accordance with 7-103 12, insert the clause therein

7-302.12 *Reserved.*

7-302 13 *Buy American Act* In accordance with 7-104 3, insert the clause therein When the contract involves construction work, in accordance with 7-602 20 and 7-602 24 also insert the clauses therein

7-302 14 *Convict Labor* In accordance with 12-203, insert the clause in 7-104 17.

7-302 15 *Walsh-Healey Public Contracts Act* In accordance with Section XII, Part 6, insert the clause in 7-103 17

7-302 16 *Contract Work Hours and Safety Standards Act—Overtime Compensation* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103 16

7-302 17 *Equal Opportunity* In accordance with 12-807 1, insert the applicable clause in 7-103 18

7-302 18 *Officials Not To Benefit* Insert the clause in 7-103 19

7-302 19 *Covenant Against Contingent Fees* Insert the clause in 7-103 20

7-302 20 *Gratuities* In accordance with 7-104 16, insert the clause therein

7-302 21 *Authorization and Consent* In accordance with 9-102, insert the following clause or the clause in 7-103 22 as appropriate

AUTHORIZATION AND CONSENT (1961 JAN)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontract)

(End of clause)

7-302 22 *Notice and Assistance Regarding Patent Infringement* In accordance with 9-104, insert the clause in 7-103 23

7-302 23 *Clauses for Domestic Contracts*

(a) *Patent Rights clause - Acquisition by the Government.*

PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (1984 JAN)

(a) *Definitions*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process machine, manufacture, design or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country

(2) "*Contract*" means any contract, agreement grant or other arrangement or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work

(3) "*States and domestic municipal governments*" means the States of the United States the District of Columbia, Puerto Rico the Virgin Islands, American Samoa Guam, the Trust Territory of the Pacific Islands and any political subdivision and agencies thereof

(4) "*Government agency*" includes an executive department independent commission, board, office agency administration, authority, Government corporation or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26951

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

(i) files or causes to be filed a United States or foreign application thereon or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause whichever is later

(2) However the Contractor shall not forfeit rights in a Subject Invention if within the time specified in (1)(i) or (1)(ii) of this paragraph (f) the Contractor:

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) contending that the invention is not a Subject Invention he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) establishes that the failure to disclose did not result from his fault or negligence

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause) the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions

(g) *Examination of records relating to inventions*

(1) The Contracting Officer or his authorized representative shall until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks) records documents, and other supporting data of the Contrac tor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency

(h) *Withholding of payment (not applicable to subcontracts)*

(1) Any time before final payment of the amount of this contract the Contracting Officer may if he deems such action warranted, withhold payment until a reserve not exceeding $50 000 or five percent (5%) of the amount of this contract whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports disclosures and other information required by this clause

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirma tory instruments

(3) The Contracting Officer may in his discretion decrease or increase the sums withheld up to the maximum authorized above If the Contractor is a nonprofit organization the maximum amount that may be withheld under this paragraph shall not exceed $50 000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract

(i) *Subcontracts*

(1) The Contractor shall include a patent rights clause, suitably modified to identify the parties, in all subcontracts awarded hereunder, regardless of tier, for the performance of experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in any such clause

(2) In every subcontract awarded hereunder to be performed by a small business firm or domestic nonprofit organization, having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include the patent rights clause of DAR 7-302 23(h) in accordance with the policies and procedures set forth in DAR 9-702

(3) In every subcontract awarded hereunder to be performed by other than a small business firm or nonprofit organization having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include one of the patent rights clauses of DAR 7-302.23(a), (b) or (c) determined by the Contractor to be in accordance with the policy expressed in DAR 9-701.2, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer

(4) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor s Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract)

(5) All invention disclosures reports instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer

(6) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion Upon request of the Government Contracting Officer the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause

(7) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(8) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions and the Contractor hereby assigns

to the Government all rights that he would have to enforce the subcontractor s obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions

(j) *Communications* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts required by DAR 7-302.23(b), (c) or (h).

(End of clause)

(b) *Patent Rights Clause - Retention by the Contractor.*

PATENT RIGHTS - RETENTION BY THE CONTRACTOR (1984 JAN)

(a) *Definitions*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country

(2) The Contractor shall furnish the Contracting Officer

(i) a complete technical disclosure for each Subject Invention within six (6) months after conception or first actual reduction to practice whichever occurs first in the course of or under the contract but in any event prior to any on sale public use or publication of such invention known to the Contractor The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature purpose operation and to the extent known the physical chemical biological or electrical characteristics of the invention;

(ii) interim reports preferably on DD Form 882 at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:

(A) the Contractor s procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) a final report preferably on DD Form 882 within three (3) months after completion of the contract work; listing all Subject Inventions or certifying that there were no such inventions

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except non technical personnel such as clerical and manual labor personnel

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause

(f) *Forfeiture of rights in unreported Subject Inventions*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he

(i) files or causes to be filed a United States or foreign application thereon or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause whichever is later

(2) However the Contractor shall not forfeit rights in a Subject Invention if within the time specified in (1)(i) or (1)(ii) of this paragraph (f) the Contractor

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract, or

(ii) contending that the invention is not a Subject Invention he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer or

(iii) establishes that the failure to disclose did not result from his fault or negligence

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause) the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions

(g) *Examination of records relating to inventions*

(1) The Contracting Officer or his authorized representative shall until the expiration of three (3) years after final payment under this contract have the right to examine any books (including laboratory notebooks) records documents and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks) records and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26963

(i) establish the procedures of paragraph (e)(1) of this clause; or
(ii) maintain and follow such procedures; or
(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency

(h) *Withholding of payment (not applicable to subcontracts)*

(1) Any time before final payment of the amount of this contract the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50 000 or five percent (5%) of the amount of this contract, whichever is less shall have been set aside if in his opinion the Contractor fails to:

(i) establish maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or
(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or
(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or
(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports disclosures and other information required by this clause

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion decrease or increase the sums withheld up to the maximum authorized above If the Contractor is a nonprofit organization the maximum amount that may be withheld under this paragraph shall not exceed $50 000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract

(i) *Subcontracts*

(1) The Contractor shall include a patent rights clause, suitably modified to identify the parties, in all subcontracts awarded hereunder, regardless of tier, for the performance of experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in any such clause

(2) In every subcontract awarded hereunder to be performed by a small business firm or domestic nonprofit organization, having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include the patent rights clause of DAR 7-302 23(h) in accordance with the policies and procedures set forth in DAR 9-702.

(3) In every subcontract awarded hereunder to be performed by other than a small business firm or nonprofit organization having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include one of the patent rights clauses of DAR 7-302 23(a), (b) or (c) determined by the Contractor to be in accordance with the policy expressed in DAR 9-701 2, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In

(iv) provide the Contracting Officer with a copy of the patent within two (2) months after a patent issues on the application; and
(v) not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office notify the Contracting Officer of any decision not to continue prosecution of the application and deliver to the Contracting Officer executed instruments granting the Government a power of attorney

(3) For each Subject Invention in which the Contractor initially elects not to retain principal domestic rights the Contractor shall inform the Contracting Officer promptly in writing of the date and identity of any on sale public use or publication of such invention which may constitute a statutory bar under 35 U S C 102 which was authorized by or known to the Contractor or any contemplated action of this nature

(k) *Filing of foreign patent applications*

(1) With respect to each Subject Invention in which the Contractor elects to retain principal rights in a foreign country pursuant to paragraph (b)(1) of this clause the Contractor shall have a patent application filed on the invention in such country in accordance with applicable statutes and regulations, and within one of the following periods:

(i) eight (8) months from the date of a corresponding United States application filed by or on behalf of the Contractor; or if such an application is not filed six (6) months from the date the invention is submitted in a disclosure pursuant to paragraph (e)(2)(i) of this clause;
(ii) six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications when such filing has been prohibited by security reasons; or
(iii) such longer period as may be approved in writing by the Contracting Officer.

(2) The Contractor shall notify the Contracting Officer promptly of each foreign application filed and upon written request shall furnish an English version of such foreign application without additional compensation

(l) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts containing either this clause or the clauses required by DAR 7-302 23(a), (c) or (h).

(End of clause)

26964 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

(c) *Patent Rights Clause Deferred.*

PATENT RIGHTS DEFERRED (1984 JAN)

(a) *Definitions*

(1) '*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract and includes any art, method process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant which is or may be patentable under the Patent Laws of the United States of America or any foreign country

(2) '*Contract*' means any contract agreement, grant or other arrangement or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work

(3) '*States and domestic municipal governments*' means the States of the United States, the District of Columbia Puerto Rico the Virgin Islands American Samoa Guam, the Trust Territory of the Pacific Islands and any political subdivision and agencies thereof

(4) '*Government agency*" includes an executive department independent commission, board, office agency, administration authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) '*To bring to the point of practical application*" means to manufacture in the case of a composition or product to practice in the case of a process or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public

(b) *Allocation of principal rights*

(1) *Assignment to the Government* After a Subject Invention is identified the Contractor agrees to assign to the Government the entire right, title and interest throughout the world in and to the Subject Invention except to the extent that greater rights are retained under paragraphs (b)(2) and (d) of this clause

(2) *Greater Rights Determinations* The Contractor, or the employee inventor with authorization of the Contractor may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of DAR 9-703.6. A request for a determination of whether the Contractor or the employee inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause or not later than three (3) months thereafter, or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor The information to be submitted for a greater rights determination is specified in DAR 9-703.6(a) Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the Contracting Officer

(c) *Minimum rights acquired by the Government* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights the Contractor

(i) hereby grants to the Government a nonexclusive, nontransferable, paid up license to make use and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments,

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency

(h) *Withholding of payment (not applicable to subcontracts)*

(1) Any time before final payment of the amount of this contract the Contracting Officer may if he deems such action warranted, withhold payment until a reserve not exceeding $50 000 or five percent (5%) of the amount of this contract, whichever is less shall have been set aside if in his opinion the Contractor fails to:

(i) establish maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports disclosures and other information required by this clause

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may in his discretion decrease or increase the sums withheld up to the maximum authorized above If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50 000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts*

(1) The Contractor shall include a patent rights clause, suitably modified to identify the parties, in all subcontracts awarded hereunder, regardless of tier, for the performance of experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in any such clause.

(2) In every subcontract awarded hereunder to be performed by a small business firm or domestic nonprofit organization, having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include the patent rights clause of DAR 7-302.23(h) in accordance with the policies and procedures set forth in DAR 9-702.

(3) In every subcontract awarded hereunder to be performed by other than a small business firm or domestic nonprofit organization having as a purpose the conduct of experimental, developmental, or research work, the Contractor shall include one of the patent rights clauses of DAR 7-302.23(a), (b) or (c) determined by the Contractor to be in accordance with the policy expressed in DAR

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26565

9-701 2, unless the Contractor is directed by the Government Contracting Officer to include a particular clause In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer

(4) The Contractor shall not in any subcontract or by using a subcontract as consideration therefor acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract)

(5) All invention disclosures reports instruments and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may in the discretion of the Government Contracting Officer be furnished to the Contractor for transmission to the Government Contracting Officer

(6) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor the applicable patent rights clause, the work to be performed under the subcontract and the dates of award and estimated completion Upon request of the Government Contracting Officer the Contractor shall furnish a copy of the subcontract If there are no subcontracts containing patent rights clauses a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause

(7) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions

(8) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor s obligations for the benefit of the Government with respect to Subject Inventions The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions

(j) *Communications* The Contracting Officer or his designee shall be the point of contact for the administration of this clause This notice shall be in all subcontracts required by DAR 7-302.23(b), (c) or (h)

(End of clause)

(d) *Reserved*

(e) *Contracts relating to Atomic Energy* Add the following paragraph to the applicable patent rights clause (see 9-701 7)

In addition to the foregoing provisions the Contractor agrees:

(i) to identify and call to the attention of the Contracting Officer each Subject Invention made by employees of the Contractor (except nontechnical personnel such as clerical employees and manual laborers) and which relates to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Act of 1954, as amended (42 U.S.C 2011-2296);

(ii) to furnish through the Contracting Officer to the Department of Energy (DOE) the required disclosure regarding each Subject Invention under (i) of this paragraph;

(iii) DOE shall have the sole power to determine whether and where a patent application relating to a Subject Invention under (i) of this paragraph shall be filed and to determine the disposition of the title to and rights under any such application or any patent that may issue thereon. Any request for greater rights to a Subject Invention shall be made in accordance with the provisions of 41 CFR 9-9 109-6;

(iv) to obtain the execution of and delivery to DOE of all required documents relating to each Subject Invention under (i) of this paragraph and to do all other things requested necessary or proper to carry out any determination of DOE made under (iii) of this paragraph; and

(v) unless otherwise authorized in writing by the Contracting Officer, to include this paragraph in the Patent Rights clause of all subcontracts.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended shall be asserted by the Contractor or his employees with respect to any Subject Invention covered by this paragraph (1977 DEC)

(f) *Contracts placed for Other Government Agencies* The agency will provide any necessary patent rights clause See 9-701 8

(g) *Contracts relating to Space* When considered appropriate under 9-701 9, the following paragraph (c)(i) shall be substituted for the corresponding paragraph of the Patent Rights clause of 7-302 23(a), (b) or (c) to be included in a contract

(c)(i) hereby grants to the Government a paid-up nonexclusive and royalty free license to practice and have practiced each Subject Invention (made by the Contractor) throughout the world by or on behalf of the Government, States, and municipal governments, including the practice of each such Subject Invention (i) in the manufacture, use, and disposition of any article or material (ii) in the use of any method or (iii) in the performance of any service, acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or funds otherwise derived through the Government. In addition the Government shall have the right to grant licenses to others under such terms and conditions as may be prescribed for the practice of such Subject Invention throughout the world in the design development manufacture, operation, maintenance and testing of communications satellite systems and of equipment components and ground tracking transmitting and receiving facilities therefor. (1975 AUG)

(End of clause paragraph)

(h) *Patent Rights Clause - Small Business Firm or Domestic Nonprofit Organization.* In accordance with 9-702.3(a), the following clause shall be included in all contracts with small business firms and domestic nonprofit organizations for the performance of experimental, developmental, or research work, unless the contract provides otherwise pursuant to one of the exceptions in 9-702.3(a)(1).

PATENT RIGHTS - SMALL BUSINESS FIRM OR DOMESTIC NONPROFIT ORGANIZATION (1984 JAN)

(a) *Definitions*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code

(2) *Subject Invention* means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract

(3) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case,

under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms

(4) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention

(5) *Small Business Firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S C 632) and implementing regulations of the Administrator of the Small Business Administration For the purpose of this clause, the size standard for small business concerns involved in Government procurement and in subcontracting at 13 CFR 121 3-8 and 13 CFR 121.3-12, respectively, will be used

(6) *Domestic Nonprofit Organization* means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. Section 501(a)), or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U.S C. 203. With respect to any Subject Invention in which the Contractor retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world for which the Contractor has elected to retain title.

(c) *Invention Disclosure, Election of Title, Filing of Patent Applications, Confirmatory Instruments and Reports.*

(1) After a Subject Invention has been disclosed in writing by the inventor(s) to contractor personnel responsible for the administration of patent matters, the Contractor shall:

(i) disclose such invention to the Contracting Officer within two (2) months;

(ii) elect whether or not to retain title to any such invention by notifying the Contracting Officer within twelve (12) months of disclosure to the Contractor;

(iii) file its initial patent application on an elected invention within two (2) years after election;

(iv) file patent applications in additional countries within either ten (10) months of the corresponding initial patent application, or six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons;

(v) within six (6) months after filing each patent application, or within six (6) months after submitting the invention disclosure to the Contracting Officer, if the application has been previously filed, deliver to the Contracting Officer a duly executed and approved instrument on the form specified in DAR 9-703.5(b), fully confirmatory of all rights to which the Government is entitled, and furnish the Government an irrevocable power to inspect and make copies of the patent application file; and

(vi) furnish to the Contracting Officer, upon request, (A) the filing date, serial number and title, (B) a copy of the patent application (including an English-language version, if filed in a language other than English), and (C) the patent number and issue date for any Subject Invention in any country for which the Contractor has retained title.

(2) Notwithstanding the requirements of subparagraph(c)(1) above, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still

be obtained in the United States, the period for election of title and filing of a United States patent application may be shortened by the Contracting Officer to a date that is no more than sixty (60) days prior to the end of the statutory period

(3) Requests for extension of the time for disclosure to the Contracting Officer, election and filing, where reasonable, shall normally be granted

(4) The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological or electrical characteristics of the invention The report shall also identify any publication, sale, or public use of the invention and shall state whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure

(d) *Conditions When the Government May Obtain Title* The Contractor shall convey to the Contracting Officer, upon written request, title to any Subject Invention:

(i) if the Contractor fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title;

(ii) in those countries in which the Contractor fails to file patent applications within the times specified in (c) above (prior to receipt of the written request, the Contractor shall continue to retain title in that country); or

(iii) in any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a Subject Invention.

(e) *Minimum Rights to Contractor* The Contractor shall retain a revocable, nonexclusive, royalty-free, license throughout the world in each Subject Invention to which the Government obtains title, except if the Contractor fails to disclose the Subject Invention within the times specified in (c) above This license extends and is revocable and transferable as specified in DAR 9-702 3

(f) *Contractor Action to Protect Government's Interest*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Contracting Officer all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those Subject Inventions for which the Contractor retains title; and

(ii) convey title to the Government when requested under paragraph (d) above to enable the Government to obtain patent protection throughout the world on that Subject Invention

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each Subject Invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights to Subject Inventions The disclosure format should require, as a minimum, the information requested by subparagraph (c)(4) above The Contractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U S or foreign statutory bars

(3) The Contractor shall notify the Contracting Officer of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office

26968 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with Government support under (identify the contract) awarded by (identify the Department). The Government has certain rights in this invention

(5) The Contractor shall furnish the Contracting Officer:

(i) interim reports, preferably on DD Form 882, every twelve (12) months from the date of the contract, listing Subject Inventions that were disclosed in writing during that period by the inventor(s) to contractor personnel responsible for the administration of patent matters, or stating that there were no such inventions; and

(ii) a final report, preferably on DD Form 882, within six (6) months after completion of work under the contract or prior to closeout, whichever occurs first, listing all Subject Inventions that were made during performance of the work under the contract, or stating that there were no such inventions.

(g) *Subcontracts*

(1) The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work by a small business firm or a domestic nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Contractor shall include in all subcontracts, regardless of tier, for experimental, developmental, or reserach work with other than a small business firm or a domestic nonprofit organization, the appropriate patent rights clause required by DAR 9-701, noting of course that the criteria in DAR 9-701 for the selection of the appropriate clause have been and may be further changed as a result of the implementation of the Presidential Memorandum on Government Patent Policy of 18 February 1983.

(3) The Contractor shall promptly notify the Contracting Officer in writing, preferably on DD Form 882, upon the award of any subcontract containing a patent rights clause. Such notification shall identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon written request of the Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing a patent rights clause, this shall be stated in the final report submitted pursuant to subparagraph (f)(5)(ii) above

(h) *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Contracting Officer may reasonably specify The Contractor also agrees to provide additional reports as may be requested by the Contracting Officer in connection with any march-in proceeding undertaken by the Contracting Officer in accordance with paragraph (j) of this clause To the extent data or information supplied under this paragraph is considered by the Contractor, a licensee, or assignee, to be privileged and confidential and is so marked, the Government agrees that, to the extent permitted by 35 U.S C 202(c)(5), it will not disclose such information to persons outside the Government.

(i) *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26959

grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States However, in individual cases, the requirement for such an agreement may be waived by the contracting activity upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible

(j) *March-in Rights* The Contractor agrees that with respect to any Subject Invention in which it has acquired title, the Government has the right, in accordance with the procedures set forth in DAR 9-702 8 and in any supplemental departmental regulations, to require the Contractor, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Contracting Officer determines that:

(i) such action is necessary because the Contractor, assignee or exclusive licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(iii) such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) such action is necessary because the agreement required by paragraph (i)

of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement

(k) *Special Provisions for Contracts With Domestic Nonprofit Organizations.* If the Contractor is a domestic nonprofit organization, it agrees that:

(i) rights to a Subject Invention in the United States shall not be assigned without the approval of the Contracting Officer, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the Contractor);

(ii) the Contractor shall not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of (A) five (5) years from first commercial sale or use of the invention, or (B) eight (8) years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance, unless on a case-by-case basis, the Contracting Officer approves a longer exclusive license If exclusive field of use licenses are granted, commercial sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(iii) the Contractor shall share any royalties collected on a Subject Invention with the inventor; and

(iv) the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, shall be utilized for the support of scientific research or education

(l) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause This notice shall be in all subcontracts containing either this clause or the clauses required by DAR 7-302 23(a), (b) or (c).

(End of clause)

(i) *Patent Rights Clause - Small Business Firm or Domestic Nonprofit Organization (SBIR Program)* The following clause shall be used in all contracts awarded under the Small Business Innovation Research Program (SBIR Program) with small business firms and domestic nonprofit organizations for the performance of experimental, developmental, or research work

PATENT RIGHTS - SMALL BUSINESS FIRM OR DOMESTIC NONPROFIT ORGANIZATION (SBIR PROGRAM) (1984 JAN)

(a) *Definitions.*

(1) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

(2) *Subject Invention* means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract.

(3) *Practical application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(4) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention

(5) *Small business firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration For the purpose of this clause, the size standard for small business concerns involved in Government procurement, and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used

(6) *Domestic Nonprofit organization* means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 (26 U.S.C 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U S C. section 501(a)), or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(b) *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each Subject Invention subject to the provisions of this clause and 35 U S.C. 203. With respect to any Subject Invention in which the Contractor retains title, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any Subject Invention throughout the world for which the Contractor has elected to retain title.

(c) *Invention Disclosures, Election of Title, Filing of Patent Applications, Confirmatory Instruments and Reports.*

(1) After a Subject Invention has been disclosed in writing by the inventor(s) to contractor personnel responsible for the administration of patent matters, the Contractor shall:

(i) disclose such invention to the Contracting Officer within two (2) months;

(ii) elect whether or not to retain title to any such invention by notifying the Contracting Officer within twelve (12) months of disclosure to the Contractor;

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26971

(iii) file its initial patent application on an elected invention within two (2) years after election;

(iv) file patent applications in additional countries within either ten (10) months of the corresponding initial patent application, or six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing was prohibited for security reasons;

(v) within six (6) months after filing each patent application, or within six (6) months after submitting the invention disclosure to the Contracting Officer, if the application has been previously filed, deliver to the Contracting Officer a duly executed and approved instrument on the form specified in DAR 9-703.5(b), fully confirmatory of all rights to which the Government is entitled, and furnish the Government an irrevocable power to inspect and make copies of the patent application file; and

(vi) furnish to the Contracting Officer, upon request, (A) the filing date, serial number and title, (B) a copy of the patent application (including an English-language version, if filed in a language other than English), and (C) the patent number and issue date for any Subject Invention in any country for which the Contractor has retained title.

(2) Notwithstanding the requirements of subparagraph (c)(1) above, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title and filing of a United States

patent application may be shortened by the Contracting Officer to a date that is no more than sixty (60) days prior to the end of the statutory period

(3) Requests for extension of the time for disclosure to the Contracting Officer, election and filing, where reasonable, shall normally be granted

(4) The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s) It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological or electrical characteristics of the invention. The report shall also identify any publication, sale, or public use of the invention and shall state whether a manuscript describing the invention has been submitted for publication and accepted at the time of disclosure

(d) *Conditions When the Government May Obtain Title.* The Contractor shall convey to the Contracting Officer, upon written request, title to any Subject Invention:

(i) if the Contractor fails to disclose or elect the Subject Invention within the times specified in (c) above, or elects not to retain title;

(ii) in those countries in which the Contractor fails to file patent applications within the times specified in (c) above (prior to receipt of the written request, the Contractor shall continue to retain title in that country); or

(iii) in any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a Subject Invention

(e) *Minimum Rights to Contractor.* The Contractor shall retain a revocable, nonexclusive, royalty-free, license throughout the world in each Subject Invention to which the Government obtains title, except if the Contractor fails to disclose the Subject Invention within the times specified in (c) above

This license extends and is revocable and transferable as specified in DAR 9-702.3.

(f) *Contractor Action to Protect Government's Interest*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Contracting Officer all instruments necessary to:

(i) establish or confirm the rights the Government has throughout the world in those Subject Inventions for which the Contractor retains title; and

(ii) convey title to the Government when requested under paragraph (d) above to enable the Government to obtain protection throughout the world on that Subject Invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each Subject Invention made under this contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) above and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights to Subject Inventions The disclosure format should require, as a minimum, the information requested by subparagraph (c)(4) above. The Contractor shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty (30) days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a Subject Invention, the following statement:

This invention was made with Government support under (identify the contract) awarded by (identify the Department) The Government has certain rights in this invention

(5) The Contractor shall furnish the Contracting Officer:

(i) interim reports, preferably on DD Form 882, every twelve (12) months from the date of the contract, listing Subject Inventions that were disclosed in writing during that period by the inventor(s) to contractor personnel responsible for the administration of patent matters, or stating that there were no such inventions; and

(ii) a final report, preferably on DD Form 882, within six (6) months after completion of work under the contract or prior to closeout, whichever occurs first, listing all Subject Inventions that were made during performance of the work under the contract, or stating that there were no such inventions.

(g) *Subcontracts*

(1) The Contractor shall include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work by a small business firm or a domestic nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's Subject Inventions.

(2) The Contractor shall include in all subcontracts, regardless of tier, for experimental, developmental, or research work with other than a small business firm or a domestic nonprofit organization, the appropriate patent rights clause required by DAR 9-701, noting of course that the criteria in DAR 9-701 for the selection of the appropriate clause have been and may be further changed

as a result of the implementation of the Presidential Memorandum on Government Patent Policy of 18 February 1983

(3) The Contractor shall promptly notify the Contracting Officer in writing, preferably on DD Form 882, upon the award of any subcontract containing a patent rights clause. Such notification shall identify the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion Upon written request of the Contracting Officer, the Contractor shall furnish a copy of the subcontract If there are no subcontracts containing a patent rights clause, this shall be stated in the final report submitted pursuant to subparagraph (f)(5)(ii) above.

(h) *Reporting on Utilization of Subject Inventions* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Contracting Officer may reasonably specify The Contractor also agrees to provide additional reports as may be requested by the Contracting Officer in connection with any march-in proceeding undertaken by the Contracting Officer in accordance with paragraph (j) of this clause To the extent data or information supplied under this paragraph is considered by the Contractor, a licensee, or assignee, to be privileged and confidential and is so marked, the Government agrees that, to the extent permitted by 35 U S C 202(c)(5), it will not disclose such information to persons outside the Government

(i) *Preference for United States Industry* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any products embodying the Subject Invention or produced through the use of the Subject Invention

will be manufactured substantially in the United States However, in individual cases, the requirement for such an agreement may be waived by the contracting activity upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in Rights.* The Contractor agrees that with respect to any Subject Invention in which it has acquired title, the Government has the right, in accordance with the procedures set forth in DAR 9-702 8 and in any supplemental departmental regulations, to require the Contractor, an assignee, or exclusive licensee of a Subject Invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself if the Contracting Officer determines that:

(i) such action is necessary because the Contractor, assignee, or exclusive licensee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the Subject Invention in such field of use;

(ii) such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(iii) such action is necessary to meet requirements for public use specified by Federal regulations and such requirements

are not reasonably satisfied by the Contractor, assignee, or licensees; or

(iv) such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any Subject Invention in the United States is in breach of such agreement.

(k) *Special Provisions for Contracts With Domestic Nonprofit Organizations* If the Contractor is a domestic nonprofit organization, it agrees that:

(i) rights to a Subject Invention in the United States shall not be assigned without the approval of the Contracting Officer, except where such assignment is made to an organization which has as one of its primary functions the management of inventions and which is not, itself, engaged in or does not hold a substantial interest in other organizations engaged in the manufacture or sale of products or the use of processes that might utilize the invention or be in competition with embodiments of the invention (provided that such assignee will be subject to the same provisions as the Contractor);

(ii) the Contractor shall not grant exclusive licenses under United States patents or patent applications in Subject Inventions to persons other than small business firms for a period in excess of the earlier of (A) five (5) years from first commercial sale or use of the invention, or (B) eight (8) years from the date of the exclusive license excepting that time before regulatory agencies necessary to obtain premarket clearance,

unless on a case-by-case basis, the Contracting Officer approves a longer exclusive license. If exclusive field of use licenses are granted, commerical sale or use in one field of use will not be deemed commercial sale or use as to other fields of use, and a first commercial sale or use with respect to a product of the invention will not be deemed to end the exclusive period to different subsequent products covered by the invention;

(iii) the Contractor shall share any royalties collected on a Subject Invention with the inventor; and

(iv) the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions, shall be utilized for the support of scientific research or education.

(l) *Communications.* The Contracting Officer or his designee shall be the point of contact for the administration of this clause. This notice shall be in all subcontracts containing either this clause or the clauses required by DAR 7-302.23(a), (b) or (c)

(End of clause)

7-302 24 *Reserved*

7-302 25 *Military Security Requirements* Insert the Military Security Requirements clause in accordance with 7-104 12

7-302 26 *Utilization of Labor Surplus Area Concerns* In accordance with 1-805 3, insert the clauses in 7-104 20

7-302 27 *Government Delay of Work* Insert the clause in 7-104 77

7-302 28 *Title and Risk of Loss* Insert the clause in 7-103 6

7-302 29 *Pricing of Adjustments* Insert the clause in 7-103 26

7-302 30 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* Insert the clause in 7-103 27

7-302 31 *Affirmative Action for Handicapped Workers* Insert the clause in 7-103 28

7-302 32 *Clean Air and Water* In accordance with 1-2302 2 insert the clause in 7-103 29

7-302.33 *Invoices* Insert the clause in 7-103 30

7-303 Clauses To Be Used When Applicable

7-303 1 *Clauses for Contracts Involving Construction Work* In accordance with 7-602 23 12-106 18-701, and 18-703 insert the Labor Standards Provisions in 7-602 23

7-303 2 *Filing of Patent Applications* In accordance with 9-106 insert the clause in 7-104 6

7-303 3 *Reporting and Refund of Royalties* In accordance with 9-110(d) and 9-111, insert the appropriate clause or clauses in 7-104 8

7-303 4 *Reserved*

7-303 5 *Preference for Certain Domestic Commodities* In accordance with 6-305, insert the clause in 7-104 13

7-303 6 *Priorities, Allocations, and Allotments* In accordance with 1-307 2, insert the clause in 7-104 18

7-303 7 *Government Property* When the Government is to furnish, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution, if not, insert the appropriate clauses as provided in 7-104 24 Changes in the clause below, like those in 7-104 24(e), (f) and (g), may be made as therein provided

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (1972 SEP)

(a) *Government-furnished Property* The Government shall deliver to the Contractor for use in connection with and under the terms of this contract the property described as Government furnished property in the Schedule or specifications together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as Government furnished property) The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government furnished property suitable for use (except for such property furnished as is) will be delivered to the Contractor at the times stated in the Schedule or if not so stated in sufficient time to enable the Contractor to meet such delivery or performance dates In the event that Government furnished property is not delivered to the Contractor by such time or times the Contracting Officer shall upon timely written request made by the Contractor, make a determination of the delay if any occasioned the Contractor thereby and shall equitably adjust the delivery or performance dates or the contract price or both, and any other contractual provision affected by any such delay Except for Government furnished property furnished as is in the event that Government furnished property is received by the Contractor in a condition not suitable for its intended use the Contractor shall upon receipt thereof, notify the Contracting Officer of such fact and as directed by the Contracting Officer either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications Upon completion of (i) or (ii) above the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price or both, and any other contractual provision effected by the return disposition repair or modification The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government furnished property or delivery of such property in a condition not suitable for its intended use

(b) *Changes in Government-furnished Property*

(1) By notice in writing the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract or (ii) substitute other Government owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal shipping and disposal of property covered by such notice

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above or any withdrawal of authority to use property provided under any other contract or lease which property the Government had agreed in the Schedule to make available for the performance of this contract the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease substitution or withdrawal in accordance with the procedures provided in the 'Changes" clause of this contract.

(c) *Title*

(1) Title to all property furnished by the Government shall remain in the Government

(2) Notwithstanding subparagraph (1) above title to equipment purchased with funds available for research having an acquisition cost of less than $1 000, shall vest in the Contractor upon acquisition or as soon thereafter as feasible provided that the Contractor shall have obtained approval of the Contracting Officer prior to acquisition of such property

7-602 21 *Convict Labor* In accordance with 12-203, insert the clause in 7-104 17

7-602 22 *Equal Opportunity* In accordance with 12-807 1, insert applicable clause in 7-103 18

7-602 23 *Labor Standards Provisions*

(a) In accordance with 18-703, insert the following clauses:

(i) *Davis Bacon Act*

DAVIS-BACON ACT (40 U.S C 276a to a-7) (1984 JAN)

(a) *Minimum Wages*

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics, subject to the provisions of paragraph (a)(4) of this clause; also regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; *Provided,* That the employer's payroll records accurately set forth the time spent in each classification in which the work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(2) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors

at the site of the work in a prominent and accessible place where it can be easily seen by the workers

(2)(A) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, when appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U S. Department of Labor, Washington, D.C 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140)

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, when appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer, or will notify the Contracting Officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(D) The wage rate (including fringe benefits, when appropriate) determined pursuant to subparagraphs (a)(2)(B) and (a)(2)(C) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit, or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(End of clause)

(ii) *Contract Work Hours and Safety Standards Act—Overtime Compensation*

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327-333) (1984 JAN)

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) *Overtime Requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is greater.

(b) *Violation; Liability for Unpaid Wages; Liquidated Damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be

liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in paragraph (a) of this clause, in the sum of ten dollars ($10.00) for each calendar day for which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the provisions set forth in paragraph (a) of this clause.

(c) *Withholding for Unpaid Wages and Liquidated Damages.* The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable because of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower-tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

(iii) *Apprentices and Trainees*

APPRENTICES AND TRAINEES (1984 JAN)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rates for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a

person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (when appropriate) to be eligible for probationary employment as an apprentice The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed When a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid for the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination In the event the Bureau of Apprenticeship and Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the

U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination, unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal Employment Opportunity.* The utilization of apprentices, trainees and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

(iv) *Payrolls and Basic Records*

PAYROLLS AND BASIC RECORDS (1984 JAN)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26979

contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid Whenever the Secretary of Labor has found under paragraph (a)(4) of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs (Approved by the Office of Management and Budget under OMB control numbers 1215-0140 and 1215-0017.)

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause This information may be submitted in any form desired Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U S Government Printing Office, Washington, D.C 20402 The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors (Approved by the Office of Management and Budget under OMB control number 1215-0149)

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor, or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) that the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) that each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) that each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5 12

(End of clause)

(v) *Compliance With Copeland Act Regulations*

COMPLIANCE WITH COPELAND ACT REGULATIONS (1984 JAN)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

(vi) *Withholding.*

WITHHOLDING (1984 JAN)

The Contracting Officer shall, upon his or her own action, or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Davis-Bacon Act prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

(vii) *Subcontracts*

SUBCONTRACTS (1984 JAN)

The Contractor or subcontractor shall insert in any subcontracts the clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination - Debarment," "Disputes Concerning Labor Standards," "Compliance With Davis-Bacon and Related Acts Requirements," and "Certification of Eligibility," and such other clauses as

the Contracting Officer may by appropriate instructions require; and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The Prime Contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the contract clauses cited above

(End of clause)

(viii) *Contract Termination—Debarment*

CONTRACT TERMINATION—DEBARMENT (1984 JAN)

A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Compliance With Davis-Bacon and Related Acts Requirements," and "Certification of Eligibility," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5 12

(End of clause)

(ix) *Disputes Concerning Labor Standards*

DISPUTES CONCERNING LABOR STANDARDS (1984 JAN)

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

(x) *Compliance With Davis-Bacon and Related Acts Requirements.*

COMPLIANCE WITH DAVIS-BACON AND RELATED ACTS REQUIREMENTS (1984 JAN)

All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(End of clause)

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26981

(x1) *Certification of Eligibility*

CERTIFICATION OF ELIGIBILITY (1984 JAN)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5 12(a)(1)

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5 12(a)(1)

(c) The penalty for making false statements is prescribed in the U.S Criminal Code, 18 U S C 1001.

(End of clause)

(b) In the case of construction contracts with a State or political subdivision thereof, in accordance with 18-703 3, preface the clauses required by (a) above with the following provision

The Contractor agrees to comply with the requirements of the Contract Work Hours Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

(c) Pursuant to 29 CFR 5 5(c), the following clause shall be used, in addition to the clause in (a)(ii) above entitled "Contract Work Hours and Safety Standards Act - Overtime Compensation," in any contract subject only to the Contract Work Hours and Safety Standards Act, and not to any other statute cited in 29 CFR 5 1:

PAYROLLS AND BASIC PAYROLL RECORDS (1984 JAN)

(a) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the contract work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid

(b) The records to be maintained under paragraph (a) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor The Contractor or subcontractor will permit such representatives to interview employees during working hours on the job

(c) The Contractor shall insert paragraphs (a) through (c) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(End of clause)

7-602 24 *Nondomestic Construction Material* When a determination has been made that certain construction materials may be used without regard to country of origin, the following clause shall be included in the contract, and the excepted items shall be listed therein

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCT)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below:

[*Insert list here*]

(End of clause)

When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection

7-602 25 *Gratuities* In accordance with 7-104 16, insert the clause therein

7-602 26 *Utilization of Small Business and Small Disadvantaged Business Concerns* In accordance with 1-707 3, insert one or more of the clauses in 7-104 14

Part 7— Patent Rights Under Government Contracts

9-700 Scope of Part. This Part prescribes contract clauses and instructions which define and implement the policy of the Department of Defense with respect to inventions made in the course of experimental, developmental, or research work performed under Government contracts.

9-701 Patent Rights Under Contracts Involving Research and Development With Other Than Small Business Firms and Domestic Nonprofit Organizations This paragraph sets forth policies and procedures, and prescribes contract clauses with respect to inventions made in the course of or under a contract or subcontract entered into by or for the benefit of the Government with other than small business firms and domestic nonprofit organizations where a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work. See 9-702 for policies, procedures and a prescribed contract clause relating to contracts and subcontracts awarded to small business firms and domestic nonprofit organizations

9-701.1 *General*

(a) *Introduction* On August 23, 1971, the President issued a Statement of Government Patent Policy (36 Fed Reg 16887, August 26, 1971) applicable to all executive departments and agencies, revising a prior Statement of Policy (28 Fed Reg 10943, October 12, 1963) Essentially, the goals of this Statement are to provide criteria for determining the allocation of rights in inventions resulting from federally sponsored research and development contracts, to promote their expeditious development so that the public can benefit from early civilian use of the inventions and to assure their continued availability In applying this regulation, both the need for incentives to draw forth private initiatives and the need to promote healthy competition in industry must be weighed

(b) *Applicable Statutes* Except to the extent that the Department of Defense may be governed by specific statutes or by any treaty or agreement between the United States and any foreign country, inconsistent with this paragraph 9-701, the provisions of this paragraph 9-701, including the use of the prescribed clauses shall be followed

(c) *Co sponsored, Cost Sharing or Joint Venture Research* The provisions of this paragraph 9-701 are not mandatorily applicable to co sponsored, cost sharing or joint venture research when it is determined that in the course of the work under the contract, the contractor will be required to make a substantial contribution of funds, facilities, or equipment to the principal purpose of the contract

9-701.2 *Policy*

(a) The Government shall normally acquire or reserve the right to acquire the principal or exclusive rights throughout the world in and to any inventions made in the course of or under a contract when:

(i) a principal purpose of the contract is to create, develop, or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations; or

(ii) a principal purpose of the contract is for exploration into fields which directly concern the public health, public safety, or public welfare; or

(iii) the contract is in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the retention of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position; or

(iv) the services of the contractor are:

(A) for the operation of a Government owned research or production facility; or

(B) for coordinating and directing the work of others

In exceptional circumstances the contractor may retain greater rights than a nonexclusive license at the time of contracting when the Secretary or his designee determines that such action will best serve the public interest Greater rights may also be retained by the contractor after the invention has been identified when it is determined that the retention of such greater rights is consistent with the intent of this paragraph (a) and is either a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application or that the Government's contribution to the invention is small compared to that of the contractor. When an identified invention made in the course of or under the contract is not directly related to a principal purpose of the contract, greater rights may also be retained by the contractor under the criteria of (c) below

(b) In other situations, where the purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government, and the work called for by the contract is in a field of technology in which the contractor has acquired technical competence (demonstrated by factors such as know how, experience, and patent position) directly related to an area in which the contractor has an established nongovernmental commercial position, the contractor shall normally retain the principal or exclusive rights throughout the world in and to any resulting inventions

(c) When the commercial interests of the contractor are not sufficiently established to be covered by the criteria specified in (b) above, the allocation of rights shall be made by the contracting officer after the invention has been identified, in a manner deemed most likely to serve the public interest as expressed in this policy, taking particularly into account the intentions of the contractor to bring the invention to a point of commercial application and the guidelines of (a) above However, the Secretary or his designee may prescribe by regulation, special situations where the public interest in the availability of the inventions would best be served by permitting the contractor to retain at the time of contracting greater rights than a nonexclusive license

(d) In the situations specified in (b) and (c) above, when two or more potential contractors are judged to have presented proposals of equivalent merit, willingness to grant the Government principal or exclusive rights in resulting inventions, will be an additional factor in the evaluation of the proposals

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26983

5 Is the contract for procurement in a field of science or technology in which the Government has been the principal developer of the field?**
(See DAR 9-701 2(a)(iii))
(Yes) ... (No) ....

If 'Yes,' briefly describe such field

6 If the answer to either 4 or 5 is "Yes, would the contractor be likely to get a preferred or dominant commercial position in that field if he were permitted to retain title to inventions made under the contract?
(See DAR 9-701 2(a)(iii))
(Yes) (No)—

Explain the answer

7 Does the contract require that the contractor both (i) provide service for operation of a Government-owned research or production facility and (ii) perform experimental developmental or research work at that facility?
(See DAR 9-701 2(a)(iv)(A))
(Yes) (No) ...

8 Does the contract require the contractor to coordinate and direct the work of others (as distinguished from the normal contractor subcontractor relationship) which might result in a potential organizational conflict of interest?
(See DAR 1-113 2; Appendix G; and 9-701 2(a)(iv)(B))
(Yes) (No) ....

If "Yes explain briefly why such a potential conflict of interest is considered to exist

(Typed Name Office and Signature of Person Completing This Form)

The Patent Rights (Acquisition by the Government) clause DAR 7-302 23(a), will .. / will not..... be used in the solicitation
(Give reasons for determination)

(Typed Name and Signature of Contracting Officer or Representative)

*The contract or series of contracts need not necessarily require delivery of the end item The end item may be a product a process or data

**The mere fact that the Government has been or is the principal funder or developer of a specific piece of hardware does not necessarily make the Government the principal funder or developer in a field of science or technology which encompasses the piece of hardware

(c) *Record of Decisions.* The Presidential Statement on Government Patent Policy states that ' The Federal Council for Science and Technology shall continue to acquire data from the Government agencies on the disposition of

patent rights to inventions resulting from Federally financed research and development and on the use and practice of such inventions to serve as bases for policy review and development " The Presidential Statement also states that "Each agency shall record the basis for its actions with respect to inventions and appropriate contracts under this statement " Accordingly, procuring activities shall record and maintain in a readily available manner the bases for each of the following actions: (i) selection of a Patent Rights clause under 9-701 3(a), including the Pre solicitation Patent Rights Documentation Checklist and the DD Form 1564, if used; (ii) finding of exceptional circumstances under 9-701 2(a); (iii) retention of greater rights determinations pursuant to 9-703 6; and (iv) determinations under 9-701 3(d) and (e) Contractors shall not be required to record and maintain the bases for such actions

(d) *License for Government, States and Municipal Governments* The policy set forth in 9-701 2(h)(i) provides that the Government shall normally acquire a paid up license in any invention resulting from the contract for the Government, States and municipal government Paragraph (c)(i) of the Patent Rights clauses in 7-302 23(a), (b) and (c) sets forth such a license When the Secretary determines pursuant to 9-701 2(h)(i) that it would not be in the public interest in a particular contracting situation to acquire a license for the Government of the scope in paragraph (c)(i), this paragraph may be appropriately modified

(e) *Right to Sublicense Foreign Governments* Paragraph (c) of the Patent Rights clauses in 7-302 23(a), (b) and (c) does not provide the Government with the right to grant a sublicense, in any inventions resulting from the contract, to any foreign government pursuant to any treaty or agreement However, where the acquisition of patent rights for the benefit of any foreign government is required under a treaty or executive agreement, paragraph (c) of the selected clause may be appropriately modified to the extent necessary for compliance therewith under the authority of 1-109 4

(f) *Minimum Rights to Contractor* The minimum rights which normally may be retained by a contractor in any invention made by the contractor in the course of or under a contract upon which a patent application has been filed is a revocable, nonexclusive, royalty free license as specified in the patent rights clause

(g) *Subcontracts*

(1) The policy expressed in 9-701 2 is applicable to all contract levels Hence, a contractor awarding a subcontract and a subcontractor awarding a lower tier subcontract, which has as a purpose the conduct of experimental, developmental or research work generally shall determine the DAR patent rights clause to be included therein which is consistent with the expressed policy When conditions require, the contracting officer may direct a contractor to include a particular patent rights clause in any subcontract

(2) The Patent Rights clause in 7-302 23(h) shall be included in all subcontracts, regardless of tier, with small business firms and domestic nonprofit organizations having as a purpose of the subcontract the conduct of experimental, developmental or research work. See 9-702 relating to patent rights under contracts and subcontracts awarded to small business firms and domestic nonprofit organizations.

(3) Contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the inventions resulting from subcontracts

(h) *Publication of Invention Disclosures* The Patent Rights clauses of 7-302 23(a), (b) and (c) specify that the Government may duplicate and disclose disclosures of Subject Inventions, and all other reports and papers required to be furnished under the clauses However, the public disclosure of information in such documents before the first filed application (whether domestic or foreign) may create a bar to the patenting of the invention in foreign countries Accordingly, to protect the mutual interests of the Government and its contractors in obtaining foreign patents on Subject Inventions, the Government and contractors should cooperate in deferring publication of such documents when practical until the filing of the first application and use their best efforts toward prompt filing when publication is imminent

9-701 4 *Reserved*

9-701 5 *Reserved*

9-701 6 *Clause for Foreign Contracts* A patent rights clause shall be included in every contract having as a purpose the conduct of experimental, developmental or research work which is to be performed outside the United States, its possessions, or Puerto Rico Except as provided in 9-701 7 and 9-701 8, the clauses authorized in accordance with 9-701 2 and 9-701 3 may be used or replaced by any other clause tailored to meet requirements peculiar to foreign procurement *provided* the replacement clause incorporates the principles of the clause being replaced

9-701 7 *Contracts Relating to Atomic Energy* In all research and development contracts relating to the production or utilization of special nuclear material or atomic energy, the paragraph in 7-302 23(e) shall be added as a final paragraph to the applicable patent rights clause of 7-302 23(a), (b) or (c) included in such contracts

9-701.8 *Contracts Placed for Other Government Agencies*

(a) *Patent Rights Clause*

(1) Other Government agencies may from time to time request the Departments to place contracts on behalf of the agencies Such requests will state whether or not an agency clause providing for property rights in inventions is required, and the request should have attached thereto the appropriate clause desired by the agency If such clause is not furnished by the agency, it must be obtained from the agency and be included in the contract The following rules amplify the use of patent rights clauses in such contracts:

(i) If the request states that an agency clause is required in any resulting contract and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then the agency clause and no other patent rights clause shall be included in the contract;

(ii) If the request states that an agency clause is required in any resulting contract and the work to be performed under the contract is severable and is only in part for the agency, then the work which is on behalf of the agency shall be identified in the contract and the agency clause shall be made applicable thereto That portion of the work for a Department shall likewise be identified and the appropriate DAR patent rights clause shall be made applicable to such portion if a patent rights clause is required by this Regulation;

(iii) If the request states that an agency clause is not required in any resulting contract and the work to be performed under the contract is not wholly on behalf of the agency, then an appropriate DAR patent rights clause shall be used if a patent rights clause is required by this Regulation

(iv) If the request states that an agency clause is not required in any resulting contract and such contract is wholly on behalf of the agency, then no patent rights clause shall be included in such contract

(2) The price of any contract described in (1) above shall in no event be increased by reason of the inclusion of any patent rights clause in the contract

(b) *Deviations* No deviations shall be made under 1-109 in the clause of any other agency providing for property rights in inventions except with the prior approval of the agency Requests for such deviations, whether individual or blanket, shall be processed in accordance with 1-109 3

9-701 9 *Contracts Relating to Space* In order that inventions arising out of Department of Defense sponsored space research and development may be available for use for the benefit of the general public in communications satellite systems, whether such systems are operated by or for the Government or by private enterprise for the transmission of commercial or Government traffic, the paragraph in 7-302 23(g) shall be substituted for paragraph (c)(1) of the Patent Rights clause in 7-302 23(a), (b) and (c) and for the instructional paragraph set forth in (3)(1) of 9-703 6(e) when a greater domestic rights determination is made in a situation in which the clause in 7-302 23(a) or (c) is applicable in any contract having as one of its purposes the performance of research and development work under a space program, project, or task, except as provided in 9-701 8

9-702 Patent Rights Under Contracts Involving Research and Development with Small Business Firms and Domestic Nonprofit Organizations. This paragraph sets forth policies and procedures and prescribes a contract clause with respect to inventions made in the performance of work under a contract or subcontract entered into by or for the benefit of the Government with small business firms and domestic nonprofit organizations where a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26985

See 9-701 for policies, procedures and prescribed contract clauses relating to contracts and subcontracts awarded to other than small business firms and domestic nonprofit organizations

9-702 1 *Policy* Public Law 96-517 (35 U S C 200 et seq), December 12, 1980, governs the distribution of rights in inventions made by small business firms and domestic nonprofit organizations under funding agreements with Federal agencies Congress provided that this act takes precedence over any other acts which would require a disposition of rights in Subject Inventions of small business firms or domestic nonprofit organizations in a manner inconsistent with the new act Additionally, the new act will take precedence over any future act unless the future act cites the new act and provides that it will take precedence This policy is effective July 1, 1981, and will be applicable to all contracts with small business firms and domestic nonprofit organizations executed on or after that date This policy may also be made applicable by prior approval of the Secretary to any Subject Inventions which are "made" in the performance of contracts which were awarded prior to July 1, 1981, to small business firms or domestic nonprofit organizations, unless prohibited by law

9-702.2 *Definitions* As used in this paragraph:

(a) *Contractor* means any person, small business firm or domestic nonprofit organization

(b) *Invention* means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code.

(c) *Subject Invention* means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a contract

(d) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms

(e) *Made*, when used in relation to any invention, means the conception or first actual reduction to practice of such invention

(f) *Small Business Firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U S C 632) and implementing regulations of the Administrator of the Small Business Administration For the purpose of this paragraph,

the size standard for small business concerns involved in Government procurement, contained in 13 CFR 121 3-8, and subcontracting contained in 13 CFR 121 3-12, will be used (See 1-701 1)

(g) *Domestic Nonprofit Organization* means universities and other institutions of higher education, or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U S C 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U S C Section 501(a)), or any domestic nonprofit scientific or educational organization qualified under a state nonprofit organization statute

9-702 3 *Procedures*

(a) *Use of the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) Clause*

(1) Each contract awarded to a small business firm or domestic nonprofit organization, which has as a purpose the performance of experimental, developmental, or research work, shall contain the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) (1984 JAN) clause set forth in 7-302 23(h), except that the contract may provide otherwise—

(i) when the contract is for the operation of a Government-owned research or production facility;

(ii) in exceptional circumstances when it is determined by the Secretary that restriction or elimination of the right to retain title to any Subject Invention will better promote the policy and objectives of chapter 38 of title 35 of the United States Code; or

(iii) when it is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any Subject Invention is necessary to protect the security of such activities

(2) Any determination under (ii) above will be in writing and accompanied by a written statement of facts justifying the determination. The statement of facts will

contain such information as is deemed relevant and, as a minimum, will (i) identify the small business firm or domestic nonprofit organization involved, (ii) describe the extent to which the right to retain title to a Subject Invention is restricted or eliminated, (iii) state the facts and rationale supporting the action, (iv) provide supporting documentation for those facts and rationale, and (v) indicate the nature of any objections to the action and provide any documentation in which those objections appear A copy of each such determination and written statement of facts will be sent by the Secretary or his designee to the Comptroller General of the United States within 30 days after the award of the applicable contract In cases of determinations applicable to contracts with small business firms, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration

(3) To qualify for the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) clause, the small business firm or domestic nonprofit organization must state in writing that it qualifies as a small business firm or domestic nonprofit organization as defined in 9-702.2(f) and (g). If the contracting officer has reason to question the status of the small business firm or domestic nonprofit organization under the definitions in 9-702 2(f) and (g), he may file a protest in accordance with 13 CFR 121.3-5 in regard to the status of the small business firm, or he may require the domestic nonprofit organization to furnish evidence to establish that it satisfies the requirements of the definition in 9-702.2(g)

(4) Whenever the use of the Patent Rights (Small Business Firm or Domestic Nonprofit Organization) clause is not appropriate, the procedures of 9-701.3 shall be followed in selecting an appropriate patent rights clause for inclusion in a contract or subcontract.

(b) *Right to Sublicense Foreign Governments and International Organizations.* When the head of the contracting activity determines at the time of contracting with a small business firm or domestic nonprofit organization that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, a sentence will be added at the end of paragraph (b) of the Patent Rights clause in 7-302.23(h) as follows:

This license will include the right of the Government to sublicense foreign governments and international organizations pursuant to the following treaties or international agreements: _____; or pursuant to any future treaties or agreements with foreign governments or international organizations

(c) *Minimum Rights to Contractor*

(1) Paragraph (e) of the Patent Rights clause in 7-302.23(h) specifies the minimum rights retained by the contractor in Subject Inventions When the Federal Government acquires title to a Subject Invention, the contractor will retain a revocable, nonexclusive, royalty-free license throughout the world in the Subject Invention The contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time contract was awarded. The license is transferable only with the approval of the contracting officer except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention pursuant to an application for an exclusive license submitted in accordance with departmental licensing regulations This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with the departmental licensing regulations, any decision concerning the revocation or modification.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26987

(d) *Subcontracts*

(1) The Patent Rights clause in 7-302 23(h) will be included in all subcontracts, regardless of tier, with small business firms and domestic nonprofit organizations having as a purpose of the subcontract the conduct of experimental, developmental, or research work. All subcontracts, regardless of tier, with other than a small business firm or domestic nonprofit organization having as a purpose of the subcontract the conduct of experimental, developmental, or research work will include one of the patent rights clauses required by 9-701.

(2) Contractors will not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the inventions resulting from subcontracts

(e) *Publication or Release of Invention Disclosures.*

(1) The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent When the contractor intends to file patent applications, the contracting activity will use reasonable efforts to comply with any written request to restrict its publication of information disclosing the invention in order to protect the patent rights in the invention The contractor must specify the reports and documents to be restricted and the period within which the patent application will be filed.

(2) As provided in 35 U S C. 205, Federal agencies are authorized to withhold from disclosure to the public information disclosing any Subject Invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), for a reasonable time in order for a patent application to be filed Furthermore, Federal Agencies are not required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office

(f) *Reporting on Subject Inventions and Subcontracts*

(1) The contracting activity may require the contractor to furnish a copy of each subcontract containing a patent rights clause

(2) The clause in 7-302 23(h) requires the contractor to submit interim and final invention reports, preferably on DD Forms 882, listing Subject Inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work

(3) The clause in 7-302 23(h) requires the contractor to submit information regarding the filing date, serial number and title, and upon request, a copy of the

patent application (including an English-language version if filed in a language other than English), and patent number and issue date, for any Subject Invention in any country for which the contractor has retained title

(4) The clause in 7-302 23(h) requires the contractor, within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure, if the application has been previously filed, to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file

(5) The contracting activity may require the contractor to submit periodic reports on the utilization of a Subject Invention, or on efforts at obtaining utilization, that are being made by the contractor or its licensees or assignees

9-702 4 *Reserved.*

9-702.5 *Reserved*

9-702 6 *Retention of Rights by Inventor* In contracts with small business firms or domestic nonprofit organizations, if the contractor does not elect to retain title to a Subject Invention, the contracting activity may consider and, after consultation with the contractor, may grant requests for retention of rights by the inventor Retention of rights by the inventor will be subject to the same conditions as retention of rights by the contractor

9-702 7 *Government Assignment to Contractor of Rights in Invention of Government Employee* In any case when a Federal employee is a coinventor of any invention made under a contract with a small business firm or domestic nonprofit organization, the military department employing such coinventor may transfer or reassign whatever right it may acquire in the Subject Invention from its employee to the contractor, subject to the conditions of 35 U S C 200 et seq

9-702 8 *Exercise of March-In Rights* The following procedures shall govern the exercise of the march-in rights set forth in 35 U S C. 203 and in paragraph (j) of the clause in 7-302 23(h):

(i) Whenever the contracting officer receives information that he believes might warrant the exercise of march-in rights, before initiating any march-in proceeding he shall notify the contractor in writing of the information and request informal written or oral comments from the

contractor. In the absence of any comments from the contractor within 30 days, the contracting officer may, at his discretion, proceed to exercise the march-in rights If a comment is received, whether or not within 30 days, then the contracting officer shall, within 60 days after he receives the comment, either initiate the march-in or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified

(ii) A determination to exercise march-in rights in cases where the Subject Invention was made under a contract will be made initially by the contracting officer in accordance with the procedures of the Contract Disputes Act In such cases, the procedures of the Contract Disputes Act will apply except that any portion of a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees The contractor, assignee, or exclusive licensee will not be required to grant a license and the Government will not grant any license until after either (1) 90 days from the date of the contractor's receipt of the contracting officer's decision, if no appeal of the decision has been made to the Armed Services Board of Contract Appeals, or if no action has been brought under 41 U.S.C. 609 within that time; or (2) the board or court, as the case may be, has made a final decision in cases when an appeal or action has been brought within 90 days of the contracting officer's decision.

[The next page is 9;79.]

9-702 9 *Licensing of Background Patent Rights to Third Parties.*

(a) A contract with a small business firm or domestic nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not Subject Inventions unless such provision has been approved by the Secretary and a written justification has been signed by the Secretary. Any such provision will clearly state whether the licensing may be required in connection with the practice of a Subject Invention, a specifically identified work object, or both The Secretary may not delegate the authority to approve such provisions or to sign justifications required for such provisions

(b) The Government will not require the licensing of third parties under any such provision unless the Secretary determines that the use of the invention by others is necessary for the practice of a Subject Invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the Subject Invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given prompt notification of the determination by certified or registered mail.

9-703 Administration of Patent Rights Clauses

9-703 1 *Patent Rights Follow up* It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public, and to enable the Government, the contractor and the public to avoid unnecessary payment of

royalties and to defend themselves against claims and suits for patent infringement To attain these ends, contracts having patent rights clauses should be so administered that:

(i) inventions are identified, disclosed and reported as required by the contract clauses;
(ii) the rights of the Government in such inventions are established;
(iii) when appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;
(iv) the rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and
(v) expeditious commercial utilization of such inventions is achieved

9-703 2 *Follow up by Contractor* Each contractor shall establish and maintain effective procedures to ensure that Subject Inventions are timely identified, disclosed and, when appropriate, patent applications filed so that the Government's rights therein are established and protected

9-703 3 *Follow up by Government*

(a) Each Department shall maintain follow up' procedures to assure that Subject Inventions are identified, disclosed, and when appropriate, patent applications filed, and that the Government's rights therein are established and protected Follow up activities for contracts which include a clause referenced in 9-701 7 or 9-701.8 shall be coordinated with the appropriate agency

(b) The contracting officer administering the contract shall be responsible for receiving invention disclosures, reports confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause When the contractor fails to furnish documents or information called for by the clause within the time required by the clause, the contracting officer administering the contract shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall take appropriate action to secure compliance Invention disclosures reports confirmatory instruments notices, requests, and other documents and information relating to patent rights clauses shall be sent by the contracting officer administering the contract to the procuring Department for appropriate action

(c) The procuring Department shall establish a method to detect and correct failures by the contractor to comply with his obligations under the patent rights clauses such as failures to disclose and report Subject Inventions both before and after the contract otherwise has been performed This effort should be directed primarily towards contracts which because of the nature of the research development or experimental work or the large dollar amount spent on such work, are more likely to result in Subject Inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations Other contracts should be spot-checked when feasible As a minimum appropriate follow up activities shall include the investigation or review of selected contracts or contractors by an individual or team qualified in patent and technical matters

award of a new contract, or the increase in quantities or scope of work under existing contract, totaling $5,000,000 or more to be performed at a facility involved in an actual or imminent work stoppage The Headquarters Labor Relations Office of the Department concerned, will monitor information concerning proposed contract awards by using standard Departmental reports of prior notification of contract awards The reports will be used to initiate consultation with the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency After such consultation, a determination will be made whether the announcement of the contract award would have a detrimental affect on labor management negotiations If no mediation agency is involved in the labor-management negotiations, the Labor Relations Office at Departmental level will provide advice in the above determination; or

(iv) seeking to obtain such voluntary agreement between management and labor as will permit, notwithstanding the general continuance of the dispute, uninterrupted procurement of military supplies and services, *provided* such activity does not involve the Department in the merits of a labor difference or dispute

12-101 2 *Contract Pricing and Administration*

(a) Nothing in 12-101 1 should be construed to relieve a contracting officer from his responsibility to achieve efficient contract pricing and administration

(b) Contractor labor policies and compensation practices, whether or not they are provided for in labor management agreements, are not an acceptable basis for allowances of cost in cost reimbursement-type contracts or for recognition of costs in pricing fixed price type contracts if and insofar as they result in unreasonable costs to the Government Section XV, particularly 15-205 6(a) explains that the term "unreasonable costs" includes costs resulting from practices that are discriminatory against the Government or unwarranted in the context of the particular contract work

(c) In some cases, labor disputes may give rise to work stoppages which cause delays in the timely performance of important contracts The contracting officer should impress on the contractor that he will be held accountable for delays that are reasonably avoidable It should be emphasized that the standard contract clauses dealing with default excusable delays etc , do not relieve the contractor for delays that are within his or his subcontractors' control such as may be the case with delays precipitated by an unfair labor practice of the contractor In addition a delay caused by a strike which the contractor could not reasonably prevent can be excused only to the extent that it does not go beyond the point at which a reasonably diligent contractor could resume the delayed performance by ending the strike by such means as:

(i) filing a charge with the National Labor Relations Board so as to permit the NLRB to seek injunctive relief in court;
(ii) recourse to the procedures of the Federal Mediation and Conciliation Service or other available Government procedures; or
(iii) use of the National Joint Board for the Settlement of Jurisdictional Disputes or other private Boards or organizations for the settlement of disputes

(d) Strikes will normally result in changing patterns of cost incurrence Certain costs may actually increase because of a strike, *e g* , guard services and fees paid to attorneys; other costs incurred during a strike may not fluctuate *i e* , "fixed costs" such as rent and depreciation, but because of reduced production become a higher proportion of the unit cost of items produced All costs incurred during a strike shall be carefully examined (i) so that acceptance of costs during a strike period sustains the Government's position of impartiality concerning the strike (see 12-101 1(c)), and (ii) as to allowability, reasonableness, and allocability in accordance with Section XV, Part 2, to assure recognition of only those costs necessary for the performance of the contract in accordance with the Government's essential interest

(e) The normal and regular functions of inspection at the plant of a military supplier, as required during the performance of a contract, shall be continued without regard to the existence at such plant of a labor dispute, strike, or picket line Inspection should not be performed if there is reason to believe that the physical safety of the individual inspector may be endangered thereby. It is emphasized that inspection personnel in the discharge of their duties, consistent with the policy of 12-101 1(c), shall refrain from taking or expressing a position upon the merits of any dispute between labor and private management

12-101 3 *Reporting of Labor Disputes*

(a) Any labor dispute affecting defense procurement will be reported by the Contract Administration Office (CAO) The CAO shall obtain and transmit information relating to potential or actual labor disputes which may interfere with performance of any contract within his cognizance

(b) When an interference is likely to occur, the CAO shall notify the purchasing offices, their Heads of Contracting Activities and their Departmental headquarters labor relations office (for the Army, the Labor Advisor, OASA (RD&A); for the Navy, Chief of Naval Material, Attn: Labor Relations Advisor (MAT 08C4L); for the Air Force, Headquarters USAF, RDC-LA, Attn: Special Assistant for Labor Affairs; for the Defense Logistics Agency, HQ DLA CAS Labor Advisor, Attn: DLA-AP, and in addition for DLA procurements one copy to DLA-PL; for the National Security Agency, Director of Procurement; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, the Chief, Office of Procurement; and for the Defense Mapping Agency, Staff Director of Logistics) Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices

(c) Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant change occurs in the dispute situation This reporting requirement is assigned RCS DD I&L (AR) 1153

12-101.4 *Impact of Labor Disputes on Defense Programs*

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

of vessels and cost plus incentive fee contracts having a cost incentive which provides for a swing from target fee of at least plus or minus 3% and a contractor's share of cost of at least 10% Whenever this clause is used, the procedural requirements of this 12-102 4 shall be followed

(b) An amount for overtime premiums at Government expense may be included in paragraph (d) of the *Payment for Overtime Premiums* clause when the use of overtime has been approved by an official designated as provided in (c) below Only overtime premiums for work in those departments, sections, etc , of the contractor's plant which have been individually evaluated and the necessity for overtime confirmed, will be considered for approval, and then only for overtime premiums not reimbursable under the exceptions contained in paragraph (a) (ii) of the clause Approval may be granted when such official determines in writing that overtime is necessary:

(i) to meet delivery or performance schedules, and such schedules are determined to be consistent with essential military objectives;

(ii) to make up for delays beyond the control and without the fault or negligence of the contractor; or

(iii) to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way

(c) When, during negotiation, it becomes apparent that overtime will be required during the performance of the contract and the contract will contain the *Payment for Overtime Premiums* clause, the PCO shall secure from the contractor a request substantially in accordance with the request procedures in paragraph (c) of such provision for all overtime to be used during the life of the contract, to the extent that it can be estimated with reasonable certainty If the contemplated overtime premium could affect the costing of other work performed by the contractor or is significant in amount, the PCO may avail himself of the advisory services of the cognizant Defense Contract Audit Agency office to determine the proper accounting treatment of such premium The PCO shall request from the appropriate official designated, as provided in (c) below, approval for overtime premiums at Government expense Upon receipt of such approval, the PCO shall complete paragraph (d) of the clause

(d) During contract performance, requests for overtime, submitted pursuant to the *Payment for Overtime Premiums* clause, will be submitted to the ACO who shall evaluate the need for such overtime and forward the request, with his comments, as expeditiously as possible to the PCO Thereupon, the PCO, if he desires that the requested overtime be approved in whole or in part, shall, unless a prior authorization is sufficient to cover the overtime requested, request the approval of the appropriate official designated as provided in (c) below and, as expeditiously as possible, modify paragraph (d) of the clause to reflect the approval

(e) The Deputy Assistant Secretary for Acquisition, Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; the Deputy Chief of Naval Material (Procurement), for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; the Executive Director for Contracting, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26931

Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, officers and civilian officials for the purpose of approving overtime premiums at Government expense Such approval may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances When two or more purchasing offices have current contracts at a single facility, and the approval of overtime by one purchasing office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels Ordinarily, in the absence of evidence to the contrary, a purchasing office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any con tract of another purchasing office

12-102 5 *Contract Administration*

(a) The cost of overtime premiums under the *Payment for Overtime Premi ums* clause and all overtime premiums under cost reimbursement type contracts which do not contain the clause, shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under the contract, in accordance with 15-201

(b) In administration of contracts under which overtime has been approved pursuant to 12-102 4, the ACO and the cognizant audit activity shall review periodically the use of such overtime to assure that it is reasonable and properly allocable to work under the contract

12-102 6 *Payment of Overtime Premiums Clause* The clause in 7-203 27 shall be used when required by 12-102 4(a)

12-102 7 *Construction Contracts* See 18-111 regarding expediting actions involving additional costs

12-103 Federal and State Labor Requirements

12-103 1 *General* The Department of Defense shall cooperate and encourage contractors to cooperate, to the fullest extent practicable, with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor

12-103 2 *Applications for Relaxation of Requirements*

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(i) the interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such labor requirements applicable to the contract involved;

(ii) the required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(iii) there is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(iv) there is no practicable possibility of taking remedial action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(v) the apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(vi) the granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesirable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Labor Advisor, OASA (RD&A) for the Army; Chief of Naval Material for the Navy; HQUSAF (RDC-LA, Attn: Special Assistant for Labor Affairs) for the Air Force; Directorate of Contracting, DLA-PL, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; Chief, Contract Management Division (Code 260), for the Defense Communications Agency; Chief, Office of Procurement, for the Defense Nuclear Agency; and Staff Director of Logistics, for the Defense Mapping Agency Such requests shall contain the following information:

(i) the facilities and services involved and affected;

(ii) provision(s) of law which require relaxation;

(iii) criticality or relative scarcity of the material;

(iv) circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(v) remedial action being taken by the manufacturer (*e g*, training, recruiting, more effective utilization of manpower);

(vi) the most limited relaxation of the requirement necessary for completion of the specific work; and

(vii) the approximate period of time required for completion of the work

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon his request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military procurement program

12-104 Reserved

12-105 Reserved

12-106 Supply, Services, or Maintenance Contracts Involving Construction Work. The requirements of statutes, regulations, and determinations establishing construction labor standards are set forth in Section XVIII, Part 7 In many instances, construction items under supply, service, maintenance, research and development, and other nonconstruction contracts are not subject to the requirements of Section XVIII, Part 7, although this is not necessarily always the case simply because the construction work is to be performed under a contract which also calls for nonconstruction work This paragraph 12-106 governs the applica-

bility of those requirements to contracts involving both construction and nonconstruction work

12-106 1 *When Construction Labor Standards and Clauses Are Applicable*

(a) Contracts involving both construction and nonconstruction work are in general subject to the requirements of Section XVIII, Part 7, and must include the appropriate clauses in 7-602 23 if:

(i) the contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(ii) the construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract; and

(iii) the requirements are otherwise applicable to the contract (see 18-701)

(b) Even though the contract contains construction labor clauses pursuant to (a) above, the nonconstruction work under the contract is not subject to those clauses, because they provide that they are applicable to the contract work only to the extent that the work is subject to the labor standards statutes involved

12-106 2 *When Construction Labor Standards and Clauses Are Not Applicable* Construction work is exempt from the requirements of Section XVIII, Part 7, when (i) it is to be performed in support of nonconstruction work, such as manufacturing and furnishing of supplies, and (ii) in the circumstances of the particular case the construction work is so merged with the nonconstruction work, or so fragmented in terms of the locations or time spans in which it is to be performed, that it cannot be segregated as a separate contractual requirement for construction Accordingly, contracts involving both nonconstruction work and this type of construction work are not subject to the requirements of Section XVIII, Part 7

12-107 Labor Standards Enforcement Report.

(a) A semiannual report is required on compliance with and enforcement of the labor standards provisions of the Davis Bacon Act and Contract Work Hours and Safety Standards Act. The reporting periods are 1 October through 31 March and 1 April through 30 September The reports shall be prepared by the contract administration office and will be submitted through channels so as to reach the labor relations advisor of the Headquarters concerned not later than 25 days after the close of the reporting period Within the next five days a report will be submitted by the Headquarters to the Administrator, Wage and Hour Division, Employment Standards Administration, U S Department of Labor, Washington, D C 20210

(b) The report shall contain the following information, as applicable, for construction work subject to the Davis Bacon Act and Contract Work Hours and Safety Standards Act:

(i) Period covered;

(ii) Number of prime contracts awarded;

(iii) Total dollar amount of prime contracts awarded;

12-805 Contract Clauses and Solicitation Provisions Clause and solicitation provisions implementing the EEO program are contained at:

(i) 7-103 18(a) Equal Opportunity clause, used with other than Federally assisted construction;

(ii) 7-103 18(b) Equal Opportunity (Federally Assisted Construction);

(iii) 7-104 22 Equal Opportunity Preaward Clearance of Subcontracts;

(iv) 7-603 60 Affirmative Action Compliance Requirements for Construction;

(v) 7-607 13 Equal Opportunity clause, used with architect - engineer services;

(vi) 7-2003 14(a) Preaward On Site Equal Opportunity Compliance Review;

(vii) 7-2003 14(b)(1)(A) - Certification of Nonsegregated Facilities;

(viii) 7-2003 14(b)(1)(B) Previous Contracts and Compliance Reports;

(ix) 7-2003 14(b)(2) - Affirmative Action Compliance used with non construction affirmative action compliance programs;

(x) 7-2003 14(d) Notice of Requirement for Affirmative Action to Ensure Equal Opportunity; and

(xi) 7-2003 14(c) - Notification of Visa Denial

12-806 Affirmative Action Compliance Programs (AACPs)

12-806 1 *Nonconstruction* Except as provided in 12-808, each prime contractor and each subcontractor with 50 or more employees and (i) a contract or subcontract of $50,000 or more, or (ii) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more is required to develop a written AACP for each of its establishments within 120 days from the commencement of its first such Government contract or subcontract.

12-806 2 *Construction*

(a) Construction contractors are required to meet (i) the contract provision citing affirmative action requirements covering specified geographical areas or projects and (ii) applicable requirements of 41 CFR Part 60-1

(b) Departments shall maintain a listing of specific geographical areas that are subject to affirmative action requirements which specify goals for minorities and women in covered construction trades. Information concerning this listing and additions thereto will be provided to the principally affected contracting offices in accordance with departmental procedures. Any contracting office contemplating a construction project in excess of $10,000 within a geographical area not known to be covered by specific affirmative action goals shall request instructions prior to issuance of a solicitation. Such a request shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; the Director of Contracting and Manufacturing Policy, Headquarters USAF, for the Air Force; Executive Director for Contracting, for the Defense Logistics Agency; Director of Procurement,

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26393

for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency; and the Assistant Director for Administrative Services, for the Defense Civil Preparedness Agency

(c) Contracting officers shall give written notice to the appropriate Assistant Regional Administrator, OFCCP, within 10 working days of award of the contract subject to these affirmative action requirements The notification shall include the name address and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed When requested by the appropriate compliance office the contracting office shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities (see 18-704 1(b)(2).

12-807 Contracting Officer Responsibilities

12-807 1 *Contract Provisions* In all solicitations and contracts, except those exempted by 12-808(b) (f) the contracting officer shall include the applicable clause(s) and solicitation provisions referenced in 12-805 (Note: By operation of the Executive Order the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and this Part to include such a clause whether or not it is physically incorporated in such contracts)

12-807 2 *Determinations (Excluding Construction)*

(a) *Preaward Clearances for Contracts and Subcontracts of $1 Million or More* Except as provided in (2)*c* below, the contracting officer shall request the appropriate OFCCP regional office (see (1)*a*. below) to determine whether a prospective contractor is awardable prior to award of any contract, modification of an existing contract for new effort that would constitute a contract award, issuance of any basic ordering agreement, award of any indefinite delivery contract or letter contract, the estimated amount of which is or is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more.

(1) *Procedure for Requesting Clearances.*

a Preaward clearance for each proposed prime contract and for each known proposed first tier subcontract of $1 million or more shall be requested by the contracting officer directly from the OFCCP Regional Office(s), as will be listed from time to time in Defense Acquisition Circulars. Verbal requests shall be confirmed in writing

b When contract work is to be performed outside the United States with employees recruited within the United States, the preaward review should be requested from the OFCCP regional office serving the area where the contractor's corporate home or branch office is located within the United States, or the corporate location where personnel recruiting is handled, if different from the foregoing In cases where the proposed contractor has no corporate office or location within the United States the preaward action should be based on the location of the recruiting agency, as defined in 12-803(o) in the United States

c. In making a request for preaward clearance, the contracting officer shall furnish the following information:

(i) name, telephone number, and address of the prospective prime contractor, any corporate affiliate thereof at which work is to be performed, and each known first tier subcontractor with a proposed subcontract estimated at $1 million or more;

(ii) anticipated date of award;

(iii) information as to whether the prime contractor and known first tier subcontractors have previously held any Government contracts or subcontracts or Federally assisted construction contracts (7-2003.14(b)(1)(B));

(iv) place or places of performance of the prime and first tier subcontract estimated at $1 million or more, if known; and

(v) the anticipated dollar amount for the prime and each first tier subcontract, if known.

(2) *Time Limitations for Requesting Preaward Clearances*

a As much time as feasible shall be provided prior to award for the conduct of necessary reviews As soon as the successful contractor can be determined, the contracting officer shall process a preaward clearance request in accordance with procedures established at 12-807 1(a)(1), assuring, where possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 calendar days prior to the proposed award date.

b. In the event that the Director, OFCCP has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request, the contracting officer shall withhold award of the contract for an additional 15 calendar days or until clearance is received, whichever occurs first. If the additional 15 calendar days expire, and the Director, OFCCP, has not found the contractor

26994 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

to be in compliance or made a final written determination declaring the contractor ineligible for reasons of noncompliance, the award may be made to the contractor in question The contracting officer shall notify the OFCCP regional office of the award and, through the head of the contracting activity, the departmental labor advisor listed at 12-1002 6

c ' When the procedures specified in *a.* and *b* above would delay award of an urgent and critical contract beyond the time necessary for the Government to make awards or beyond the time specified in the bid or proposal or extension thereof, the contracting officer shall immediately inform the servicing OFCCP regional office as to the expiration date of the bid or proposal or the required date of award, and request clearance be provided prior to that date If the OFCCP regional office advises that a clearance review cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity who, after informing the servicing OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward review from the appropriate OFCCP regional office

d If, under the provisions of *c* above, a postaward review determines the contractor to be nonawardable, the Director, OFCCP, may authorize the use of the enforcement procedures at 12-810 against the noncomplying contractor

(b) *Reserved.*

12-807.3 *Processing Ineligibility Determinations.* Where a determination of ineligibility by reason of EEO deficiencies has been made, the contracting officer shall follow the notification procedures set forth in 12-810(b).

12-807 4 *Contractor Inquiries.* Any contractor inquiring in regard to its compliance status and rights of appeal under 41 CFR 60-2 2(b) shall be referred to the OFCCP regional office.

12 807.5 *Labor Union Inquiries.* Inquiries from organized labor which concern revision of a collective bargaining agreement in order to comply with the Executive Order and with the Equal Opportunity clause shall be referred to the Director, OFCCP. The departmental labor advisor (12-1002 6) shall be advised in writing of all such referrals.

12-807 6 *Other Matters* Matters requiring the attention of OFCCP national headquarters shall be referred to the departmental labor advisor (see 12-1002 6) in accordance with departmental procedures

12-807 7 *Equal Opportunity Posters* The contracting officer shall furnish to the contractors appropriate quantities of the poster entitled "Equal Opportunity Is the Law " These notices shall be obtained in accordance with departmental procedures

12-808 Exemptions.

(a) *Transactions of $10 000 or Less* The equal opportunity clause is required to be included in contracts in accordance with 12-801(a) Individual contracts or subcontracts of $10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all contracts and subcontracts awarded to a contractor or subcontractor in any 12-month period exceeds, or can reasonably be expected to exceed $10,000 (Note: Government bills of lading regardless of amount are not exempt) In determining the applicability of this exemption to any Federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern No contracting officer, contractor or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause

(b) *Work Outside the United States* Contracts and subcontracts are exempt from the requirements of the Equal Opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States. See 12-807 2(a)(l)b for procedures in cases where employees are recruited in the United States

(c) *Contracts with State or Local Governments* The requirements of the clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract

(d) *Work on or near Indian Reservations* It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation The use of the word "near" includes all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis or religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with the Executive Order, rules and regulations of the Secretary of Labor and the equal opportunity clauses and provisions in Section VII

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26995

(e) *Contracts Exempted by the Secretary of Defense in the Interest of National Security*

(1) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security.

(2) *Request for Exemption* The contracting officer shall prepare a detailed justification for such determination which shall be submitted through contracting channels to the labor advisor (see 12-1002 6), for departmental coordination and submission, as appropriate, to the Deputy Under Secretary of Defense for Research and Engineering (DUSDRE), who shall submit the request for exemption to the Secretary of Defense for approval and shall notify the Director, OFCCP, within 30 days of such a determination

(f) *Specific Contracts and Facilities Exempted by the Director, OFCCP*

(1) *Specific Contracts* The Director, OFCCP, may exempt an agency or person from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract or subcontract when the Director deems that special circumstances in the national interest so require Groups or categories of contracts or subcontracts of the same type may also be exempted where the Director finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the Order

(2) *Facilities Not Connected with Contracts* The Director, OFCCP, may exempt from the requirements of the clause, any of a prime contractor's or subcontractor s facilities which the Director finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, *provided* that the Director also finds that such an exemption will not interfere with or impede the effectuation of the Order

(3) *Special Circumstances* The Director OFCCP, may exempt a contract or subcontract when the Director finds that special circumstances indicate that use of either of the clauses in 7-103 18 in the contract or subcontract would not be in the national interest

(4) *Request for Exemption* The contracting officer shall submit a detailed justification for omitting or modifying the clause under (1) (2) or (3) above through contracting channels to the labor advisor (see 12-1002.6), for departmental coordination and submission, as appropriate The DUSDRE shall submit the request for exemption to the Director, OFCCP

(5) *Withdrawal of Exemption by the Director, OFCCP* When any contract or subcontract is of a class exempted under this paragraph 12-808, the Director, OFCCP, may withdraw the exemption for a specific contract, subcontract, or group of contracts or subcontracts when, in his judgment, such action is necessary or appropriate to achieve the purposes of the Executive Order Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal. In contracts entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids

12-809 Complaints

(a) Complaints received alleging violation of the Equal Opportunity clause shall be referred immediately to the appropriate regional office of the OFCCP Complainant shall be advised in writing of the referral

(b) The contractor 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.

12-810 Enforcement

(a) At written direction of the Director, OFCCP, one or more of the following actions, including administrative sanctions and penalties, may be exercised against contractors found to be in violation of the Executive Order, the regulations of the Secretary of Labor, or the clauses and provisions in Section VII:

(i) publication of the names of such contractors or their unions;

(ii) cancellation, termination, or suspension of the contractor's contracts or portions thereof; and

(iii) debarment from future Government contracts, or extensions or modifications of existing contracts until such contractors have established and carried out personnel and employment policies in compliance with the Executive Order and the regulation of the Secretary of Labor; and

(iv) referral by the Director, OFCCP, of any matter arising under the Executive Order to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

(b) Upon receipt of written notification from the Director, OFCCP, that a specific contractor is ineligible, the departmental labor advisor (see 12-1002 6) shall be immediately informed by the most expeditious means and provided a copy of the notification The departmental labor advisor shall inform HCAs of the contractor's ineligible status

thereby possibly bringing it within the Act's coverage)

12-1002.2 *Geographical Coverage of the Act* The Act applies to service contracts performed within the United States (see 12-1002 3(ii)). The Act does not apply to contracts performed outside the United States

12-1002 3 *Definitions* For the purpose of this part, unless otherwise indicated, terms used here are defined as follows:

(i) "Service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U S C 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons

(ii) "United States" shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U S C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country

(iii) "Administrator" means the Administrator of the Wage and Hour Division, United States Department of Labor, or the Administrator's authorized representative.

(iv) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(v) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(vi) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) and 4(c) of the Act (41 U.S.C. 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

12-1002.4 *Statutory Exemptions.* Statutory exemptions are set forth in paragraph (p) of the clause at 7-1903.41(a).

12-1002.5 *Administrative Limitations, Variations, Tolerances, and Exemptions.* The Secretary of Labor, only in special circumstances, may provide such reasonable limitations

and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act as the Secretary may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business (41 U S C 353(b)) Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the departmental labor advisor (12-1002 6)

12-1002 6 *Questions Concerning Applicability of the Act* In the event the contracting officer questions the applicability of the Act to an acquisition, the matter shall be forwarded for resolution, prior to issuance of the solicitation, as follows:

For the Army: Assistant Secretary of the Army (RDA)
Attn: Labor Advisor
For the Navy: Chief of Naval Material
Attn: Labor Relations Advisor
For the Air Force: HQ USAF, RDC-LA
Attn: Special Assistant for Labor Affairs
For DCA: Defense Communications Agency Headquarters
Attn: Counsel
For DMA: Staff Director of Logistics
For DNA: Deputy Director of Operations and Administration
For DLA: Executive Director, Contracting, DLA-PL

12-1003 Department of Labor Regulations The Department of Labor has issued 29 CFR, Parts 4 and 1910, providing for the administration and enforcement of the Act The regulations include coverage of the following matters relating to the requirements of the Act:

(i) Service Contract Labor Provisions and Procedures (see 29 CFR, Subpart A, Part 4);
(ii) Equivalents of Determined Fringe Benefits (see 29 CFR, Subpart B, Part 4);
(iii) Application of the Act of 1965 (Rulings and Interpretations) (see 29 CFR, Subpart C, Part 4);
(iv) Safe and Sanitary Working Conditions (see 29 CFR, Part 1910); and
(v) Rules of Practice for Administrative Proceedings Enforcing Service Contract Labor Standards (see 29 CFR, Part 6)

12-1004 Contract Clauses and Solicitation Provisions Clauses, solicitation provisions, and guidance as to their use are contained at:

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

(i) specific program objectives or contract requirements which cannot be accomplished with the existing facilities;
(ii) cost reductions which will produce identifiable savings in production or overhead costs;
(iii) increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities; or
(iv) consistent pattern of capacity operation (2 1/2-3 shifts) on existing facilities

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

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

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

(i) analysis of utilization of existing ADPE;
(ii) application of the criteria in (b) above;
(iii) specific objectives or requirements, generally in the form of a data system study and data system specification;
(iv) solicitation of proposals from qualified sources based on the data system specification; and
(v) proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease

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

(3) When a contractor s prospective ADPE lease cost equals or exceeds the thresholds specified in 15-205 48(b)(2)(iii) data in support of the initial decision to lease under (b)(1) above shall be furnished in accordance with 3-1100 3 If the total cost of leasing ADPE in a single plant division or cost center exceeds $500 000 per year, and 50% or more of the total leasing cost is allocated to Government contracts requiring the negotiation or determination of costs data in support of the annual justification under (b)(2) above, for retention or change of existing ADPE capability and the need to continue leasing that capability shall also be furnished in accordance with 3-1100 3

15-205 49 *Deferred Research and Development Costs* (CWAS NA) As used herein, research and development refers to the type of technical effort which is described in 15-205 35(a) but which is sponsored by, or required in performance of a contract or grant Research and development costs (including amounts capitalized) which were incurred prior to the award of a particular contract are unallowable except when allowable as precontract costs (see 15-205 30) In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract (see 15-205 19)

15-205 50 *Cost of Money* (CWAS NA)

(a) *Facilities Capital Cost of Money*

(1) Facilities capital cost of money (Cost of Capital Committed to Facilities) is an imputed cost determined by applying a cost of money rate to facilities capital employed in support of Defense contracts A cost of money rate is derived from a common source and uniformly imputed to all contractors Capital employed is determined without regard to its source as between equity or borrowed capital The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in 15-205 17

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

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

(4) Cost of money which is calculated, allocated and documented in accordance with these regulations shall be deemed an ' incurred cost" for cost reimbursement purposes pursuant to the payment provisions of applicable cost type contracts See E-509 5 re applicability of cost of money for progress payment purposes under fixed price contracts

(5) The cost of money resulting from including goodwill (however represented) in the facilities capital employed base is unallowable.

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

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

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

15-205 53 *Goodwill* Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

15-206 Notice of Intent to Disallow or Not Recognize Costs.

(a) *Purpose* The clause entitled "*Notice of Intent to Disallow or Not Recognize Costs*" is a required clause for all cost type contracts and fixed price incentive contracts and contracts providing for price redetermination (*see 7-203.35*) A Notice of Intent to Disallow or Not Recognize Costs provides the basis under a contract for the contractor to appeal, prior to final settlement of costs of the contract, a determination of exception to costs either incurred or to be incurred It thereby provides a vehicle for disputes to be settled in a more timely fashion

(b) At any time during the performance of the contract, the cognizant contracting officer may issue a Notice of Intent to Disallow or Not Recognize Costs stating his intent to take exception to specific costs or portions thereof, under the contract Usually, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs results from activities performed through monitorship of contractors' cost (*see Section XV, Part 10*), or on advice of auditors or technical personnel Also, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs shall only be made after discussion between the contracting officer and the contractor The notice should be specific as to the type of cost to which exception is taken, the amount of such exception (if applicable), reasons for exception, applicable time period of the exception, and should reference the Notice of Intent to Disallow or Not Recognize Costs clause of the contract. When such notification involves elements of indirect costs, the approval of the contracting officer having authority for final settlement of overhead shall be obtained prior to issuance of the notice except that a Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate expense. When the Notice of Intent to Disallow or Not Recognize Costs is issued, the originating contracting officer (CACO or ACO) will distribute information copies to all administrative contracting officers cognizant of that corporation. The notice will allow the contractor sixty days in which to contest the exception in writing and provide justification why the proposed expenditure is justifiable and reasonable. The ACO will then consider the contractor's position and shall within sixty days either modify his original position or issue a decision in writing under the Disputes clause of

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 26823

the contract When elements of indirect cost are involved, such decision will be rendered by the contracting officer with authority for final overhead settlement (see 3-700)

(c) As a minimum the Notice of Intent to Disallow or Not Recognize Costs should contain the following information:

(i) contractor identification;
(ii) contract(s) affected;
(iii) description of cost exception(s);
(iv) estimated dollar value by item;
(v) reason(s) for the exception;
(vi) applicable time period(s) involved;
(vii) potential impact on billing rates and FPRAs;
(viii) effective date of notice;
(ix) provision for acknowledgment of receipt;
(x) date when formal reply must be received; and
(xi) recipients of copies of notice

Part 2—Formal Advertising

18-201 Types of Contracts. Generally, contracts for construction shall be formally advertised and be of the firm fixed price type Fixed price contracts for such work may be either (i) lump sum contracts for the total work or for defined parts of the work, or (ii) unit price contracts in which a unit price is paid for specified quantity units of work such as cubic yards of earth or concrete or square yards of pavement, or (iii) a combination of both Lump sum contracting shall be used in preference to unit price contracting except where (i) large quantities of work such as grading, paving, outside utilities or site preparation are involved, (ii) quantities cannot be determined in advance of contracting within limitations that would permit a lump sum bid without a substantial contingency, (iii) quantities may change significantly during construction, or (iv) bidders would have to expend unusual effort in making take-off's of quantities Fixed price contracts with economic price adjustment provisions may be used where such clauses are customary in contracts for particular items if the omission of the clause would preclude a significant number of firms from bidding, or would likely result in the inclusion of unwarranted contingencies, unreasonably increasing the cost to the Government The economic price adjustment clauses in 7-106 may be used, adapted to the particular procurement

18-202 Preparation of Invitation for Bids.

(a) Forms used to invite bids are prescribed in Section XVI, Part 4 and are set forth in Appendix F Invitations for bids shall contain the information required by 2-201(b)

(b) All invitations for bids shall allow sufficient bidding time (*i e*, the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) (see 2-202 1) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard for the construction season, the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work and prepare estimates from plans and specifications

18-203 Inspection of Site and of Data Affecting the Work As appropriate, provisions should be made for bidders to inspect the construction site and have the opportunity to examine data available to the Government which may provide information affecting performance of the work, such as boring samples, original boring logs, records and plans of previous construction, etc Such data should be assembled in one place and made available for inspection The invitation for bids should notify bidders of the time and place for the site or data inspection and where such inspection by the bidders alone is not feasible, designate an individual, preferably the same one for all bidders, who will show the site or data to the bidders Care shall be taken that all significant information regarding the site and the data is made available to all bidders in the same manner, including information regarding utilities, if any, to be furnished during construction A record should be kept of the identity and affiliation of all bidder's representatives who inspect the site or examine the data

18-204 Prebid Conferences. When the contracting officer considers that a prebid conference should be held in connection with a large construction project involving important or complex work, the invitation for bids shall provide for

27000 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

such conference to be held on a specified date, about midway during the bidding period At the conference, the contracting officer or his representative shall explain the nature of the work and problems that can be expected He shall answer questions which he may require to be submitted in advance He shall, however, defer answer on questions which he considers require further study The design architect engineer should be available during the conference to assist in interpreting plans and specifications Remarks and explanations at the conference shall not qualify the terms of the invitation and specifications A complete record shall be made of the conference

18-205 Preinvitation Notices

(a) Unless the requirement is waived by the Head of a Procuring Activity or his designee, preinvitation notices shall be sent to all prospective bidders on any construction procurement to be formally advertised, estimated to cost $100,000 or more These notices shall be sufficiently in advance of the invitation for bids to stimulate interest on the part of the greatest number of contractors Such notices may also be used where the procurement is estimated to cost less than $100,000 Preinvitation notices shall:

(i) describe the proposed work in sufficient detail to disclose the nature and volume of work;
(ii) state the location of the work;
(iii) include tentative dates of issuance of invitations, opening of bids and estimated time of completion;
(iv) state where plans will be available for inspection without charge;
(v) include a statement of the magnitude in terms of physical characteristics and estimated cost of the proposed construction in accordance with 18-109;
(vi) specify a date by which request for an invitation for bids should be submitted; and
(vii) expressly notify contractors that, if no bid is to be submitted, they should advise issuing office whether future advance notices are desired

(b) Invitations for bids shall be sent to those bidders who have requested them pursuant to a preinvitation notice and may be sent to other bidders on specific request

(c) In addition to compliance with 2-203 1, on request, pre invitation notices and invitations for bids (with plans and specifications) for unclassified construction work will be furnished without charge to organizations which maintain plan display rooms for the benefit of contractors, subcontractors and material suppliers, without charge to the public Requests from organizations in the United States may be honored on an annual or semiannual basis for all or for a stated class of construction projects The geographical extent of this distribution shall be as determined on a case by case basis by the contracting officer

18-206 Amendment of Invitation for Bids. See 2-208, 16-401 1 (ix) and 18-704 2 When an amendment will require additional time for bidders to prepare bids, the time for bidding shall be appropriately extended, except in emergencies, and consideration shall be given to notifying bidders by telephone or telegraph of the forthcoming amendment to minimize disruption of their bid

327-333), certain contracts entered into by any Department must contain a clause (see 7-602 23(a)(ii)) to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any work week unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any work week whichever is the greater number of overtime hours at not less than one and one-half times his basic rate of pay

18-702 2 *Department of Labor Regulations* Pursuant to the foregoing statutes and Reorganization Plan No 14 of 1950 (5 U S C 133z-15), the Secretary of Labor has issued regulations (Subtitle A, title 29, Code of Federal Regulations) providing for the administration and enforcement of these statutes in construction contracts Each Department shall comply with the regulations, rulings, interpretations, and decisions the Department of Labor issued pursuant to the above provisions If a question arises concerning such compliance, the Department concerned shall attempt to resolve it with the appropriate office of the Department of Labor In any case where resolution of the question by higher authority is deemed appropriate, such question shall be submitted, for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (RD&A); for the Navy, to the Chief of Naval Material, ATTN: Labor Relations Advisor; for the Air Force, to Headquarters USAF, RDC-LA, Attn: Special Assistant for Labor Affairs; for the Defense Logistics Agency, to Headquarters Defense Logistics Agency, DLA-PL; and for the National Security Agency, to the Director of Procurement. Any such questions which are not resolved by the foregoing procedure shall be referred to the DUSDRE(AM) for further action

18-703 Contract Clauses.

18-703.1 *Clauses for General Use* Every construction contract in excess of $2,000 for work within the United States shall include the clauses listed below (These clauses are set forth in 7-602 23(a))

Davis Bacon Act (40 U S C 276a to a-7)
Contract Work Hours and Safety Standards Act—Overtime Compensation
Apprentices and Trainees
Payrolls and Basic Records
Compliance With Copeland Regulations
Withholding of Funds
Subcontracts
Contract Termination—Debarment
Disputes Concerning Labor Standards

18-703.2 *Overseas Contracts* Every construction contract (a) in excess of $2,000 for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, or Johnston Island shall include (i) the clause entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, in 7-602 23(a)(ii); (ii) the Subcontracts clause in 7-602 23(a)(vii), except that the first sentence thereof shall be modified to refer only to the clause entitled Contract Work Hours and Safety Standards Act — Overtime Compensation, Subcontracts, and Contract Termination — Debarment, and (iii) the clause entitled Contract Termination — Debarment in 7-602 23(a)(viii) except that the clause shall be modified to refer only to the

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27091

clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation and Subcontracts; (b) in excess of $10,000 requiring payment of minimum wages determined in accordance with the Davis-Bacon Act for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll or Johnston Island shall also include the clause entitled "Apprentices and Trainees" in 7-602 23(a)(iii)

18-703 3 *Contracts With a State or Political Subdivision* In the case of construction contracts with a State or political subdivision thereof, the contract clauses in 7-602.23(a) shall be inserted therein but shall be prefaced by the provision in 7-602 23(b)

18-704 Administration and Enforcement

18-704 1 *Policy*

(a) *General.* To comply with the Department of Defense policy of assuring full and impartial enforcement of the labor standards laws in the administration of construction contracts, each Department shall maintain a continuing effective enforcement program which shall include:

(i) training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities;

(ii) assuring that contractors and subcontractors are informed, prior to commencement of work, of their obligations under the labor standards provisions of their contracts;

(iii) adequate payroll and on the site inspections and employee interviews to determine compliance, and prompt initiation of corrective action when required;

(iv) prompt investigation and disposition of complaints;

(v) prompt submission of all reports required by this Part; and

(vi) periodic review of field enforcement activities to assure compliance with applicable regulations and instructions

(b) *Responsibility* The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his and any subcontractor's responsibilities thereunder In order to assure that the contractors and subcontractors fully understand the labor standards provisions in their contracts and the attendant administrative requirements, the following procedures shall be followed

(1) *Preconstruction Letters* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to (i) employment of foremen, laborers, mechanics and others, (ii) wages and fringe benefits payments, payrolls and statements; (iii) differentiation between subcontractors and suppliers, (iv) additional classifications, (v) benefits to be realized by contractors and subcontractors in keeping complete work records, (vi) penalties and sanctions for violations of labor standards provisions; and (vii) the provisions of 18-701(a) which may be of consequence in contract performance The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act; Contract Work

Hours and Safety Standards Act; Copeland ("Anti Kickback") Act; and Parts 3 and 5 of the Secretary of Labor's Regulations (Parts 3 and 5, Subtitle A, Title 29, Code of Federal Regulations) Executive Order 11246 (Equal Employment Opportunity) also may be covered in this letter. Prime contractors shall also be advised to send a copy of the preconstruction letter to each subcontractor

(2) *Preconstruction Conference* The contracting officer shall confer with the contractor and such subcontractors as the prime contractor designates to emphasize their labor standards obligations under the contract, when the prime contractor has not performed previous Government construction contracts or has experienced difficulty in complying with labor standards requirements on previous contracts, or when for other reasons the contracting officer considers such action warranted Such conferences should be held prior to the beginning of construction. During the conference, the contracting officer should determine whether the contractor and his 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 is indicated, the contractor shall be advised of the requirements of 18-704 3(a).

18-704.2 *Wage Determinations*

(a) *In General*

(1) Wage determinations reflecting the prevailing wages, including fringe benefits, for laborers and mechanics in a particular area are issued by the Secretary of Labor.

(2) In formally advertised procurements, whenever—

(i) it appears before bid opening that a wage determination may expire before award, or

(ii) a determination actually does expire before bid opening,

a new wage determination shall be obtained The scheduled bid opening date shall be postponed, if necessary, to allow a reasonable time to (a) obtain the determination, (b) modify the IFB to reflect the new determination and (c) permit bidders to amend their bids. Even if the new determination does not change the wage rates, and hence would not warrant amended bids, the solicitation must nevertheless be modified to include the number and date of the new determination.

(3) In negotiated procurement, whenever (i) it appears that a wage determination will expire before award is made or (ii) the determination actually does so expire, a new wage determination shall be obtained If the new determination makes a change in the wage rates, the wage rate information specified in the new determination shall be furnished to (a) all prospective offerors to whom a solicitation has been sent if the closing date for receipt of proposals has not yet occurred, or (b) to all prospective offerors who have submitted proposals if the closing date is past All prospective offerors to whom such information has been furnished shall be given a reasonable opportunity to amend their proposals The contracting officer need not delay opening and reviewing proposals or discussing them with the respective offerors while a new determination is being obtained and offerors are preparing amended proposals. Offerors should be requested to extend the period for acceptance of any proposal if that period expires or may expire while the contracting officer is waiting for a new wage determination

27002 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

(4) When a new determination has been received before award, but an award is made before the expiration date of the original determination, the new determination must be treated as a superseding decision in accordance with (g) below, except that the expiration of the new determination shall be controlled by the date thereon and not by the date on the determination which it replaces

(5) After bids have been opened in formally advertised procurement, if (i) it becomes apparent that the wage determination will expire before award or (ii) in fact the wage determination does expire before award, the Secretary, or his designee at a level no lower than the Head of a Procuring Activity, may, upon finding that an extension is in the public interest to prevent injustice, undue hardship, or serious impairment of the conduct of Government business, submit a written request to the U S Department of Labor, Washington, D C 20210, for an extension of the expiration date If an extension is not requested, or if it is requested and denied, a new determination shall be obtained If the new determination changes the wage rates, the IFB shall be canceled and the procurement readvertised using the new wage rates

(b) *Types of Wage Determinations*

(1) A general area wage determination is issued for use by more than one Government agency and provides wage rates for all contracts for the types of construction designated in the determination which may be awarded within a given geographical area Such a determination is published in the Federal Register, is the only type which is automatically issued by the Department of Labor on a continuing basis, and, although it may be modified or superseded from time to time, contains no expiration date Such determinations shall be used whenever possible

(2) An installation determination provides wage rates for all contracts for work described in the determination which may be awarded at an installation or within a given geographical area (usually a county) during the 120-day life of the determination This type of determination is used only when no general area wage determination has been issued, and may be obtained for installations or areas where continuing construction activity is anticipated

(3) An individual determination is provided by the Department of labor for use in a contract not covered by either of the above types of determination Such a determination is effective for a 120 day period

(4) Wage determinations provide wage rates for the types of construction designated therein, such as building, heavy, highway, residential, and dredging, and shall be used only for the designated types of construction It is particularly important to insure that residential rates rather than building rates are used for family housing construction, alteration, or repair.

(c) *Obtaining General Area Wage Determinations* General area wage determinations, and modifications thereto, are published in the Federal Register Information as to the existence and applicability of such determinations may be obtained from the appropriate District Engineer, Corps of Engineers, for the Army; from the cognizant Naval Facilities Engineering Command Division Office, for the Navy; from the appropriate Contractor Industrial Relations Specialist, for the Air Force; and from the Executive Director, Contracting, DLA-PL, for the Defense Logistics Agency.

(d) *Obtaining Installation or Individual Wage Determinations;*

(1) Requests for installation or individual wage determinations shall be prepared on Standard Form 308, "Request for Determination and Response to Request:" SF 308 shall be filled out as follows:

a Under "Department, Agency, or Bureau" enter the name of the requesting Department followed in parentheses by the name of the installation submitting the request (and, for the Army, the name of the Engineer District)

b Under ' Description of Work" include a statement of whether an installation or individual determination is desired When the request indicates a type of work other than building, heavy or highway, it is of particular importance, in order to avoid delay, that the request be accompanied by (i) any pertinent wage payment information which may be available, and (ii) a copy of the pertinent portions of the specifications or a detailed description of the work to be performed Where the Secretary of Labor has issued a general area wage determination, a request should be submitted only when the type of work to be performed is not included in the description of work set forth in the decision If additional space is needed, a separate attachment may be submitted with the form Additional information requirements for installation determination requests are set out at subparagraph *f* below

c Under ' Location of Project (City or Other Description)," state the installation or area to be covered or exact location of the proposed project, as appropriate If the project is not in a city, town, or village, state the distance and direction from the nearest community or other point of reference If river or other work covering an extended project site is involved, explain the full extent of the location with references to data identifying the geographic limits of the project, such as side of river and direction from several reference points

d For individual determinations, check only those craft classifications which are actually anticipated to be necessary for the work Craft classifications which are anticipated but are not on the form may be entered in blank spaces or on a separate list attached to the form Determinations should be requested only for craft classifications which are recognized in the area or in the construction industry Do not check any craft classifications when an installation determination is requested

e When it is known that wage patterns for the area involved are not clearly established, the following information concerning public contracts being performed or recently completed in the area should be furnished, if reasonably available, as an attachment to Form SF 308 to aid the Department of Labor.

(i) names and addresses of contractors;
(ii) locations, approximate costs, dates of construction, and types of projects;
(iii) number of workers employed in each classification on each project; and
(iv) wage rates, including fringe benefits, paid such workers

Wage rates determined for public construction by state or local officers pursuant to state or local prevailing wage legislation and any other pertinent information should also be sent to the Department of Labor if reasonably available

f In every case where an installation wage determination is being requested, the following information shall be provided in an attachment to the SF

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27003

308, in addition to other applicable requirements contained in subparagraphs *a* through *e* above

(i) A complete statement of reasons for requiring an installation type of wage determination for the installation

(ii) A complete statement of the incidence of use of the last previously issued installation determination, the total dollar amount of the contract awarded thereunder, and an estimate of the use of any new determination during its 120-day life This should include a brief description of the planned projects (i.e , commercial, residential, heavy or highway), the estimated cost of each project, and the kinds of laborers and mechanics likely to be employed

(2) Requests for determinations shall be initiated and forwarded as provided in *a* through *d* below to the appropriate regional office of the Department of Labor Requests shall be submitted in time to reach the Department of Labor at least 30 days in advance of the date selected for issuance of the solicitation When, due to an emergency, a wage determination is required immediately, or when any information concerning wage determinations is needed, the requiring office may request assistance from the appropriate Departmental office listed in *a* through *d* below

a For the Army—SF 308 shall be initiated by the office responsible for the preparation of specifications or the awarding of contracts, and shall be forwarded in triplicate to the appropriate District Engineer The original and one copy of SF 308 shall be sent by the District Engineer to the appropriate regional office of the Department of Labor

b For the Navy—Within the Naval Facilities Engineering Command, requests shall be initiated by the office responsible for the preparation of specifications The original and one copy of SF 308 shall be sent to the appropriate regional office of the Department of Labor with a copy to the cognizant Naval Facilities Engineering Command Division Office Requests relating to contracts of other commands or offices should be processed through the cognizant Naval Facilities Engineering Command Division Office

c For the Air Force—Requests shall be initiated by a civil engineering office in cases where it is responsible for preparing the construction specifications, and by the contracting officer administering the contract in cases of subcontracts and facilities contracts The original and one copy of SF 308 shall be submitted to the appropriate regional office of the Department of Labor. One copy of the SF 308 shall be forwarded to the appropriate Labor Relations Advisor and one copy retained in the requesting office's files

d For the Defense Logistics Agency—Requests shall be initiated by the office responsible for the preparation of specifications or award of contracts The original and one copy of SF 308 shall be sent to the appropriate regional office of the Department of Labor with a copy to the Executive Director, Contracting, DLA-PL

(e) *Review of Wage Determination Decisions* Immediately upon its receipt, the requesting officer shall examine the wage determination and inform the appropriate office indicated in (d)(2) above of any changes considered to be necessary or appropriate to correct errors Private parties requesting changes should be advised to submit their requests to the Department of Labor.

(i) DD Form 1568, "Labor Standards Investigation Summary Sheet;"
(ii) his findings;
(iii) statement as to the disposition of any contractor rebuttal to the findings;
(iv) statement as to whether the contractor has accepted the findings and has paid any restitution or liquidated damages;
(v) statement as to the disposition of funds available;
(vi) recommendations as to disposition or further handling of the case (when appropriate, include recommendations as to the reduction or nonassessment of liquidated damages, whether the contractor should be placed on the list of Debarred, Ineligible and Suspended Bidders, and whether the file should be referred for possible criminal prosecution); and
(vii) the exhibit portion of the report which shall include, when applicable;
(A) investigator's report;
(B) copy of contractor's written rebuttal or a summary of his oral rebuttal of the contracting officer's findings;
(C) copies of correspondence between the contractor and contracting officer, including a statement of the specific violations found, corrective action requested, and contractor's letter of acceptance or rejection;
(D) evidence of payment of restitution or liquidated damages, such as copies of receipts, canceled checks, or supplemental payrolls; and
(E) letter from the contractor requesting relief from the liquidated damages provisions of the Contract Work Hours Standards Act.

(b) Where the investigation reveals no violations, where underpayments total less than $500 and are nonwillful, and where restitution and liquidated damages, if any, have been paid and compliance during the remainder of the contract is anticipated, the contracting officer may process the report, except in cases involving Air Force contracts, by closing the case without forwarding a report unless one has been requested Where an Air Force contract is involved, a concise narrative report shall be submitted to the major Air Command Headquarters and the Air Force Liaison Officer (AFLO) having jurisdiction, and shall include, as a minimum, the contracting officer's findings and decision, amount of restitution paid each employee, and the amount of liquidated damages, if any In all other investigations the contracting officer shall forward his report through channels as specified in (1) through (4) below When the contracting officer concludes that a criminal statute has been violated, he shall forward four extra copies of the report through the channels specified

(1) *Army Contracts* The report together with the recommendation of the Head of the Procuring Activity, shall be forwarded through channels to the Labor Advisor, except for reports on Corps of Engineers contracts not involving recommendations of sanctions against the contractor which will be processed in accordance with the procedure established by the Chief of Engineers

27004 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

(2) *Navy Contracts* On contracts of the Naval Facilities Engineering Command, the report shall be forwarded through channels to the Commander of that Command On contracts of other procuring activities, the report shall be forwarded through channels to the Chief of Naval Material, Attn: Labor Relations Advisor

(3) *Air Force Contracts* The report shall be forwarded to the AFLO for review and evaluation The AFLO shall forward it, with his findings and recommendations, to Headquarters USAF, RDC-LA, Attn: Special Assistant for Labor Affairs, for HQ USAF evaluation and final disposition Reports involving criminal violations shall be referred to the nearest Office of Special Investigations District Officer for review and disposition

(4) *Defense Logistics Agency Contracts* The report shall be forwarded together with the recommendation of the Head of the Procuring Activity to Headquarters, Defense Logistics Agency, Attn: DLA-PL.

(c) Reports processed in accordance with (b) above shall be forwarded with recommendations by the Departmental Headquarters to the Administrator, Wage & Hour & Public Contracts Divisions (WHPC) Except as specifically authorized, the findings, recommendations or conclusions of such reports shall not be disclosed outside of reporting channels In those cases where there are probable criminal violations, the Department shall forward two copies of the report to the Attorney General for possible prosecution; and the Administrator, WHPC, shall be informed of such action

18-704 13 *Suspensions of and Deductions From Contract Payments*

(a) When the contracting officer believes a violation exists, he shall withhold from payments due the contractor an amount equal to the estimated underpayments, as well as any estimated liquidated damages due the United States under the Contract Work Hours Standards Act. If, after investigation, no violations are found, the funds withheld shall be released

(b) If the investigation reveals violations, a sufficient amount shall continue to be withheld until the contractor makes restitution When voluntary restitution is not made, the contracting officer, upon submission of his report, shall forward to the appropriate disbursing officer a Standard Form 1093, "Schedule of Withholdings Under the Davis Bacon Act," listing the name, last known address of each employee involved, the amount due each employee, and a brief statement of the reason for requiring restitution The form shall indicate whether a report is being forwarded to the Department of Labor The disbursing officer shall, without waiting for final processing of the report, forward the funds withheld for restitution, together with Standard Form 1093, to the General Accounting Office Employees to whom restitution is due should be advised to file a claim with the Comptroller General, Claims Division, Washington, D C 20548 Such employees may be assisted in the preparation of their claims.

(c) When restitution is not made, because an employee cannot be located, Standard Form 1093 shall so indicate and be submitted by the disbursing officer to the General Accounting Office The form shall be accompanied with a check payable to the General Accounting Office covering the gross amount of restitution due In those cases not requiring processing of a report through higher headquarters, the following notation shall be made on the form:

in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(i) *Code B Additional Work, Other* — Enter this code when additional work is acquired by means of modification to the basic contract as follows:

(1) Exercise of options for increased quantities or extended performance.

(2) Incremental yearly buys under multiyear contracts.

(3) Amendments to letter contracts, supplemental agreements, and other modifying actions which add work and are made pursuant to the terms of existing contracts

(j) *Code C Funding Action* — Enter this code for amendments to letter contracts and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds This includes, by way of illustration, incremental funding (other than incremental yearly buys under multiyear contracts), increasing the estimated cost on cost-reimbursement contracts, and repricing actions covering incentive price revision, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see (c) and (h)(2) above). For funding actions involving the kinds of contracting actions covered in (d), (e), (f) and (g) above, codes 4, 5, 6, and 7 shall be used as appropriate.

(k) *Code D Change Order* — Enter this code when reporting change orders issued pursuant to the "Changes," "Differing Site Conditions," or similar provisions of existing contracts.

(l) *Code E* — Enter this code for termination for default.

(m) *Code F* — Enter this code for termination for convenience.

(n) *Code G* — Enter this code for cancellation.

21-106 Part C of DD Form 350. The following rules apply to each of the items listed in Part C of DD Form 350.

(a) If Item B12 is coded 1 or if Item B13 is coded 6 or 7, leave all items in this Part C blank.

(b) If Item B13 is coded 1 through 4, or A, coding of all items in this Part C shall be accomplished in accordance with the coding instructions for that item.

(c) If Item B13 is coded 5, or B through G, enter the same code in each item in Part C that was reported on the DD Form 350 to the original contract governing this transaction. If a DD Form 350 to the original contract was not submitted because a DD Form 350 was not required, enter the code which is applicable to the original contract governing this transaction.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27005

21-106.1 *Item C1, Synopsis in Commerce Business Daily* Enter code 1 if a synopsis of the proposed action was prepared and transmitted in accordance with 1-1003 If not, enter code 2

21-106.2 *Item C2, Reason Not Synopsized* Enter the applicable code as follows (see 1-1003 1:

Code	Reason
0	original estimate less than $10,000 or contract made outside the United States, its possessions, or Puerto Rico;
1	the procurement for security reasons is of a classified nature;
2	procurement of perishable subsistence when made by placement of an order under a contract covered by 3-409;
3	procurement is for utility services and only one source is available;
4	procurement which is of such unusual and compelling urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than the time periods specified at 1-1003 2;
5	procurement to be made by an order placed under an existing contract covered by 3-409 or as required by 5-102;
6	procurement to be made from another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;
7	procurement that results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research;
8	procurement for which a foreign government reimburses the Department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty;
9	when it has been determined in writing by the Secretary, with the concurrence of the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable

Part 3—Supplemental Agreements

26-301 Use. Supplemental agreements are used:

(i) to reflect the agreement reached in the negotiation of change orders;

(ii) in preference to a change order when a supplemental agreement is considered feasible, even though authority exists to accomplish the modification by change order;

(iii) to definitize letter contracts (see 3-408(e));

(iv) to reflect other agreements of the parties modifying the terms of contract; and

(v) to definitize provisioned items orders (see 4-300)

26-302 Preparation of Supplemental Agreements All supplemental agreements shall be prepared on Standard Form 30, Amendment of Solicitation/Modification of Contract, in accordance with 16-104 4 When a supplemental agreement changes the unit price or unit quantity, information reflecting the changed conditions shall be shown in the format contained in Standard Form 36, Continuation Sheet, unless this form has been used as an attachment to Standard Form 30

Part 4—Novation Agreements and Change of Name Agreements

26-400 Scope of Part This Part prescribes the policy and procedures for (i) recognition of a successor in interest to Government contracts when such interests are acquired incidental to a transfer of all the assets of a contractor or such part of his assets as is involved in the performance of the contracts, (ii) a change of name of a contractor, (iii) execution of novation agreements and change of name agreements by the cognizant Administrative Contracting Officer (ACO) (see definition below), and (iv) entering into novation agreements and change of name agreements on behalf of the National Aeronautics and Space Administration (NASA)

26-401 General

(a) *Definition of Cognizant ACO* The cognizant ACO is the ACO administering DoD contracts held by the transferor When the transferor has multiple plants or divisions, the ACO responsible for the corporate office is the cognizant ACO When purchasing offices retain responsibility for administration of all contracts of the transferor, the Department having the largest unsettled (unbilled plus billed but unpaid) dollar balance is responsible for executing or designating the office to execute novation and change of name agreements In the event there is more than one transferor, the cognizant ACO of the CAS component having the largest unsettled dollar balance is responsible for executing novation and change of name agreements

(b) *Legal Review* All novation agreements and change of name agreements, prior to execution, shall be reviewed by Government Counsel for legal sufficiency

26-402 Agreement To Recognize a Successor In Interest

(a) The transfer of a Government contract is prohibited by law (41 U S C 15) However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest arises out of the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract Examples include but are not limited to:

(i) sale of such assets;

(ii) transfer of such assets pursuant to merger or consolidation of corporation; and

(iii) incorporation of a proprietorship or partnership

(b) When a contractor requests that the Government recognize a successor in interest, the contractor shall be required to provide three signed copies of the novation agreement to the cognizant ACO (see 26-401(a)) together with one copy of each of the following, as applicable:

(i) a properly authenticated copy of the instrument by which the transfer of assets was effected, as for example, a bill of sale, certificate of merger, indenture of transfer, or decree of court;

(ii) a list of all contracts and purchase orders, tabulated by service and purchasing office within each service, which have not been finally settled among all Departments concerned and the transferor, and all elements of NASA concerned and the transferor, showing the contract number, the name and address of the purchasing office involved, the total dollar value of each contract as amended, the type of contract involved, and the balance remaining unpaid;

(iii) transfer of the ownership of a contractor through a stock purchase transaction, or by any other means, when the Secretary concerned determines that the sale may significantly affect the Government's rights and interests under existing and future contracts

(iv) a certified copy of the resolutions of the Boards of Directors of the corporate parties authorizing the transfer of assets;

(v) a certified copy of the minutes of any stockholders' meetings of the corporate parties necessary to approve the transfer of assets;

(vi) a properly authenticated copy of the certificate and articles of incorporation of the transferee if such corporation was formed for the purpose of receiving the assets involved in the performance of the Government contracts;

(vii) opinion of counsel for the transferor and transferee that the transfer was properly effected in accordance with applicable law and the effective date of transfer;

(viii) evidence of the capability of the transferee to perform the contracts;

(ix) balance sheets of the transferor and the transferee as of dates immediately prior to and after the transfer of assets;

(x) evidence of security clearance requirements; and

(xi) consent of sureties on all contracts listed under (ii) above where bonds are required, or a statement that none is required

(c) When it is consistent with the Government's interest to recognize a successor in interest to a Government contract, the cognizant ACO shall execute an agreement with the transferor and the transferee, which shall ordinarily provide in part that:

(i) the transferee assumes all the transferor's obligations under the contract;

(ii) the transferor waives all rights under the contract as against the Government;

(iii) the transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted in lieu of such guarantee); and

(iv) nothing in the agreement shall relieve the transferor or the transferee from compliance with any Federal law

A form for such an agreement for use when the transferor and transferee are corporations, and all the assets of the transferor are transferred, is set forth herein This form may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for use in other situations

AGREEMENT

This AGREEMENT, entered into as of (*date upon which the transfer of assets became effective pursuant to applicable State law*) 19—, by and between the ABC CORPORATION a corporation duly organized and existing under the laws of the State of with its principal office in the City of (hereinafter referred to as the "Transferor"); the XYZ CORPORATION *a.k.a. if appropriate* (formerly known as the LMN CORPORATION), a corporation duly organized and existing under the laws of the State of with its principal office in the City of (hereinafter referred to as the "Transferee"); and the UNITED STATES OF AMERICA (hereinafter referred to as the "Government")

WITNESSETH:

CONTRACT MODIFICATIONS

1 WHEREAS the Government, represented by various Contracting Officers of the Department of Defense and the National Aeronautics and Space Administration has entered into certain contracts and purchase orders with the Transferor [namely: .. ..] or as set forth in the attached list marked Exhibit A to this Agreement and herein incorporated by reference; and the term the contracts as hereinafter used means the above contracts and purchase orders and all other contracts and purchase orders including modifications thereto heretofore made between the Government represented by various Contracting Officers of the above named Department or NASA and the Transferor (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights duties or obligations thereunder) and including modifications thereto hereafter made in accordance with the terms and conditions of such contracts and purchase orders between the Government and the Transferee:

2 WHEREAS as of .. , 19—, the Transferor assigned conveyed and transferred to the Transferee all the assets of the Transferor by virtue of a [*term descriptive of the legal transaction involved*] between the Transferor and the Transferee;

3 WHEREAS the Transferee by virtue of said assignment conveyance and transfer has acquired all the assets of the Transferor;

4 WHEREAS by virtue of said assignment conveyance and transfer, the Transferee has assumed all the duties obligations and liabilities of the Transferor under the Contracts;

5 WHEREAS the Transferee is in a position fully to perform the Contracts and such duties and obligations as may exist under the Contracts;

6 WHEREAS it is consistent with the Government s interest to recognize the Transferee as the successor party to the Contracts;

7 WHEREAS, there has been filed with the Government evidence of said assignment conveyance or transfer as required by ASPR 26–402(b);

[*Where a change of name is also involved such as prior or concurrent change of name of the transferee, an appropriate recital shall be used; for example:*

8 WHEREAS there has been filed with the Government a certificate dated .. .... 19— signed by the Secretary of State of the State of , to the effect that the corporate name of LMN CORPORATION was changed to XYZ CORPORATION on .. 19);

NOW THEREFORE in consideration of the premises the parties hereto agree as follows:

9 The Transferor hereby confirms said assignment conveyance and transfer to the Transferee, and does hereby release and discharge the Government from and does hereby waive any and all claims demands and rights against the Government which it now has or may hereafter have in connection with the Contracts.

10 The Transferee hereby assumes agrees to be bound by and undertakes to perform each and every one of the terms, covenants and conditions contained in the Contracts The Transferee further assumes all obligations and liabilities of and all claims and demands against, the Transferor under the Contracts in all respects as if the Transferee were the original party to the Contracts

11 The Transferee hereby ratifies and confirms all actions heretofore taken by the Transferor with respect to the Contracts with the same force and effect as if the action had been taken by the Transferee

12 The Government hereby recognizes the Transferee as the Transferor s successor in interest in and to the Contracts The Transferee hereby becomes entitled to all right, title and interest of the Transferor in and to the Contracts in all respects as if the Transferee were the original party to the Contracts The term Contractor as used in the Contracts shall be deemed to refer to the Transferee rather than to the Transferor

13 Except as expressly provided herein nothing in this Agreement shall be construed as a waiver of any rights of the Government against the Transferor.

14 Notwithstanding the foregoing provisions all payments and reimbursements heretofore made by the Government to the Transferor and all other action heretofore taken by the Government pursuant to its obligations under any of the Contracts shall be deemed to have discharged *pro tanto* the Government s obligations under the Contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to said Transferee and shall constitute a complete

DAC #76-48 25 JANUARY 1984 0:127

(c) The listed allocation bases in this section are illustrative. Other bases for allocation of home office expenses to segments may be used if they are substantially in accordance with the beneficial or casual relationships outlined in § 403.40.

Home office expense or function	Illustrative allocation bases
Staff management of specific activities:	
1. Personnel management	1. Number of personnel, labor hours, payroll, number of hires.
2. Manufacturing policies (quality control, industrial engineering, production, scheduling, tooling, inspection and testing, etc.).	2. Manufacturing cost input, manufacturing direct labor.
3. Engineering policies	3. Total engineering costs, engineering direct labor, number of drawings.
4. Material/purchasing policies	4. Number of purchase orders, value of purchases.
5. Marketing policies	5. Sales, segment marketing costs.
Central payments or accruals:	
1. Pension expenses	1. Payroll or other factor on which total payment is based.
2. Group insurance expenses	2. Payroll or other factor on which total payment is based.
3. State and local income taxes and franchise taxes	3. Any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction.

§ 403.70 Exemptions.

(a) Any contractor or subcontractor which together with its subsidiaries did not receive net awards of negotiated national defense prime contracts during Federal fiscal year 1971 (July 1, 1970, through June 30, 1971) totaling more than $30 million is exempt from this Standard. This exemption expires on March 10, 1978. Any contractor, unless otherwise exempt, who receives a negotiated national defense contract after March 10, 1978, shall be required to comply at the start of his first cost accounting period following receipt of that award.

(b) This standard shall not apply to contractors who are subject to the provisions of Federal Management Circular 74-4 (Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments).

[37 FR 4173, Feb. 29, 1972, as amended at 40 FR 32749, Aug. 4, 1975; 42 FR 45629, Sept. 12, 1977; 43 FR 24820, June 8, 1978]

PREAMBLES: For preamble affecting § 403.70, see preambles A, C, D, and E of the supplement to this part. For preamble to superseded regulations, see preamble B of the supplement to this part.

§ 403.80 Effective date.

(a) This standard shall be followed by each contractor as of the beginning of his next fiscal year after September 30, 1973. The effective date of this standard is July 1, 1973.

(b) The effective date of § 403.70(a) as amended is March 10, 1978.

[38 FR 7447, Mar. 22, 1973; as amended at 42 FR 45629, Sept. 12, 1977]

PREAMBLES: Preamble A of this part explains how effective dates are determined. For preamble affecting § 403.80(b), see preamble D.

APPENDIX—INTERPRETATION No. 1

Questions have arisen as to the requirements of Part 403, Cost Accounting Standard, Allocation of Home Office Expenses to Segments, for the purpose of allocating State and local income taxes and franchise taxes based on income (hereinafter collectively referred to as income taxes) from a home office of an organization to its segments.

By means of an illustrative allocation base in Section 403.60, the Standard provides that income taxes are to be allocated by "any base or method which results in an allocation that equals or approximates a segment's proportionate share of the tax imposed by the jurisdiction in which the segment does business, as measured by the same factors used to determine taxable income for that jurisdiction." This provision contains two essential criteria for the allocation of income taxes from a home office to segments. First, the taxes of any particular jurisdiction are to be allocated only to those segments that do business in the taxing jurisdiction. Second, where there is more than one segment in a taxing jurisdiction, the taxes are to be allocated among those segments on the basis of "the same factors used to determine the taxable income for that jurisdiction." The questions that have arisen relate primarily to whether segment book income or loss is a "factor" for this purpose.

Most States tax a fraction of total organization income, rather than the book income of segments that do business within the State. The fraction is calculated pursuant to a formula prescribed by State statute. In these situations the book income or loss of individual segments is not a factor used to determine taxable income for that jurisdiction. Accordingly, in States that tax a fraction of total organization income, rather than the book income of segments within the State, such book income is irrelevant for tax allocation purposes. Therefore, segment book income is to be used as a factor in allocating income tax expense from a home office to segments only where this amount is expressly used by the taxing jurisdiction in computing the income tax.

[45 FR 13721, Mar. 3, 1980]

Promulgation Comments Interpretation No. 1, Standard 403

Following is the text of the comments of the Cost Accounting Standards Board accompanying promulgation of Interpretation No. 1 to Standard 403, 45 FR 13722, March 3, 1980.

SUPPLEMENTARY INFORMATION: Cost Accounting Standard (CAS) 403 was published in the Federal Register on December 14, 1972. Among other subjects, the Standard deals with the method of allocating to segments the State income tax or franchise tax which is levied on the contractor. Information available to the Cost Accounting Standards Board indicates that most contractors have been allocating the taxes involved in a manner that comports with the Board's intent. Some contractors, however, seeking to validate different methods, have appealed decisions of contracting officers to the Armed Services Board of Contract Appeals (ASBCA). These appeals have resulted in two decisions (McDonnell Douglas Corp., ASBCA No. 19842; Lockheed Corp., Lockheed Missiles and Space Group, Inc., ASBCA No. 22451) which have demonstrated that the Cost Accounting Standards Board's intent in CAS 403 has been misunderstood by the ASBCA. The misunderstanding, if not resolved promptly, will frustrate the intent of the Cost Accounting Standards Board and cause substantial problems in the administration of contracts being performed by those contractors who are applying the Standard as intended.

Because of the serious and widespread nature of the problems which will result if no action is taken, the Cost Accounting Standards Board has concluded that it is imperative to act immediately to set forth in unequivocal terms the intent of Cost Accounting

DAC #76-48 25 JANUARY 1984 0:127-A

Standard 403 as it relates to the allocation of income taxes and franchise taxes.

Notwithstanding this interpretation, the Cost Accounting Standards Board has determined that a general review of several Standards including Cost Accounting Standard 403 is appropriate. The review of CAS 403 will focus on the income tax allocation provisions and is expected to proceed on a priority basis. As a part of that project the Cost Accounting Standards Board may take further action with respect to tax allocation practices. Pending such action, however, the following interpretation being promulgated today sets forth the intent of the Board with respect to tax allocations under Cost Accounting Standard 403.

PREAMBLE A

Preamble to Original Publication, 12-14-72

Preamble to original publication of 4 CFR Part 403, at 38 FR 26680, Dec. 14, 1972.

The Standard on Allocation of Home Office Expenses to Segments is one of a series being promulgated by the Cost Accounting Standards Board pursuant to section 719 of the Defense Production Act of 1950, as amended, Pub. L. 91-379, 50 U.S.C. app. 2168, which provides for the development of Cost Accounting Standards to be used in connection with negotiated national defense contracts.

Work on this Standard was initiated as the result of a variety of continuing problems between contractors and the Government concerning equitable allocations of home office expenses to segments involved in negotiated defense contracts. The problems include disagreements on:

(i) The propriety in certain circumstances of using particular allocation bases, such as cost of sales or direct labor for allocating home office expenses to segments; (ii) whether and to what extent certain kinds of segments such as GOCO's, foreign subsidiaries and partially owned subsidiaries should be included in the allocation base; and (iii) the homogeneity of expense pools.

The allocation of home office expenses to segments is not now specifically governed or guided by an authoritative accounting statement. Home office expenses allocated to segments and then to contracts can constitute an important element of total contract cost. The lack of authoritative standards to guide contractors, procurement officers, auditors, and others, provides a great potential for disagreement and controversy over contract costs. Assurance of equity in cost determinations and contract settlement is singularly lacking.

This Standard prescribes criteria for allocation of the expenses of a home office to segments of an organization. The criteria are based primarily on the beneficial or causal relationship between such expenses and the receiving segments. The Standard governs how a contractor may allocate expenses of its corporate headquarters to various divisions, subsidiaries, plants, or other subsidiaries of the corporation. The Board believes that application of this Standard will result in sound cost accounting and will provide a great degree of uniformity in the determination of costs of negotiated defense contracts.

Research establishes that some home office expenses are incurred for specific segments and can be assigned directly to them. Other expenses, not incurred for a specific segment, have clear relationships to two or more segments, relationships which are measurable with reasonable objectivity. A third type of home office expense possesses no readily measurable relationship to segments.

The Cost Accounting Standards Board finds that a Cost Accounting Standard to govern the allocation of home office expenses is desirable to reduce wasteful and expensive controversy and to obtain equity for the contracting parties. The Standard published today requires that those home office expenses incurred for specific segments are to be allocated directly to those segments to the maximum extent practical. Those that can be allocated to segments on the basis of objective measurable relationships are to be accumulated and allocated by means of logical and homogenous expense pools established for this purpose. The remaining or residual home

0:128

DAC #76-44 25 MARCH 1983

403, Preamble A

office expenses are then to be allocated as discussed below.

The Board expects that this Standard will operate to reduce residual expenses to a relatively minor amount and by this means also reduce controversy and inequity. Where this is the case, the Board sees no reason to require one particular technique to allocate these expenses. Accordingly, where residual expenses are no greater than a specified percentage of operating revenues, the Standard allows the use of any appropriate allocation technique. However, if residual expenses exceed such specified percentages, the Board believes that its objective of reducing controversy and avoiding inequity would best be served by selecting a single allocation technique to be used. Its research in this connection has led the Board to conclude that for this purpose, a three-factor formula is superior to other allocation bases and techniques for the allocation of residual expenses.

Early research on this Standard included an extensive review of available literature on the subject, a review of decisions of contract appeals boards and courts, and a study of home office management philosophy and operations of 40 companies representing a wide variety of industries.

This research led to the publication of a proposed Cost Accounting Standard in the FEDERAL REGISTER of June 30, 1972, with an invitation for interested parties to submit written data, views, and comments to the Board. To better assure that those who had already expressed interest or provided assistance had an opportunity to comment, the Board supplemented the FEDERAL REGISTER notice by sending copies of the FEDERAL REGISTER materials directly to 196 organizations and individuals, of which 86 companies were invited to furnish the Board with estimates of any additional or reduced costs which could arise from the implementation of the Standard.

Responses were received from 130 sources, including individual companies, Government agencies, professional associations, industry associations, public accounting firms, and others. All of these comments and data have been carefully considered by the Board. Those comments which are of particular significance are discussed below together with an explanation of resultant substantive changes to the Standard as published in the FEDERAL REGISTER of June 30, 1972.

As will be seen from the following discussion, the Board was greatly benefited by the many comments it received on the Standard as published in the FEDERAL REGISTER of June 30, 1972. The Board takes this opportunity to express its considerable debt to those who devoted time and skill to assisting the Board in this endeavor and to thank the many companies and individuals involved.

(1) *Materiality.* Many commentators urged that the Standard contain a general statement on materiality. The Board has previously stated that the administration of its rules, regulations, and Cost Accounting Standards should be reasonable and not seek to deal with insignificant amounts of cost. The Board does not believe that any further general statement is needed at this time. However, where specific changes could be made to clarify the intent of this Standard with respect to materiality, they have been made as further discussed below.

While most commentators agreed with the concept of maximum direct allocation of home office expenses, and accumulation of nondirectly allocated home office expenses into logical, homogeneous expense pools, a few of these commentators believed that the Standard did not adequately incorporate the concept of materiality for this purpose. The Board agrees that materiality is an important consideration in determining whether to specify that an expense is to be allocated directly or by means of a separate expense pool. Accordingly, § 403.40 of the Standard has been revised to state that expenses are to be allocated to the maximum extent "practical" and that expenses not directly allocated are to be grouped into separate homogeneous expense pools "if significant in amount and in relation to total home office expenses."

In addition, a number of commentators questioned the need for using what they considered to be a relatively complex formula to allocate residual expenses even when they are minor in amount. This requirement was contained in the Standard as published in the FEDERAL REGISTER of June 30, 1972. The Board believes the formula to be relatively simple, well understood, already used by many companies to satisfy State tax requirements, and based on financial data that is readily available. Nevertheless, the Board agrees that other allocation techniques may be acceptable if residual expenses are not material. Accordingly, § 403.40(c) of the Standard being published today permits the use of any allocation base representative of total activity if residual expenses are less than a specified percentage of operating revenue.

The Board also considered a materiality test conducted periodically which would permit a contractor, otherwise covered, to choose not to follow the Standard if its application would result in little or no change in the total amount he allocates to his segments with Government business. The Board in this instance rejected this approach for the following reasons:

Title 4—Accounts

(a) Such an approach would put undue emphasis on the effect of this Standard on the allocation of costs to or away from Government contracts.

(b) The administrative problems and time spent by both the Government and the contractor in estimating the contract cost consequences of application of the Standard periodically and negotiating the pro forma application of the Standard for comparative test purposes would outweigh any benefits that might be derived from waiver of the entire Standard on the basis of materiality of result.

(c) There would be no assurance that a contractor's own procedures, which in the test year happened to provide nearly identical results to the results which would be provided through use of the Standard, would in other, subsequent years also produce the same nearly identical results. In effect, the results in the test year may have been an aberration.

(d) In light of the general acceptance by the majority of commentators of the concept of direct charging and grouping of homogeneous expense pools, the provisions for materiality considerations previously described are deemed sufficient.

(e) The Board has applied the concept of materiality to the extent it believes practical in this Standard. The Board, however, as noted in its prefactory comments on the first two published Standards (37 FR 4141), will give consideration to stating a concept of materiality applicable to all Standards if subsequent events indicate the desirability and feasibility of doing so.

The Board has eliminated a requirement, originally contained in the June 30, 1972, proposal, for interdepartmental allocations of home office expenses. This proposal would have required part of the cost of certain home office functions to be allocated to other home office functions before being reallocated to segments. The Board accepts the views of a number of commentators that this procedure would be complex and unwarranted in the light of a relatively insignificant effect on the allocation of home office expenses.

The proposed Standard, as published in the FEDERAL REGISTER of June 30, 1972, required that all segments be included in an allocation base unless it could be demonstrated that any segment did not receive benefit from, or contribute to the cause of, an expense to be allocated. A number of commentators observed that it would be virtually impossible to demonstrate that a segment received no benefit. Others commented that a segment should not be included in an allocation base if it received only negligible benefit. The June 30, 1972 proposal has been revised to accommodate

[FR Doc. 84-17489 Filed 6-28-84; 8:45 am]
BILLING CODE 3810-01-C

32 CFR Parts 1-39

[DAC 76-49]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-49. The changes include revision of Service Contract Act Regulations.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1-106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM) (DARS), OUSDRE(M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The July 1, 1983 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76-1 through 76-44.

The Department of Defense announced the promulgation of the 1979 CFR edition in the Federal Register of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the Federal Register.

Defense Acquisition Circular 76-49

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-49, issued 27 January 1984. The following is a summary of the amendments:

Revision of Service Contract Act Regulations. Revised final regulations (29 CFR Part 4), implementing the Service Contract Act, were published by the Department of Labor (DOL) in the Federal Register of October 27, 1983. These changes had been suspended pending the outcome of litigation which is now resolved. Accordingly, DAR Section XII, Part 10, and the applicable clauses have been revised to conform to the changes in the DOL Regulations.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on receipt in accordance with DAR 1-106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-49. The number at the top of each page (for example, 7:451) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none above, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1983 edition of 32 CFR Parts 1-39, Volumes I, II, and III, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table.

DAR paragraph	Replacement pages
Volume II	
7-1903.41(a)	7:451 through 7:454, 7:454-A through 7:454-H.
7-1903.41(b)	7:454-H.
7-1903.41(e) (deleted)	7:455.
7-2003.84 (Reserved) (deleted).	7:526-D.
7-2003.85(ii)	7:526-D.
7-2003.85 (clause)	7:526-D.
12-1000	12:38.
12-1000(ii)	12:38.
12-1002.1 (last sentence deleted).	12:39.
12-1002.2	12:39.
12-1002.3(ii)	12:39.
12-1002.4(i)-(vii) (added)	12:40.
12-1002.5(a)	12:40, 12:41.
12-1002.5(b) (added)	12:41 through 12:43.
12-1002.6 (a) and (b) (added).	12:43, 12:44, 12:44-A.
12-1002.7 (formerly .6)	12:44-A.
12-1003 (ii)	12:44-A.
12-1003 (iv) and (v) (added)	12:44-A.
12-1003 (vi) and (vii) (formerly (iv) and (v)).	12:44-B.
12-1004 (v) and (vi) (deleted).	12:44-B.
12-1004 (vii) (changed to (v))	12:44-B.
12-1005.2(b)(1)-(5)	12:44-B through 12:44-I.
12-1005.2(c) (added)	12:44I.
12-1005.3(ii)	12:44-J.
12-1005.5 (a) and (b)	12:44-J, 12:44-K.
12-1005.8(a)	12:44-K.
12-1005.8(b) (added)	12:44-L.
12-1005.10	12:44-L.
12-1005.12 (added)	12:44-L, 12:44-M.

List of Subjects in 32 CFR Parts 1-39

Government procurement.

M. S. Healy,

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

June 27, 1984.

BILLING CODE 3810-01-M

7-1903.38 Protection of Government Buildings, Equipment and Vegetation. In accordance with 7-104.63, insert the clause therein.

7-1903.39 Insurance. In accordance with 10-405, insert the clause in 7-104.65.

7-1903.40 Acquisition and Use of Excess and Near Excess Currency. In accordance with 6-1110, insert the clause in 7-104.66.

7-1903.41 Service Contract Act of 1965, as Amended.

(a) Service Contracts in Excess of $2,500. The clause set forth in the following paragraphs shall be included in every nonexempt contract in excess of $2,500, or in an indefinite amount, the principal purpose of which is to furnish services in the United States through the use of service employees.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1984 JAN)

This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(a) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) If there is such a wage determination attached to this contract, the Contracting Officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section.

(3) Such conforming procedure shall be initiated by the Contractor prior to the performance of contract work by such unlisted class of employee. A written

report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Contractor to the Contracting Officer no later than thirty (30) days after such unlisted class of employees performs any contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information, including the position of the Contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(4) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(5) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(6) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor

succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken, but the other procedures in paragraph (a)(3) of the clause need not be followed.

(7) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(8) The wage rate and fringe benefits finally determined pursuant to paragraphs (a)(2) and (3) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(9) Upon discovery of failure to comply with paragraphs (a)(2) through (8) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(b) Adjustment of Compensation. If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than one (1) year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour

Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) Obligation to Furnish Fringe Benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d) Minimum Wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) Successorship. If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for

services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract, 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(f) Notification to Employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(g) Safe and Sanitary Working Conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service

employees engaged to furnish these services and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) Records and Employees Interviews:

(1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for three (3) years from the completion of the work records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor.

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weeky compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to paragraph (a) of this clause.

A copy of the report required by paragraph (a)(3) of this clause shall be deemed to be such a list.

(vi) Any list of the predecessor contractor's employees which had been furnished to the Contractor pursuant to paragraph (c) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(i) Pay Periods. The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(j) Withholding of Payments and Termination of Contract. The Contracting Officer shall withhold or cause to be withheld from the Government prime Contractor under this or any other Government contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost.

(k) Subcontractors. The Contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the

Act. The term "Contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime Contractor".

(l) Service Employee. As used in this clause, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(m) Federal Wage Board (Blue Collar) and General Schedule (White Collar) Wages and Fringe Benefits Applicable to Service Employee Classifications. The following statement is included in contracts pursuant to section 2(a)(5) of the Act and is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C. 5341 or 5 U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

Employee class	Monetary wage-fringe benefits

(n) Collective Bargaining Agreements Applicable to Service Employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service

employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof.

(o) Seniority List. Not less than ten (10) days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The Contracting Officer shall turn over such list to the successor contractor at the commencement of the succeeding contract.

(p) Regulations Incorporated by Reference. Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(q) Contractor's Certificate.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(r) Variations, Tolerances, and Exemptions Involving Employment. Notwithstanding any of the provisions in paragraphs (a) through (p) of this clause relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(s) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

(t) Tips. An employee engaged in an occupation in which he or she customarily and regularly receives more than thirty dollars ($30) a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531; Provided, however, That the amount of such credit may not exceed $1.24 per hour beginning January 1, 1980, and $1.34 per hour after December 31, 1980. To utilize this proviso:

(i) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(ii) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(iii) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit;

(iv) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(u) Disputes Concerning Labor Standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4,6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor or the employees or their representatives.

(End of clause)

(b) Service Contracts Not in Excess of $2,500. Every contract with the Federal Government which is not in excess of $2,500 but has as its principal purpose the furnishing of services through the use of service employees shall contain the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1984 JAN)

Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of $2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4 and are hereby incorporated by reference in this contract.

(End of clause)

(c) Basic Ordering Agreements and Blanket Purchase Agreements. In the case of the basic ordering agreement or blanket purchase agreement, the dollar amount thereof for purposes of (a) and (b) above shall be the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement. If an agreement

continues or is extended, such estimate shall be made annually for each year after the first, and the agreement modified accordingly.

(d) Price Adjustment Clauses.

(1) In fixed price-type service contracts with options to renew and fixed price-type multiyear service contracts which contain the clause in (a) above, insert the Fair Labor Standards Act and Service Contract Act--Price Adjustment (Multiyear and Option Contracts) clause in 7-1905(b).

(2) In fixed price service contracts other than those covered by (1) above, which contain the clause in (a) above, insert the Fair Labor Standards Act and Service Contract Act--Price Adjustment clause in 7-1905(c).

7-1903.42 Patent Rights. When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1903 43 *Government Delay of Work* The clause in 7-104 77 may be inserted

7-1903 44 *Safety Precautions for Ammunition and Explosives* In accordance with 7-104 79, insert the clause therein

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles* In accordance with 7-104 81, insert the clause therein

7-1903 46 *Management Systems Requirements* In accordance with 16-827 1, insert the clause in 7-104 50

7-1903 47 *Reserved.*

7-1903.48 *Cost Accounting Standards* In accordance with 3-1204, insert the clauses in 7-104 83

7-1903.49 *Availability of Funds* In accordance with 1-318, insert one of the clauses in 7-104 91

7-1903 50 *Capture and Detention* In accordance with 10-406, insert the clause in 7-104 94

7-1903 51 *Value Engineering*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104 44 modified, as required, to suit the particular procurement involved

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor hour contract the effect of the proposal on the Contractor s cost of performance for purposes of the instant contract sharing paragraph (e)(1) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification or substitution by the labor hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor s cost of developing the proposal and of implementing the change and increased Government costs related to implementing the proposal (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings) (End of clause paragraph)

7-1903.52 *Buy American Act* In accordance with 7-104 3, insert the clause therein

7-1903 53 *Preference for United States Flag Air Carriers* In accordance with 1-336 1(b), insert the clause in 7-104 95

7-1903.54 *Privacy Act* In accordance with 1-327 1, insert the clause in 7-104 96

7-1903.55 *Preference for Domestic Specialty Metals* In accordance with 7-104 93, insert the applicable clause therein

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments* In accordance with 6-1312, insert the clause in 7-104 97

7-1903.57 *Hazardous Material Identification and Material Safety Data* In accordance with 1-323 2(b), insert the clause in 7-104 98

7-1903.58 *Reserved.*

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract* The clause in 7-105 1(a) may be inserted

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27019

7-2003 80 *Women-Owned Business* In accordance with 2-201(a)Sec K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec K(xxi), insert the following provision in all solicitations except those made outside the United States

WOMEN-OWNED BUSINESS (1981 JUL)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a women-owned business A *women-owned business* is a business that (i) is at least 51 percent owned by a woman or women who are U S citizens and who also control and operate the business; and (ii) is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto *Control* in this context means exercising the power to make policy decisions *Operate* in this context means being actively involved in the day-to-day management

(End of provision)

7-2003 81 *Percent Foreign Content* In accordance with 2-201(a)Sec K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec K(xxii), insert the following provision in all solicitations except those made outside the United States

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort

(End of provision)

7-2003.82 *Recovered Material* The following certification shall be inserted in solicitations as required by 1-2500 5(b)

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500 4, will be used as required by the applicable specifications

7-2003.83 Reserved.
7-2003.84 Reserved.

7-2003.85 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA). In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which--

(i) the clause at 7-1903.41(a) applies;
(ii) the contract resulting from this solicitation succeeds an ongoing contract for substantially the same services to be performed in the same locality;
(iii) the incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and
(iv) all applicable Department of Labor wage determinations have been requested but not received.

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (1984 JAN)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____and the _____(union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1b and paragraph (e) of the clause at 7-1903.41(a), the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of provision)

7-2003.86 Reserved.
7-2003.87 Reserved.
7-2003.88 Reserved.

7-2003.89 Notice of Cost Comparison.

(a) Advertised contracts. In accordance with 4-1202, insert the following provision in solicitations and resultant contracts.

NOTICE OF COST COMPARISON (ADVERTISED) (1980 MAY)

(a) Bidders are notified that this solicitation is a part of a cost comparison to determine whether accomplishing the specified work in-house or by contract is more economical.

(b) The Government's in-house cost estimate shall be based on the statement of work set forth in this solicitation and shall be submitted to the Contracting Officer in a sealed envelope not later than the time set for bid opening At the time of the bid opening, the bids and the sealed Government in-house estimate will be opened and the results announced This announcement is based upon an initial comparison of the cost of in-house performance with the cost of contracting out as indicated on the cost comparison form. The abstract of bids, the completed cost comparison form and detailed supporting data relative to the in-house cost estimate shall be made available to interested parties for review

(c) A period of ____ working days will be provided for public review by interested parties of the cost comparison data No final determination regarding the question of in-house or contractor performance will be made during this review period. Interested parties may file written requests, based on specific objections, for review of the cost comparison results with the Contracting Officer during this period. This review shall only be used to resolve questions concerning the calculation of the cost comparison, and shall not apply to decisions regarding selection of one bidder in preference to another. Decisions with regard to such requests are final.

(d) After evaluation of bids, and resolution of requests for review, if any, the Contracting Officer shall announce the results of the cost comparison and either award a contract or cancel the solicitation. The completed cost comparison analysis shall be made available to interested parties.

(e) In accordance with provisions of the clause "Late Bids, Modifications of Bids or Withdrawal of Bids," a late modification which displaces the otherwise low in-house cost estimate shall not be considered. An otherwise low in-house cost estimate is considered a successful bid and cannot be displaced by a late modification within subparagraph (d) of that clause.

(End of clause)

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 9—Nondiscrimination Because of Age

12-901 Policy Regarding Nondiscrimination Because of Age It is the policy of the Executive Branch of the Government (i) that contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and (ii) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement This policy is stated in Executive Order No 11141 dated 12 February 1964 Any complaint regarding a concern's compliance with the foregoing policy should be brought to the attention of the concern by a communication (in writing, if appropriate) which states the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern take any appropriate steps which may be necessary to comply with the policy

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 10--Service Contract Act of 1965, As Amended

12-1000 Scope of Part. This part sets forth policies and procedures for implementing the provisions of the McNamara-O'Hara Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et. seq.), as they pertain to service contracts, and the regulations prescribed in 29 CFR, Parts 4 and 1925, and instructions issued by the Secretary of Labor.

12-1001 Statutory Requirements. The Service Contract Act, referred to in this part as the "Act," includes the following general requirements with respect to service contracts entered into by Federal agencies.

(i) Regardless of contract amount, no contractor or subcontractor holding a Federal service contract shall pay any of its employees engaged in such work less than the minimum wage specified in the Fair Labor Standards Act of 1938, as amended;

(ii) Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services performed in the same locality in any bona fide collective bargaining agreement entered into by the predecessor contractor (unless such wages and fringe benefits are determined to be substantially at variance with those which prevail for services of a similar character in the locality);

(iii) Service contractors performing on contracts in excess of $2,500, to which no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act; and

(iv) See 12-1002.4 for statutory exemptions and 12-1002.5 for regulatory exemptions.

12-1002. Applicability.

12-1002.1 General. Subject to statutory exemptions or administrative exemptions by the Secretary of Labor under section 4(b) of the Act (41 U.S.C. 353), the Act applies to

all Federal contracts, the principal purpose of which is to furnish services in the United States through the use of service employees.

12-1002.2 Geographical Coverage of the Act. The Act applies to service contracts performed within the United States (see 12-1002.3(ii)). The Act does not apply to contracts performed outside the United States. In addition, a contract which is performed essentially outside the United States, with only an incidental portion performed within the United States, is not covered by the Act.

12-1002.3 Definitions. For the purpose of this part, unless otherwise indicated, terms used here are defined as follows:

(i) "Service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U.S.C. 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(ii) "United States" shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island, but shall not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(iii) "Administrator" means the Administrator of the Wage and Hour Division, United States Department of Labor, or the Administrator's authorized representative.

(iv) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(v) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(vi) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) and 4(c) of the Act (41 U.S.C 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

12-1002.4 Statutory Exemptions The following are specifically excluded from coverage under the Act, pursuant to statutory exemptions:

(i) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(ii) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(iii) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(iv) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(v) Any contract for public utility services, including electric light and power, water, steam, and gas;

(vi) Any employment contract providing for direct services to a Federal agency by an individual or individuals;

(vii) Any contract with the Post Office Department (now the U.S. Postal Service), the principal purpose of which is the operation of postal contract stations.

12-1002.5 Administrative Limitations, Variations, Tolerances, and Exemptions.

(a) The Secretary of Labor, only in special circumstances, may provide such reasonable limitations and may make such rules and regulations allowing reasonable

variations, tolerances, and exemptions to and from any or all provisions of the Act as the Secretary may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Governemnt business (41 U.S.C. 353(b)). Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the departmental labor advisor (12-1002.7).

(b) Pursuant to the authority cited in (a) above, the Secretary of Labor has exempted the following types of contracts form all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels, over regularly established routes and accounts for an insubstantial portion of the revenue therefrom;

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident;

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(4) Exemption for Contracts for Maintenance and Repair of Certain ADP, Scientific and Medical, and Office and Business Equipment.

(i) Contracts principally for the maintenance, calibration and/or repair of the following types of equipment are exempt from all provisions of the Act, subject to the restrictions in (ii), (iii), and (iv) below:

(A) Automated data processing equipment and office information/word processing systems;

(B) Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply

Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment"; Class 6525, "X-Ray Equipment"; FSC Group 66, Class 6630, "Chemical Analysis Instruments"; Class 6665, "Geographical and Astronomical Instruments", are largely composed of the types of equipment exempted hereunder);

(C) Office/business machines not otherwise exempt pursuant to (A) above, where such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemptions set forth in this paragraph (4) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of such commercial items. An "established catalog price" is a price included in a catalog, price list schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor;

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers;

(D) The contractor certifies in the contract to the provisions in this subparagraph (ii).

(iii) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer prior to contract award. In making a judgement that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) If the Department of Labor determines after contract award that any of the above requirements for exemption have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

12-1002.6 Remanufacturing of Equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Act rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either (1) or (2) below are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual components parts; and

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced; and

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment; and

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized; and

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment; and

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so; and

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down; and

(ii) Outmoded parts are replaced; and

(iii) The item or equipment is rebuilt or reassembled; and

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition; and

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in (a)(1) and (2) above, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include:

(i) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment;

(ii) Repair of typewriters and other office equipment (see 12-1002.5(b)(4));
(iii) Repair of appliances, radios, television, calculators, and other electronic equipment;
(iv) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in (i), (ii), and (iii) above; and
(v) Reupholstering, reconditioning, repair, and refinishing of furniture.

12-1002.7 Questions Concerning Applicability of the Act. In the event the contracting officer questions the applicability of the Act to an acquisition, the matter shall be forwarded for resolution, prior to issuance of the solicitation, as follows:

For the Army: Assistant Secretary of the Army (RDA)
Attn: Labor Advisor
For the Navy: Chief of Naval Material
Attn: Labor Relations Advisor
For the Air Force: Special Assistant for Labor Affairs
HQ USAF/RDC-LA
For DCA: Defense Communications Agency Headquarters
Attn: Counsel
For DMA: Staff Director of Logistics
For DNA: Deputy Director of Operations and Administration
For DLA: Executive Director (Contracting)
Attn: DLA-PL

12-1003 **Department of Labor Regulations.** The Department of Labor has issued 29 CFR, Parts 4 and 1925, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(i) Service Contract Labor Provisions and Procedures (see 29 CFR, Subpart A, Part 4);
(ii) Wage Determination Procedures (see 29 CFR, Subpart B, Part 4);
(iii) Application of the Act of 1965 (Rulings and Interpretations) (see 29 CFR, Subpart C, Part 4);
(iv) Compensation Standards (see 29 CFR, Subpart D, Part 4);
(v) Enforcement (see 29 CFR, Subpart E Part 4);

(vi) Safe and Sanitary Working Conditions (see 29 CFR, Part 1925); and
(vii) Rules of Practice for Administrative Proceedings Enforcing Service Contract Labor Standards (see 29 CFR, Part 6).

12-1004 **Contract Clauses and Solicitation Provisions.** Clauses, solicitation provisions, and guidance as to their use are contained at:

(i) 7-1903.41(a) - Service Contracts in Excess of $2,500;
(ii) 7-1903.41(b) - Service Contracts Not in Excess of $2,500;
(iii) 7-1903.41(c) - Basic Ordering Agreements and Blanket Purchase Agreements;
(iv) 7-1903.41(d) - Price Adjustment Clause;
(v) 7-2003.85 - SCA Minimum Wages and Fringe Benefits Applicable to Successor Contractor Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).

12-1005 **Administration and Enforcement.**

12-1005.1 Responsibilities of the Department of Labor. The Secretary of Labor is authorized and directed to administer and enforce the provisions of the Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act.

12-1005.2 Contracting Officer Responsibilities--Preparation of Solicitations and Contracts.

(a) As to solicitations and contracts of $2,500 or less, to which the Act applies, the contracting officer shall include the clause set forth in 7-1903.41(b).

(b) As to solicitations and contracts that are or may be in excess of $2,500, to which the Act applies, the contracting officer shall insert the applicable clause(s) at 7-1903.41 and the solicitation provision at 7-2003.85, and shall take the following appropriate actions:

(1) Issuance of Notice of Intention to Make a Service Contract--Standard Forms 98 and 98a.

a. For any contract exceeding $2,500 which may be subject to the Act, the contracting office shall file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. With respect to recurring or known requirements, such notices shall be filed not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) prior to any invitation for bids, request for proposals, commencement of

negotiations, exercise of option or contract extension, annual anniversary date of a multiyear contract subject to annual fiscal appropriations of the Congress, or each biennial anniversary date of a multiyear contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division. Notices with regard to solicitations where such planning is not feasible shall be submitted as soon as possible, but not later than 30 days prior to the above contracting actions. This notice shall be submitted on SF 98/98a (see Appendix F-100.98) in accordance with the forms' instructions and shall be supplemented by the information required under b. and c. below. Care should be taken to ensure that all required information is provided to avert return without action by the Department of Labor.

b. The contracting office shall file SF 98a with SF 98. SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(i) classes of service employees;

(ii) the number of service employees in each class; and

(iii) the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 or 5332 (see (3) below).

c. If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same location by an incumbent contractor whose contract the proposed contract will succeed, and if the incumbent contractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements, the contracting officer shall obtain from the contractor (see paragraph (n) of 7-1903.41(a)) a copy of each such collective bargaining agreement, together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement, and submit them with the SF 98/98a, retaining a copy for the contract file. If such services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements have application. If the collective bargaining agreement does

not apply to all service employees under the contract, the contracting office shall identify the employees and/or work subject to the collective bargaining agreement. See (2) below for notice to interested parties, which is required at least 30 days prior to issuance of the solicitation. See also (4)b. below, concerning collective bargaining agreements that are considered not to be entered into as a result of arms-length negotiations or that are at substantial variance with the wages and fringe benefits prevailing in the locality. (Note that the successorship provisions of the Act do not apply if the contract services are to be performed in a different locality than where performed by the predecessor contractor.)

d. If exceptional circumstances prevent the filing of the notice of intention and the supplemental information required by b. above, the notice shall be submitted to the Wage and Hour Division as soon as practicable, with a detailed explanation justifying the need for expeditious action on the SF 98.

e. Requests to expedite issuance of wage determinations or to check the status of a particular request should be made in accordance with departmental procedures through the offices listed in 12-1002.7. Direct contact with Department of Labor officials for this purpose is not authorized.

f. Place of Performance Unknown.

1. Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting office shall, upon identification of firms participating in the procurement in response to an initial solicitation, file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract (SF 98/98a). In addition to the requirements contained in a. above, such submission shall identify each location where the work may be performed as indicated by participating firms. Subsequent amendments to the solicitation setting forth the wage determinations and any necessary change in the date and time for submission of final bids shall be made upon receipt of wage determinations. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the

resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

2. There may be unusual situations, as determined by the Department of Labor upon consultation with the departmental labor advisor (see 12-1002.7), where the procedure in 1. above is not practicable in a particular situation, in which event the Department of Labor may authorize a modified procedure which may result in the subsequent issuance of wage determinations for one or more composite localities.

g. If any invitation for bids, request for proposals, bid opening, or commencement of negotiations for a proposed contract for which a wage determination was provided in response to an SF 98/98a has been delayed, for whatever reason, more than 60 days from the date of such procurement action as indicated on the submitted SF 98/98a, the contracting office shall contact the Wage and Hour Division for the purpose of determining whether the wage determination issued pursuant to the initial submission is still current. Any revision of a wage determination received by the contracting office as a result of such communication or upon discovery by the Department of Labor of a delay, shall supersede and replace the earlier response as the wage determination applicable to such procurement, subject to the time frames set forth in 12-1005.2(b)(4).

(2) Notice to Interested Parties. If the contracting officer is aware that the incumbent contractor's or a subcontractor's service employees performing on the contract are represented by a collective bargaining agent, the contracting officer shall give both the incumbent (predecessor) contractor and his employees' collective bargaining representative written notification at least 30 days in advance of all applicable estimated procurement dates, including issue of bid solicitation, bid opening, date of award, commencement of negotiations, receipt of proposals, or the commencement date of a contract resulting from a negotiation, option, or extension, as the case may be.

(3) Statement of Equivalent Rates for Federal Hires.

a. In accordance with section 2(a)(5) of the Act, paragraph (m) of the clause at 7-1903.41(a) shall contain a statement of rates for equivalent Federal hires, setting forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of

service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule--white collar) and/or 5 U.S.C. 5341 (Wage Board--blue collar) were applicable.

b. Procedures for computation of these rates are as follows:

1. Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees. Determinations of applicable Wage Board rates are as follows:

i. Where the place of performance is known, the rates applicable to that location shall be used; or

ii. Where the place for performance is not known, the rates applicable to the contracting activity's location shall be used.

2. Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

3. Local civilian personnel offices can assist in determining and providing grade and salary data.

(4) Applicability of Wage Determinations Prior to Award.

a. Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions thereto) issued by the Administrator in response to the notice required under (1) above, setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, the following rules regarding the receipt of wage determinations and revisions thereto should be observed:

(i) A wage determination revision shall not apply where no collective bargaining agreement exists and the wage determination or revision is received by the Federal agency less than 10 days before the opening of bids in formally advertised contracts, unless the contracting officer finds that there is a reasonable time to notify bidders thereof. In the case of procurements entered into pursuant to negotiations (or in the case of the execution of an option or an extension of the initial contract term) wage determination or revisions received by the agency after award (or execution of an option or extension of term, as the case may be) of the contract shall not be effective provided that the contract start of performance is within 30

days of such award (or execution of an option or extension of term). If the contract does not specify a start of performance date which is within 30 days from the award, and/or if performance of such procurement does not commence within this 30-day period, the Department of Labor shall be notified and any wage determination or revision received by the agency not less than 10 days before commencement of the contract shall be effective.

(ii) A wage determination (or revision) based on a collective bargaining agreement shall not apply where the contracting office has received notice of the existence of that collective bargaining agreement less than 10 days before bid opening in formally advertised contracts and the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation. Similarly, a wage determination (or revision) based on a collective bargaining agreement shall not apply if notice of the terms of the new or changed collective bargaining agreement is received by the agency after award of a successor contract to be entered into pursuant to negotiations or as a result of the execution of a renewal option or an extension of the initial contract term; Provided, that the contract start of performance is within 30 days of such award or renewal option or extension. If the contract does not specify a start of performance date which is within 30 days from the award, and/or performance of such procurement does not commence within this 30-day period, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the contract will be effective for purposes of the successor contract under section 4(c) of the Act.

(iii) The limitations in (ii) above shall apply only if the notices required in (1) and (2) above have been given.

b. Review of Collective Bargaining Agreements and Wage Determinations.

1. If a contracting officer believes that an incumbent contractor's collective bargaining agreement under section 4(c) of the Act was not entered into as a result of arms-length negotiations, procedures in accordance with 4. below shall be followed.

2. Immediately upon receipt of a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall examine the wage determination to ascertain whether it is correct and whether it conforms with the wages and fringe benefits prevailing

for services of a character similar in the locality. If the wage determination is at substantial variance with the prevailing rates, the contracting officer shall proceed in accordance with 3. below.

3. A full statement of the facts shall be transmitted immediately to the departmental labor advisor (see 12-1002.7) through contracting channels for appropriate action.

4. If wages and fringe benefits provided for in a collective bargaining agreement are substantially at variance with those prevailing for services of a character similar in the locality, the contracting officer shall proceed as follows:

i. Review immediately the agreement to ascertain if a hearing (12-1006) is warranted.

ii. Submit a request for hearing, when warranted, to the departmental labor advisor (12-1002.7) through contracting channels. Sufficient payroll data shall accompany this request to support a prima facie showing that the bargained-for rates, in fact, are substantially at variance with those prevailing for services of a character similar in the locality. Except under extraordinary circumstances, as determined by the Administrator, a request for hearing shall not be considered by the Secretary unless received by the Department of Labor more than 10 days before the award of an advertised contract or prior to the commencement of a negotiated contract or contract extension, through option or otherwise.

(5) Late Receipt of Wage Determinations.

a. If the SCA wage determination requested in accordance with the filing deadlines set out in (1) above is not received in time, and absent an incumbent contractor union agreement, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. (But see (4)a.(i) above.)

b. In those cases involving an incumbent contractor operating under a collective bargaining agreement, the wage determination in the incumbent's contract shall not be included in any solicitation that must be released without a new SCA wage determination. Instead, using the solicitation provisions at 7-2003.85, offerors shall be informed that--

(i) the economic terms of such agreement(s) will apply to the contract and should be considered in developing an offer; however,

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27029

(ii) pursuant to Department of Labor regulations at 29 CFR 41b, and subject to the conditions set forth in (2) and (4)a.ii. above, the economic terms of any agreement entered into subsequent to this solicitation might apply to the contract.

c. The contracting officer shall notify in writing the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor. An information copy of each such notice shall be forwarded to the appropriate departmental labor advisor (see 12-1002.7).

(c) Seniority Lists. In cases of a contract performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See section (o) of the clause at 7-1903.41(a).) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation fringe benefits which are based on length of service with predecessor contractors (where such benefit is required by an applicable wage determination).

12-1005.3 Applicability of Wage Determinations--Subsequent to Award. If a required wage determination is not included in the solicitation or contract due to failure to comply with 12-1005.2(b)(1) or (2), and if the contracting officer receives a wage determination from the Department of Labor within 30 days of the late filing of the SF 98/98a or the discovery by the Department of Labor of the failure to include a wage determination required by this part--

(i) the contracting officer shall attempt to negotiate a bilateral notification to--
  (A) incorporate the appropriate clauses, if not previously included;
  (B) incorporate the required wage determination, which shall be effective as of the date of issuance unless otherwise specified; and

(C) equitably adjust the contract price to compensate for any increased cost of performance under the contract by the wage determination; or

(ii) the contracting officer, if unable to negotiate a bilateral modification incorporating the wage determination, shall document the contract file to show the efforts made and provide a copy of this documentation through appropriate channels to the departmental labor advisor (see 12-1002.7).

12-1005.4 Additional Classes of Service Employees (Conformable Rates). Where additional classes of service employees are required, which were not set forth in the wage determination, the procedure described in paragraph (a) of the contract clause (7-1903.41(a)) shall be followed after award.

12-1005.5 Notice of Award.

(a) Notice of Award of Contract--Standard Form 99. Two copies of SF 99 shall be prepared for contracts of more than $10,000 but less than $25,000 containing the clause in 7-1903.41(a). No SF 99 is required for covered service contracts of $10,000 or less. The original and duplicate SF 99 shall be forwarded to the Department of Labor, ATTN: Administrator, Wage and Hour Division, Washington, D.C. 20210. The form shall be completed as follows:

(i) Item 1 through 7 and 12 and 13: self-explanatory;

(ii) Item 8: enter the notation "Service Contract Act";

(iii) Item 9: leave blank;

(iv) Item 10: enter the notation "Major Category" and indicate beside this entry the general service area into which the contract falls (e.g., food services, grounds maintenance, computer services, installation or facility support services, custodial-janitorial service, garbage collection, insect and rodent control, laundry and drycleaning services, etc.);

(v) Item 11: enter the dollar amount of the contract or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite" or "not to exceed $_____."

(b) Individual Procurement Action Report (DD Form 350). Awards of service contracts of $25,000 or more are reported to the Department of Labor via the Federal Procurement Data System from information contained in this form (see 21-114). Therefore, the contracting officer shall not report such awards directly to the Department of Labor.

12-1005.6 Inquiries Concerning the Act. Contractors or contractor employees who inquire concerning the administration and enforcement of the Act shall be advised that such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Assistant Regional Administrator of the Wage and Hour Division of the Department of Labor (see 12-607).

12-1005.7 Contract Modifications.

(a) Bilateral Contract Modifications. Generally, a bilateral contract modification affecting the scope of the work is regarded as a new contract for purposes of the Act. Bilateral contract modifications not related to the contract's labor requirements or containing insignificant changes to the contract's labor requirements shall not be deemed to create a new contract for purposes of the Act.) Prior to entering into such modification, the contracting officer shall forward SF 98/98a to the Administrator in accordance with the procedure set forth in 12-1005.2(b)(1), except that--

(i) in the "Estimated Solicitation Date" block, enter the date the wage determination is needed; and

(ii) in block 6, enter "Modification of Existing Contract for (describe type of service) Services."

(b) Extension of Contract Through Exercise of Option or Otherwise. A new contract shall be deemed entered into for purposes of the Act when the period of performance of an existing contract is extended pursuant to an option clause or otherwise. Prior to extending the period of performance of the contract, the contracting officer shall forward SF 98/98a as provided in 12-1005.2(b)(1) and in (a) above.

12-1005.8 Multiyear Contracts.

(a) Multiyear Contracts Subject to Annual Appropriations. After the initial submission of the SF 98/98a for a covered multiyear service contract subject to annual fiscal appropriations of the Congress, the contracting officer shall submit an SF 98/98a on an annual basis thereafter, not less than 60 days (nor more than 120 days) prior to the contract anniversary date.

(b) Multiyear Contracts Not Subject to Annual Appropriations. If the proposed contract is for a multiyear period subject to other than annual appropriations, the contracting officer shall file with the initial SF 98/98a a statement in writing concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that an SF 98/98a must be filed on the annual anniversary date, a new SF 98/98a shall be submitted on each biennial anniversary date of the proposed multiyear contract in the event its term is for a period in excess of two years.

12.1005.9 Withholding of Contract Payments.

(a) As provided by the Act, any violation of the stipulations required by the clauses (7-1903.41) renders the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of the contract. Upon the written request of the Department of Labor, at a level no lower than an Assistant Regional Administrator, so much of the accrued payment due on the contract under which the violations occurred shall be withheld as is necessary to pay such employees under that contract or under any other contract between the Government prime contractor and the Federal Government, provided such other contract is not assigned pursuant to 31 U.S.C. 203 or 41 U.S.C. 15. Generally, such sums withheld shall be forwarded immediately to the Department of Labor for payment to employees unless otherwise directed by the Department of Labor.

12.1005.10 Termination. See paragraph (j) of 7-1903.41(a).

12-1005.11 Cooperation with the Department of Labor. The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred in writing to the appropriate regional office of the Department of Labor. In no event shall complaints by employees be disclosed to the employer.

12-1005.12 Disputes Concerning Labor Standards. Disputes arising out of the Service Contract Act labor

standards contract provisions are not subject to the Disputes clause. (See subparagraph (u) of the clause at 7-1903.41(a).) Such disputes shall instead be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this part include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

12-1006 **Hearings.** A successor contractor's obligation (see 12-1001(ii)) cannot be avoided unless it is found after a hearing that such bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Such hearings may be requested by any interested party, including the contractor, a union, or the contracting agency.

12-1007 **Procedures for Evaluating Professional Employee Compensation for Service Contracts.**

12-1007.1 Purpose. The Service Contract Act of 1965, as amended, was enacted to ensure that blue collar and some white collar workers are fairly compensated by contractors providing contract services to the Government. It does not apply, however, to professional employees. This part provides policies and procedures to be used when contracting for services which include a meaningful number of professional employees not covered under the Service Contract Act.

12-1007.2 Policy. It is the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government be fairly and properly compensated. To accomplish this policy, DoD proposal evaluators shall ensure that they fully understand the compensation plan proposed by each offeror within the competitive range. If a particular plan is either unclear or not fully substantiated, the evaluator shall request clarification and/or additional substantiating information, including, as appropriate, recognized national and regional compensation surveys and studies of professional public and private organizations used in establishing the total compensation package.

12-1007.3 Applicability. The provisions in 7-2003.78 and 7-2003.79 shall apply when all of the following conditions are present:

(i) the principal purpose of the proposed contract is to furnish services in the United States;

(ii) the proposed contract will be negotiated;

(iii) there are a meaningful number of professional employees who will be employed by the contractor to perform the service; and

(iv) the proposed contract will be in excess of $250,000.

12-1007.4 Definition of Professional Employee. The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

* U S GOVERNMENT PRINTING OFFICE: 1984-421 335:305

[FR Doc. 84-17437 Filed 6-28-84; 8:45 am]
BILLING CODE 3810-01-C

32 CFR Parts 1–39

[DAC 76–50]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76–50. The changes include the addition of Appendix T, International Agreements.

EFFECTIVE DATE: Upon receipt, in accordance with DAR 1–106.2(d).

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, OUSDRE(AM)(DARS), OUSDRE(M&RS), Room 3D 139, Pentagon, Washington, D.C. 20301, telephone (202)697–7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1–39, Volumes I, II, and III, of the Code of Federal Regulations (CFR). The July 1, 1983 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1976 edition of the DAR made by Defense Acquisition Circulars 76–1 through 76–44.

The Department of Defense announced the promulgation of the 1979 CFR edition in the Federal Register of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the DAR would be published in the Federal Register.

Defense Acquisition Circular 76–50

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76–50, issued 19 March 1984. The following is a summary of the amendments:

Appendix T—International Agreements. Appendix T has been created to incorporate all of the Memoranda of Understanding and Memoranda of Agreement which were formerly contained in DAR Section VI. This appendix contains all of the agreements which are in effect at this time.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on receipt in accordance with DAR 1–106.2(d).

How To Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–50. The number at the top of each page identifies the page number. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none above, on a preceding page. This is a new document; therefore marginal lines are not provided.

Adoption of Amendments

Therefore, the Defense Acquisition Regulation contained in the July 1, 1983 edition of 32 CFR Parts 1–39, Volumes I, II, and III, is amended in the DAR by addition of the pages listed in the table.

DAR paragraph	Pages
Volume III	
Appendix T, Table of Contents	T:i.
T-000	T:1.
T-100	T:2.
T-101	T:2, T:3.
T-102	T:3.
T-102.1	T:3, T:4, T:5.
T-102.2	T:6, T:7.
T-200	T:8.
T-201	T:8.
T-201.1	T:8–T:11.
T-201.2	T:11 through T:15.
T-202	T:16–T:23.
T-203	T:23 through T:37.
T-204	T:33–T:43.
T-205	T:43 through T:53.
T-206	T:54–T:60.
T-207	T:60 through T:71.
T-208	T:72–T:78.
T-209	T:78 through T:83.
T-210	T:84–T:94.
T-211	T:94, T:95.
T-212	T:95 through T:120.
T-213	T:121 through T:145.
T-300	T:148.
T-301	T:148–T:150.
T-302	T:150 through T:159.

List of Subjects in 32 CFR Parts 1–39

Government procurement.

Dated: June 27, 1984.

M. S. Healy,

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

BILLING CODE 3810-01-M

DAC #76-50 19 MARCH 1984

APPENDIX T

INTERNATIONAL AGREEMENTS

TABLE OF CONTENTS

Paragraph		*Page*
T-000	Scope of Appendix	T:1
	Part 1—FMS/Offset Arrangements	
T-100	Scope of Part	T:2
T-101	Australian Memorandum of Discussion	T:2
T-102	Swiss Agreements	T:3
	T-102.1 Swiss F-5 Agreement	T:3
	T-102.2 Amendment 1 to Swiss F-5 Agreement	T:6
	Part 2—MOU's With NATO Participating Countries	
T-200	Scope of Part	T:8
T-201	Canadian Agreements	T:8
	T-201.1 Letter of Agreement With Canada	T:8
	T-201.2 Cooperative Agreement With Canada	T:11
T-202	United Kingdom Memorandum of Understanding	T:16
T-203	Norway Memorandum of Understanding	T:28
T-204	Netherlands Memorandum of Understanding	T:38
T-205	Federal Republic of Germany Memorandum of Understanding	T:48
T-206	Italy Memorandum of Understanding	T:54
T-207	Portugal Memorandum of Understanding	T:60
T-208	Belgium Memorandum of Understanding	T:72
T-209	Denmark Memorandum of Understanding	T:78
T-210	Luxembourg Memorandum of Understanding	T:84
T-211	France Memorandum of Understanding	T:94
T-212	Spain Memorandum of Understanding	T:96
T-213	Turkey Memorandum of Understanding	T:121
	Part 3—Defense Cooperation Country Agreements and Annexes	
T-300	Scope of Part	T:146
T-301	Israel Memorandum of Agreement	T:146
T-302	Egypt Memorandum of Understanding	T:150

DAC #76-50 19 MARCH 1984

APPENDIX T

INTERNATIONAL AGREEMENTS

T-000 Scope of Appendix This Appendix contains copies of international agreements entered into by the Department of Defense

27034 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

APPENDIX T

INTERNATIONAL AGREEMENTS

Part 1—FMS/Offset Arrangements

T-100 Scope of Part. This part provides, for information purposes only, copies of FMS/Offset Arrangements negotiated pursuant to FMS agreements. See DAR 6-1315

T-101 Australian Memorandum of Discussion

MEMORANDUM OF DISCUSSIONS

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973 between the U.S. Department of Defense and the Australian Department of Defence. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defence will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: one, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and two, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, D.C.

SUBMITTED:	Leonard A. Alne For the U.S. Department of Defense	Roy W.G. Davies For the Australian Department of Defence
APPROVED:	W.P. Clements, Jr.	L. Barnard, M.O.D.

T-102 Swiss Agreements.

T-102.1 *Swiss F-5 Agreement.*

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE UNITED STATES CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F-5E and F-5F aircraft, with associated supporting defense articles and services, from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27035

2. The goal of the Memorandum of Understanding (MOU) is to offset to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing contracts on a competitive basis with Swiss industries, but in no event will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to those U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capabilities and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use its best efforts to have Northrop, General Electric, and other companies associated with the F-5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U S. industry and other sources for sub-contracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U S. contractors associated with the F-5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F-5 aircraft, the following:

(A) Direction to Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger	Rudolf Gnaegi
The Secretary of Defense of the United States of America	The Chief of the Federal Military Department of the Swiss Confederation
2 July 1975 (Date)	9 July 1975 (Date)

27036 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

T-102.2 *Amendment 1 to Swiss F-5 Agreement.*

AMENDMENT 1 TO THE

MEMORANDUM OF UNDERSTANDING

BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION

AND THE GOVERNMENT OF THE UNITED STATES

CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department, intends to purchase an additional quantity of approximately 40 F-5 aircraft over and above that quantity covered by the basic Memorandum of Understanding (MOU). This purchase will be made from U S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The purpose of this Amendment is to extend the period of time during which Swiss industry will be allowed to compete with U S. industries for DoD contracts. It is understood that reciprocal access to Swiss Government defense contract opportunities is afforded to U S industry, since the Government of Switzerland imposes no national protectionist barriers nor import duties in considering foreign proposals for Swiss Government defense contracts.

3. The U.S. Government will continue to perform its commitments with respect to the offset goal specified in the basic MOU through the period of time specified therein. However, this Amendment does not obligate the U S Government to any additional offset goal with respect to the additional F-5 purchase.

4. In consideration of the purchase by the Government of Switzerland of this additional quantity of F-5 aircraft, the basic MOU is herewith amended to provide that, upon termination of the obligations of the U S Government as set forth in the basic MOU, the DoD will continue, on a case-by-case basis, and to the extent permitted by U S laws and regulations, to:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contract and subcontract solicitations from Swiss industry.

(B) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(C) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(D) Provide for necessary duty-free certification and related documentation.

(E) Provide for waivers of buy national and balance of payments restrictions

5. This Amendment shall become effective in July 1983 contingent upon Swiss Federal Military Department acceptance of the U S. DoD's Letter of Offer and Acceptance for the additional F-5E/F Aircraft This Amendment shall remain in effect for four years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

Secretary of Defense
for the Government of the
United States of America

OCT 7 1980
(Date)

Chief of the Federal Military
Department for the Government of
the Swiss Confederation

Oct 29 1980
(Date)

Part 2—MOU's With NATO Participating Countries

T-200 Scope of Part This part provides, for information purposes only, copies of Participating Country Agreement, Memoranda of Understanding, and accompanying annexes See DAR 6-1406

T-201 Canadian Agreements

T-201 1 *Letter of Agreement With Canada*

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation It shall remain in force from year to year, until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements facilitating procurement by each of the parties in the country of the other

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP-31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) excess profits referred to in paragraph (a) above, and

(iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc , as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c)) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*now the Department of Supply and Services

T-201.2 *Cooperative Agreement with Canada.*

MEMORANDUM OF UNDERSTANDING IN THE FIELD OF COOPERATIVE DEVELOPMENT BETWEEN THE UNITED STATES DEPARTMENT OF DEFENSE AND THE CANADIAN DEPARTMENT OF DEFENCE PRODUCTION

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27039

1. Objectives:

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. Description of the Program:

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) which are performed by Canadian prime contractors;

(2) which are designed to meet specific DoD research and development requirements;

(3) in which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. Funding:

The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.

4. Selection of Projects:

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. Project Agreements:

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will inter alia set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. Selection of Prime Contractors:

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. Contract Clauses for Projects:

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. Competitive Research and Development:

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

27040 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

9. DoD Procurement of Researched Developed Items:

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. Security:

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. Disclosure of Classified Information:

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. Sales:

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. Other Research and Development Efforts not in Defense Development Sharing Program:

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. Canadian Access to United States Information:

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms will have the same access to DoD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury
Minister of Defence Production
Date: 21 November 1963

Robert S. McNamara
Secretary of Defense
Date: 16 November 1963

T-202 United Kingdom Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN P&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT)

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attainable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/ Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

d. To facilitate production programs set up in implementation of this MOU, the Governments understand that subject to their established policies, procedures, regulations and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents of information and technology necessary for the purposes of such facilitation.

e. The Governments, through their appropriate representative, will consult concerning any problems which may inhibit the efficient operation of this arrangement. Such consultations will be conducted on the basis of SECTION B of this MOU.

SECTION B: IMPLEMENTATION MACHINERY

1. Both Governments understand that detailed implementing procedures need to be considered and decided upon in order to carry out the provisions of this MOU. Representatives of the Governments will be appointed to develop a coordinated program of such implementing procedures, and to discuss procurement and production needs of the Governments. These representatives will meet as required.

2. The Director, Defense Security Assistance Agency, under the policy guidance of the Assistant Secretary of Defense (International Security Affairs), and in coordination with the Director, Defense Research and Engineering, the Assistant Secretary of Defense (Installations and Logistics and other DoD offices will be the focal point in the US Government for the development of an overall coordinated program of implementing procedures under this MOU. The Director, Defense Research and Engineering will be responsible for matters under this MOU touching upon research, development, test and evaluation as they relate to bilateral arrangements for joint military development. The Assistant Secretary of Defense (Installations and Logistics) will be responsible for managing procurement and production matters under this MOU on a continuing basis, in coordination with OASD(ISA), DSAA and other appropriate DoD offices.

3. The Head of Defense Sales, MOD, under the policy guidance of the Minister of State for Defence, and in consultation, as appropriate with the Chairman and members of the MOD Defence Equipment Policy Committee, will be responsible on the UK side for the development of an overall coordinated program of implementing procedures under this Memorandum of Understanding.

SECTION C: INDUSTRIAL PARTICIPATION

1. Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation.

2. Implementation of this MOU will involve full industrial participating. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

SECTION D: TERMINATION

1. This MOU will be terminated on 1 January 1985 unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1985, any proposal for termination will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination.

SECTION E: FURTHER COOPERATION

Annexes subsequently negotiated by the responsible offices and endorsed by appropriate Governmental authorities will form an integral part of this Memorandum of Understanding.

SECTION F: EFFECTIVE DATE

This Memorandum of Understanding will come into operation upon signature by the Governments.

Signed in duplicate at London this 24th day of September 1975.

James R. Schlesinger	Roy Mason
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland

Date 24 September 1975

ANNEX I

Implementing Procedures for the "Memorandum of Understanding between the Government of the United States and the Government of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment" of 24 September 1975.

I INTRODUCTION

On 24 September 1975 the Governments of the United States (US) and the United Kingdom (UK) signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment". The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II MAJOR PRINCIPLES

A. Both the US and UK will consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed and produced in the other country. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation. The responsible governmental purchasing agencies in each country will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27043

B. Offers will be evaluated without applying price differentials under Buy-National laws and regulations.

C Offers will be evaluated without consideration of the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

D Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK consistent with the policies and criteria of the respective purchasing agencies.

E Offers will be required to satisfy requirements for performance, quality, delivery, continued logistic support, and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

III ACTION

In implementing the MOU both countries will review and, where considered necessary, revise defense policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization are taken into account. In addition both countries will:

A Ensure that their respective requirement offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU, which are complemented by the "Arrangements for Joint Military Development by the US and the UK" of 1963.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E Assist industries in their respective countries to identify and advise the other government of their capabilities and assist industries in carrying out the supporting actions to maximize industrial participation.

F Review defense items submitted as candidates for respective requirements. Indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility

G. Make best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

H. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements (for the maintenance of a defense mobilization base) are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from nonnational sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

I. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

IV COUNTING PROCEDURES

The US and UK Governments will decide between them to which items of defense equipment this MOU will apply but in principle all defense items (and associated services included in a procurement contract) purchased by either country will be counted against the goals of this MOU as long as they meet the following criteria:

A. Direct purchases by either Government from the other, including its Agencies;

B. Direct purchases by either Government from the industry of the other country;

C. Purchases by Industry from the Government or Industry of the other country in aid of Government defense contracts;

D. Purchases by a third country government from either US or UK Government or industrial sources as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded projects to which the US and/or UK are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The applicability of such purchases to this MOU will be agreed between MOD/OSD in each case.

F. License fees, royalties and other associated income resulting from orders placed by Industry and/or Government with a licensed company in the other country

V ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual US/UK Statement of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any US-UK Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B above.

HOWARD M. FISH
For the Government of the United States

2 April 1976
Date

R. Anderson
For the Government of the United Kingdom of Great Britain and Northern Ireland

2 April 1976
Date

ANNEX II

MUTUAL ACCEPTANCE OF TEST AND EVALUATION

INTRODUCTION

1. In furtherance of the principles governing reciprocal Defence purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for the MOU (Annex I thereto), representatives of the US Department of Defense (DoD) and the UK Ministry of Defence (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defence procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organizations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, drawn up in accordance with Section E of the MOU, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defence systems are considered:

a. Those still under development.

b. Those for which development is complete.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27045

a To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960 10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c For systems for which development is complete, the offering government will ensure, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

William J. Perry
For the Government of the United States

9 October 1978
Date

Sir Clifford Cornford
For the Government of the United Kingdom of Great Britain and Northern Ireland

9 October 1978
Date

ANNEX III

RECIPROCAL AUDITS OF CONTRACTS AND SUBCONTRACTS

I GENERAL

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defence equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

- Survey of contractor's capability;
- Pre-contract audit;
- Audit during contract performance;
- Audit after contract performance, e g termination, before payment of final price in respect of fixed price contract or cost type contract;
- Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
- Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

27046 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

II PURPOSE AND SCOPE OF AUDITS

The purpose of these audits will be to examine proposed or incurred costs and supporting data in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits performed under the provisions of this Annex will cover all elements of cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III AUDIT AGENCIES

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

- For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).
- For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS(PE)) of the Ministry of Defence.

IV AUDIT REQUEST PROCEDURES

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:

- Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
- The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:

- Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V OPERATING RULES

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or sub-contract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the questions contained in the request for audit and will detail any problems encountered during the audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If, due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI PROTECTION OF INFORMATION

Each audit report will be prepared by the audit agency and submitted in confidence. No report, or data therein, will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation purposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27047

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it

VII NATIONAL SECURITY

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

William Levitt	Leonard Salthouse
United States	United Kingdom
21 June 1979 (date)	21 June 1979 (date)

T-203 Norway Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF NORWAY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

° Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

° Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and

° Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment

have entered into this Memorandum of Understanding in order to achieve the above aims

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5 In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

ARTICLE V

Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway The Minister of Defense	For the United States Government The Secretary of Defense
Rolf Hansen	Harold Brown
Date May 19, 1978	Date May 19, 1978

ANNEX 1

I. INTRODUCTION

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27051

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B above

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government

For the Government of Norway

T-204 Netherlands Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defence:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C-M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27053

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10 Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

ARTICLE V

Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands	For the Government of the United States of America
The Minister of Defense	The Secretary of Defense
Willem Scholten	Harold Brown
Date August 24, 1978	Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27055

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insure free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

K. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. COUNTING PROCEDURES

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) directly purchased by the MoD or DoD from one another; or

(2) directly purchased by the MoD or DoD from the industry of the other country; or

(3) purchased by the industry of one country from the Government or industry of the other country; or

(4) purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) license fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the other country.

B. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. ADMINISTRATION

A Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 22 December 1978	Date 22 December 1978

(Appendices to Annex I not included)

ANNEX II

Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

ANNEX III

TERMS OF REFERENCES

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defence equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of each country and the likely areas of cooperation including joint activities in these fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27057

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

T-205 Federal Republic of Germany Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

27058 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding. Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27059

ARTICLE IV

Security

4 1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4 2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4 3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

5 1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6 1 This Memorandum of Understanding will remain in effect for a six-year period following its signing Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America	The Federal Minister of Defense of the Federal Republic of Germany
Harold Brown	Hans Apel
Date October 17, 1978	October 17, 1978

T-206 Italy Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ITALY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27031

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duties and other discriminatory levies in evaluating bids submitted in accordance with this MOU, as well as the waiver of protectionist provisions Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9 Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country

10 Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost

11. Both Governments will review items submitted as candidates for respective requirements They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12 Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15 Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements

27062 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the US Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

ARTICLE V

Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter

of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27063

2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government	For the Government of the Italian Republic
Harold Brown	Attilio Ruffini
Date 11 September 1978	11 September 1978

T-207 Portugal Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5 The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27065

ARTICLE IV

Security

1 To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification

2 Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the 'Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1 The Portugal-U S Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3 An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America The Secretary of Defense	For the Government of Portugal The Minister of Defense
Harold Brown	José Alberto Loureiro dos Santos
Date 28 March 1979	18 December 1978

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. MAJOR PRINCIPLES

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3 4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3 5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3 6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3 7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27667

4. COUNTING PROCEDURES

4 1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4 1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4 1 3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4 1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case-by-case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country

5. ADMINISTRATION

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the data available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX II

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING LOGISTIC SUPPORT OF COMMON EQUIPMENT

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article I of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU.

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX III

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

TERMS OF REFERENCE

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article, II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU.

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27069

T-208 Belgium Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of their respective resources allocated to defense,

- Promote the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art 3 of the North Atlantic Treaty and para 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment

The two Governments conclude this MOU to strengthen the North Atlantic Alliance The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In

so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels

c A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services

3 In the interests of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds of the U S Department of Defense or budgeted funds of the Belgian Ministry of Defense.

27070 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, as well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the exent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27071

ARTICLE II

Implementation Procedures

1 Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2 Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representative for the Government of Belgium.

3 The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU

4 Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense They will be listed in an annex to be made a part of this MOU

ARTICLE III

Industry Participation

1 Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

ARTICLE IV

Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding

ARTICLE V

Annual Statement

An annual United States - Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support, of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian - United States Committee for Mutual Cooperation, in accordance with its terms of reference.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination

3 Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

27072 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

ARTICLE VIII

Implementation

1 The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of the Kingdom of Belgium
The Secretary of Defense	The Minister of Defense
Harold Brown	Jose Desmarets
Date 12 December 1979	12 December 1979

T-209 Denmark Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27073

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2 The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Denmark for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

27074 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classifed by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America	The Kingdom of Denmark
The Secretary of Defense	The Minister of Defense
Harold Brown	Paul Sögaard
Date 30 January 1980	Date 2 January 1980

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27075

T-210 Luxembourg Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
on
RECIPROCAL DEFENSE PROCUREMENT

PREAMBLE

The Government of the United States of American and the Government of the Grand-Duchy of Luxembourg, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense;

- Promote the widest possible use of standard or interoperable equipment; and,

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the potential for increased purchases of defense items by the United States from Luxembourg and from the United States by Luxembourg, and recognizing the desirability of working toward a long term equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1 1.1 Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national

policies. A long term equitable balance will not imply an equitable monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities

1.1 2 Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels.

1 1.3 In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement. Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Ministry of Defense of Luxembourg.

1 2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance

1 3 In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country

1 4 Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1 5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1 1 1 of this Agreement, as well as the other aims of this Agreement.

1.6 Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each country for use by the other country's defense establishment.

1 7 Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

27076 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

1 7.1 Offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

1.7 2 Each country will give full consideration to all qualified sources in the other country In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1.7 3 Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1 7 4. Provisions for duty-free certificates and related documentation;

1 7.5. Arrangements concerning quality control and audits of incurred costs and price proposals.

1.8. Both Governments will review defense items and services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1.9. Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may recieve from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain.

1 10.1. Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties.

1.10.2. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data.

1.11 Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. Consistent with its laws and regulations, each Government will make available to the other all information necessary to implement cooperative arrangements under this Agreement To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industria cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two contries

1 12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources avilable to the other for this purpose as required and mutually agreed

ARTICLE 2

Implementing Procedures

2.1 Both Governments agree to create a Joint United States-Luxembourg Committee for Defense Industrial Cooperation

2 2 The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement

2 3. The Director of Foreign Trade, in cooperation with the appropriate bodies of the Ministry of Defense, will be the responsible authority of the Government of Luxembourg for the development of implementing procedures under this Agreement.

2.4 The United States-Luxembourg Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in paragraphs 2.2 and 2 3, above, or their designated representatives. The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement. It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; agree to the basis of and keep under review the financial statement referred to in paragraph 2.6, below; and consider any other matters relevant to this Agreement

2.5. Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate.

2.6. An annual United States-Luxembourg statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two contries will be prepared on a basis to be mutually agreed.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27077

ARTICLE 3

Industry Participation

3.1 Implementation of this Agreement will involve maximum industrial participation Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation

3 2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance. Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information

3 3. The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation

3 4 To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

ARTICLE 4

Security

4.1. The General Security of Information Agreement dated 17 September 1981, between the two Governments, with particular reference to industrial security, apply to activities under this Memorandum of Understanding

4 2 To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government

4.3 Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in

providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence.

ARTICLE 5

Duration

5.1. This Agreement will enter into force when signed, and will remain in force for a period of ten (10) years from the last date of signature.

5 2 If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

5 3 Notwithstanding the expiration or termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms.

5 4 Articles 1.9, 1 10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement

ARTICLE 6

Annexes

6 1. Annexes which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof.

Done in Luxembourg this 2 day of November 1983, in duplicate.

FOR THE UNITED STATES OF AMERICA

FOR THE GRAND-DUCHY OF LUXEMBOURG

27078 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

MEMORANDUM OF UNDERSTANDING
on
RECIPROCAL DEFENSE PROCUREMENT

ANNEX I

Principles Governing Implementation

ARTICLE 1

Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and the Grand-Duchy of Luxembourg to implement the Memorandum of Understanding on Reciprocal Defense Procurement, hereinafter referred to as "The MOU".

ARTICLE 2

Major Principles

2 1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country

2 2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2.2.1 Plans and programs for research, development, production and acquisition of defense items and services.

2.2.2 Requirements for the qualification of sources.

2.2.3 Specifications and quality assurance standards.

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures. However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country.

ARTICLE 3

Actions

3.1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and

objectives of this Agreement, which are intended to be compatible with the broad aims of NATO Standardization and Interoperability, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interest of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1.1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

- Their respective defense planning, programming, and contracting offices.

- Their respective offices responsible for defense imports and exports

- Their respective agencies and industries responsible for the research, development, and production of defense items and/or services

3 1 2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations, or the cost of import duties.

3 1.3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation

3 1 4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3.1.5 Consider defense items and services offered by the Government or industry of the other country as candidates for their respective requirements Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research, development, production and procurement processes.

3.1.6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

3.1.7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1.10 of the Agreement. Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3.1.8 Ensure that those items and services excluded from consideration under this Agreement for reasons of protecting national

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27073

requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. Such defense items and services, together with those items and services that must be excluded from consideration under this Agreement because of legally imposed restrictions on acquisition from non-national sources, will be identified as soon as possible by both Governments. Lists of these items and services will be prepared and kept under review at this level

3 1.9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment

3.2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased.

ARTICLE 4

Counting Procedures

4 1 The purchases and other transactions to be counted against the goals of this Agreement will be identified jointly by the two Governments In principle, all defense items and services purchased by one Government from the other country will be counted as long as such purchases meet the following criteria:

4 1 1 Direct purchases by the defense agencies, one from the other

4.1 2 Purchases by defense agencies of either country from the industry of the other country

4 1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts

4.1 4 Purchases by a third country government from the Government of the United States or the Government of Luxembourg or the industry of either country when either of the following circumstances occur:

- The sale requires the prior agreement of the non-vendor Government

- The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party

4 1 5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries

4 1.6 License fees, royalties and other associated income resulting from orders placed by defense agencies of one country with a licensed company in the other country; or in Government-to-Government transactions

4.1 7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of this Agreement

4 1 8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments

4.1.9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of this Agreement.

4 2 The following transactions will not be counted:

4 2.1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of this Agreement

4.2 2 Any transaction being carried out under contracts and agreements in effect before the effective date of this Agreement

4 2 3 Operational expenses of either Government to achieve the goals of this Agreement

4 3 Transactions listed in Article 4.1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4 3 1 At the value of the contract on its effective date

4.3 2 Purchases by third countries of defense items or services from the United States Government or the Government of Luxembourg or the industry of either country as described in paragraph 4.1.4. of this Annex, will be credited as a sale by the non-vendor country, as follows:

- When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited

- When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Luxembourg or their respective industries will be credited.

4 4 The following transactions will be credited in the manner and amounts agreed by both Governments:

- License fees, royalties, and any other income resulting from transfers of technology, and production, testing and quality control equipment between both countries

27080 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

5

- Orders placed by defense agencies in one country with a licensed company in the other country, or from Government-to-Government transactions

- Contributions by one country in research, development and demonstration programs in the other country

4 5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction

4 6 Each Government will prepare an annual counting report. These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplies, the parties to the transaction, transaction date, and credited value Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting Any disagreement concerning the reports will be settled by the Committee established pursuant to Article 2 1 of the Agreement

ARTICLE 5

Administration

5 1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement

5.2 The Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement.

5 3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country.

T-211 France Memorandum of Understanding.

Synopsis -- U.S./France Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING RECIPROCAL PURCHASE OF DEFENSE EQUIPMENT.

On 22 May 1978, the Minister of Defense of France and the Secretary of Defense of the United States signed an MOU for reciprocal defense procurement. The purpose of this MOU, which is classified, CONFIDENTIAL, is to seek balanced cooperation in defense equipment, research, development, production, and purchasing.

In accordance with the U.S /France MOU, contracting authorities of each country will:

- Evaluate offers without applying price differentials resulting from buy national laws (in the United States, the Buy American Act)
- Consistent with the laws and policies of each country, attempt to obtain exemptions from customs, duties, taxes, or other restrictions designed to limit participation by industries of the other country.
- Take into consideration all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office, it being understood that offers will satisfy requirements for performance, quality, delivery, and cost
- Assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications, and appropriate documentation.

Both countries agree that in general the principles of this MOU will apply to defense purchases of both Governments on the broadest possible basis Items and services will be excluded from consideration under this MOU in order to protect the defense mobilization base; because of legally imposed restrictions; and for other reasons to be discussed by the parties from time to time in meetings between the MOD and the DoD. A Franco-American Committee for Defense Equipment (FACDE) will be established for this purpose Both countries will ensure that those items and services excluded from consideration under this MOU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending.

Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and classified information safeguarding

Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU and, where considered necessary, revise policies, procedures and regulations to ensure MOU principles are taken into account. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

(Signed)
Yvon Bourges
Minister of Defense
Republic of France

(Signed)
Harold Brown
Secretary of Defense
United States of America

T-212 Spain Memorandum of Understanding

COMPLEMENTARY AGREEMENT FOUR
Defense Industrial Cooperation

PREAMBLE

The Government of the United States of America and the Government of Spain, hereinafter referred to as the "Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the areas of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense;
- Promote the widest possible use of standard or interoperable equipment; and
- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the Parties to this Agreement;

Noting the substantial purchases of defense items by Spain from the United States and the purchase of defense items from Spain by the United States, and recognizing the desirability of working toward an equitable balance in defense trade between the two countries;

Recognizing that suppliers in each country should be afforded the opportunity to compete, on a reciprocal basis, for the procurement of defense products, equipment, materials and services, hereinafter referred to as "defense items and services";

Seeking to improve the present situation and to strengthen their military capability and economic position through the mutual acquisition of standard or interoperable equipment and to achieve the above aims;

Enter into this Agreement, which sets out the guiding principles governing mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1.1 1 Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense research and development (R&D) cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base.

27082 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

1 1 2 Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense items and services to include systems, subsystems, components, and spare parts at all technological levels

1 1 3 In order to assess the mutual flow of defense procurement, the Governments have jointly determined counting procedures which are set down in Annex 1 to this Agreement, and which will apply to all defense items and services purchased by them directly or through their respective industries under this Agreement Defense items and services are those items and services which may be procured utilizing appropriated funds of the United States Department of Defense or budgeted funds of the Spanish Ministry of Defence

1 2 The Governments will, consistent with their relevant laws and regulations, give full and prompt consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Atlantic Alliance.

1 3 In the interests of standardization and the effective utilization of scarce resources, each Government shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet the requirements of the Government of such country

1 4 Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

1.5 Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to achieve and maintain the equitable balance mentioned in Article 1 1.1 of this Agreement, as well as the other aims of this Agreement.

1 6 Competitive contracting procedures shall normally be used in acquiring items of defence equipment developed or produced in each country for use by the other country's defence establishment.

1.7 Both Governments agree that consistent with and to the extent permitted by national laws and regulations, mutually agreed implementing procedures will incorporate the following:

1.7 1 Barriers to defense industrial cooperation including those to procurement of defense items developed or produced in the other country shall be removed. Specifically, offers or proposals of defense items produced in or defense services provided by each country will be evaluated without applying price differentials under "buy national" laws and regulations, and without applying the cost of applicable import duties;

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27033

1 7 2 Each country will give full consideration to all qualified sources in the other country In addition, each country will give full consideration to all applications for qualification by sources in the other country;

1 7 3 Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

1 7 4 Provisions for duty-free certificates and related documentation;

1 7 5 Arrangements concerning quality control and audits of incurred costs and price proposals

1 8 Both Governments will review defense items and services submitted as candidates for their respective requirements They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify as eligible suppliers and to submit a bid or proposal.

1 9 Technical Data Packages (TDPs) shall not be transferred between the two countries without the written permission of those owning or controlling any associated proprietary rights. Each Government will ensure that any TDPs which it may receive from the other are not used for any purpose other than for the purpose of offering or bidding on or performing a prospective defense contract, without the prior written

agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain

1 10 1 Transfers to third parties of defense articles or technical data made available under this Agreement, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments or in multilateral agreements to which both Governments are parties

1 10 2 Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and policies Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data

1 11 Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights Consistent with its laws and regulations, each Government will

27084 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

make available to the other all information necessary to implement cooperative arrangements under this Agreement. To the extent feasible, both Governments will seek an understanding with their respective industries that, in the interest of standardization and defense industrial cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements between the industries of the two countries.

1 12 Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Agreement. Each Government will make its defense logistic systems and resources available to the other for this purpose as required and mutually agreed.

1 13 To the extent consistent with their respective laws and regulations and on the basis of reciprocity, each Government will waive its claims for reimbursement from the other with respect to nonrecurring research, development, and production costs.

ARTICLE 2

Implementing Procedures

2.1 Both Governments agree to create a Joint United States-Spanish Committee for Defense Industrial

Cooperation to which they will appoint representatives who will develop terms of reference for this Committee and procedures for implementing this Agreement. Such implementing procedures are included in Annex 1 to this Agreement

2 2 The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Department of Defense for the development of implementing procedures under this Agreement.

2 3 The Director General de Armamento y Material of the Ministry of Defense will be the responsible authority of the Government of Spain for the development of implementing procedures under this Agreement.

ARTICLE 3

Industry Participation

3 1 Implementation of this Agreement will involve maximum industrial participation. Notwithstanding the governmental procedures to facilitate the implementation of this Agreement, it will be the basic responsibility of the industries in each country to identify and advise their Government of their respective capabilities for cooperation and to carry out the supporting actions to bring industrial participation to consummation

3 2 Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this Agreement and the appropriate implementing guidance Both Governments will take all necessary steps to ensure that their industries comply with the regulations pertaining to security and to safeguarding classified information

3 3 The Governments will arrange that their respective defense acquisition organizations are made familiar with the principles and objectives of this Agreement, and will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation

3 4 To encourage the exchange of information in accordance with the purpose of this Agreement, each Government will, pursuant to its national laws and regulations, take action to facilitate participation by properly cleared officials and representatives of the other country in informational symposia, program briefings and prebid conferences, as well as access to publications and visits to installations.

ARTICLE 4

Security

4 1 Security arrangements under this Agreement will be subject to any subsequent security agreements entered into by the Governments. Until such security arrangements are agreed, the following provisions will apply:

4 1 1 To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government

4.1 2 Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classification or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Agreement, and that the information is furnished in confidence

4.1.3 Each Government will permit security experts of the other Government to make periodic visits to its territory, when it is mutually convenient, to discuss with its security authorities its procedures and facilities for the protection of classified military information furnished to it by the other Government. Each Government will assist such experts in determining whether such information provided to it by the other Government is being adequately protected.

27086 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

4 1 4 The recipient Government will investigate all cases in which it is known or there are grounds for suspecting that classified military information from the originating Government has been lost or disclosed to unauthorized persons The recipient Government shall also promptly and fully inform the originating Government of the details of any such occurrences, and of the final results of the investigation and corrective action taken to preclude recurrences

ARTICLE 5

Defense Production Projects

5 1 The Government of the United States shall use its best efforts to furnish the Government of Spain such assistance as may be mutually agreed upon in light of the latter's priorities for the development, production, maintenance, repair and overhaul of Spanish defense equipment and materials, including arms and ammunition

5.2 As a contribution to increasing the productive capacity of the Spanish military industry, defense production projects shall be designated by mutual agreement A list of those projects under consideration shall be developed as soon as feasible; this list shall become part of this Agreement. Each Government shall from time to time notify the other of defense

industrial cooperation projects it considers particularly suitable for addition to the list. Those projects may be carried out by Spain alone, or as cooperative joint production projects by Spain and the United States, or as multilateral projects with the participation of one or more NATO countries as mutually agreed

5 3 The Government of the United States will provide to the Government of Spain, or will assist the Government of Spain to obtain: wherever possible at no cost, or on terms no less favorable than those extended by the Government of the United States to other NATO countries, the industrial property rights requested by the Government of Spain to develop its own defense production or to promote standardization and interoperability of equipment manufactured in Spain with that of the United States, and with other members of the NATO Alliance

5 4 In accordance with the objectives set forth in Article 1 1 1 of this Agreement and the other goals of this Agreement, the Governments may enter into specific Government-to-Government or Government-to-industry agreements for cooperation in developing, producing, coproducing or procuring defense items

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27087

ARTICLE 6

Administration

6 1 The United States-Spanish Joint Committee for Defense Industrial Cooperation will be co-chaired by the authorities referred to in Article 2 of this Agreement, or their designated representatives The Committee will meet as agreed at the request of either Government, but a minimum of once a year to review progress in implementing this Agreement It will discuss the research, development, production, procurement and logistics support needs of each country and the likely areas of cooperation; develop the list of defense industrial cooperation projects mentioned in Article 5 2 of this Agreement; agree to the basis of and keep under review the financial statement referred to in Article 6 3 of this Agreement; and consider any other matters relevant to this Agreement

6 2 Each Government will designate points of contact at the Ministry/Department of Defense level, in each purchasing Service/Agency under the Ministry/Department of Defense, and with other Government Departments and Agencies as appropriate

6 3 An annual United States-Spanish statement of the current balance and long-term trends of R&D cooperation, production, and purchases between the two countries will be prepared on a basis to be mutually agreed

ARTICLE 7

Effect of Termination

7.1 Notwithstanding the expiration of termination of this Agreement, any contract entered into consistent with the terms of this Agreement will continue in effect, unless the contract is terminated in accordance with its own terms

7 2 Articles 1 9, 1 10 and Article 4 of this Agreement will continue in full force and effect after, and notwithstanding the expiration or termination of this Agreement

ARTICLE 8

Entry into Force

8 1 This Agreement, including its Annexes, will enter into force and remain in force in accordance with the provisions of Article Six of the Agreement on Friendship, Defense and Cooperation

8 2 Supplementary protocols which may be negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this Agreement and made an integral part thereof

Done in Madrid, this 2nd day of July, 1982, in duplicate, in the English and Spanish languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA:

Terence A. Todman

FOR THE KINGDOM OF SPAIN:

F P R. Urea.

COMPLEMENTARY AGREEMENT FOUR

Defense Industrial Cooperation

ANNEX I

Principles Governing Implementation

ARTICLE 1

Introduction

This Annex sets forth the procedures agreed upon by the Governments of the United States and Spain to implement Complementary Agreement Four, hereinafter referred to as "The Agreement," to the Agreement on Friendship, Defense and Cooperation between the two countries

ARTICLE 2

Major Principles

2 1 Each Government will consider for its defense requirements qualified defense items and services developed or produced in the other country

2 2 The responsible Government authorities in each country will assist sources in the other country to obtain appropriate information concerning:

2 2 1 Plans and programs for research, development, production and acquisition of defense items and services

2 2 2 Requirements for the qualification of sources

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27089

2 2 3 Specifications and quality assurance standards

Both Governments will respond promptly to requests for information that comply with their respective regulations and procedures However, notwithstanding the governmental procedures established to facilitate the Agreement, it will be the responsibility of Government and/or industry representatives in each country to acquire information concerning the other country's research, development and procurement plans and to respond to solicitations in accordance with the prescribed acquisition regulations and procedures of the purchasing country

ARTICLE 3

Actions

3 1 Both Governments will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of the Agreement, which are intended to be compatible with the broad aims of NATO standardization and interoperability, are taken into account Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process must be considered, both Governments agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3 1 1 Ensure that, as a minimum, the following entities are familiar with the principles, objectives and terms of the Agreement:

- Their respective defense planning, programming, and contracting offices
- Their respective offices responsible for defense imports and exports
- Their respective agencies and industries responsible for the research, development, and production of defense items and/or services

3 1 2 Ensure that, consistent with national laws and regulations, offers of defense items developed and/or produced in the other country will be evaluated without applying to such offers either price differentials under "buy-national" laws and regulations or the cost of import duties

3 1 3 Consistent with national laws and regulations, provisions will be made for duty-free entry certificates and related documentation

3 1 4 Assist industries in their respective countries to advise the other Government of their capabilities, and assist such industries in carrying out the supporting actions to maximize industrial participation in the implementation of the Agreement.

3 1 5 Consider defense items and services offered by the Government or industry of the other country as candidates for their respective

27090 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

requirements Identify specific requirements and proposed purchases to the other country in a timely fashion to ensure that agencies and industries of such country are afforded adequate time to be able to participate in the research, development, production, and procurement processes

3 1 6 Use their best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes

3 1 7 Permit the sale of defense equipment produced under license, coproduction agreements and/or joint development projects to allied countries and to appropriate third countries, subject to the policy outlined in Article 1 10 of the Agreement Each agreement for a joint development or coproduction will address transfers of items or technology to allied or third countries.

3 1 8 Ensure that those items and services excluded from consideration under the Agreement for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense acquisition spending. Such items and services, together with those that must be excluded from consideration under the Agreement because of legally imposed restrictions on acquisition from non-national

sources, will be identified as soon as possible by the Department of Defense as well as by the Ministry of Defense Lists of these items and services will be prepared and kept under review at this level

3 1 9 Pursuant to its national laws and regulations, facilitate arrangements for visits by properly cleared Government officials and industry representatives of the other country to explore and actively promote cooperation possibilities for research, development, production, procurement and logistic support of defense equipment

3 2 Both Governments will ensure that their respective actions under the Agreement in working toward an equitable balance in defense trade, take into consideration the level of technology involved as well as the contractual value of the items being purchased

ARTICLE 4

Counting Procedures

4 1 The purchases and other transactions to be counted against the goals of the Agreement will be identified jointly by the Department of Defense and Ministry of Defense In principle, all defense items and services purchased by the Department of Defense or Ministry of Defense from the other country will be counted as long as such purchases meet the following criteria:

4 1 1 Direct purchases by the Department of Defense or Ministry of Defense, including their respective agencies, one from the other

4 1 2 Purchases by either the Department of Defense or Ministry of Defense from the industry of the other country When such purchases involve offset agreements between the Government of either country and the industry of the other country, the amount of such offset shall be applied in calculating the balance

4 1 3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts

4 1 4 Purchases by a third country government from the Government of the United States or the Government of Spain or the industry of either country when either of the following circumstances occur:

- The sale requires the prior agreement of the non-vendor Government
- The sale is a direct result of the promotional efforts by the Government or industry of the non-vendor country, which fact has been previously acknowledged and agreed by the vendor party

4 1.5 Acquisitions by either country of defense items or services resulting from projects jointly funded by both countries

4 1 6 License fees, royalties and other associated income resulting from orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country; or in Department of Defense-Ministry of Defense transactions

4 1 7 Transfers of technology, and production, testing and quality control equipment required to achieve the goals of the Agreement

4 1 8 Contributions by one country in research, development and demonstration programs in the other country that have been agreed by both Governments

4 1 9 Purchases of non-defense items and services by the Government or industry of either country from the Government or industry of the other, provided that both Governments agree that any particular purchase is to be counted against the goals of the Agreement

4 2 The following transactions will not be counted:

4 2 1 Maintenance and logistic support activities in either country under contracts in effect before the effective date of the Agreement.

4 2 2 Any transaction being carried out under contracts and agreements in effect before the effective date of the Agreement

4 2 3 Operational expenses of either Government to achieve the goals of the Agreement

27092 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

4 3 Transactions listed in Article 4 1 of this Annex, and any others that both Governments agree, will be credited in the following manner:

4 3 1 At the value of the contract on its effective date

4 3 2 Purchases by third countries of defense items or services from the Government of the United States or the Government of Spain or the industry of either country as described in Article 4 1 4 of this Annex, will be credited as a sale by the non-vendor country, as follows:

- When authorization by the non-vendor Government is required; only the value of the item(s) directly related to the authorization will be credited
- When the sale is the direct result of promotional efforts by the Government or industry of the non-vendor country; only the value of parts, subassemblies, assemblies, equipment and services supplied by either the Government of the United States or the Government of Spain or their respective industries will be credited.

4.4 The following transactions will be credited in the manner and amounts agreed by both Governments:

- License fees, royalties, and any other income resulting from transfers of technology; and production, testing and quality control equipment between both countries
- Orders placed by the Department of Defense or the Ministry of Defense and/or industry in one country with a licensed company in the other country, or from Department of Defense-Ministry of Defense transactions
- Contributions by one country in research, development and demonstration programs in the other country

4 5 Transactions will be credited according to the exchange rate of the respective currencies on the effective date of the transaction

4 6 Each Government will prepare an annual counting report These reports will summarize the data counted pursuant to each of the categories above. Supporting data for each category included in the summary will indicate the item supplied, the parties to the transaction, transaction date, and credited value Both Governments will exchange the summary reports and supporting data sufficiently in advance of the annual meeting to permit review and comment or agreement by the other at least two (2) weeks prior to the meeting. Any disagreement concerning the reports will be settled by the Joint Committee established pursuant to Article 2.1 of the Agreement.

ARTICLE 5

Administration

5 1 Each Government will designate points of contact at their respective Ministry/Department of Defense levels, as well as within other relevant departments and agencies, for the purpose of carrying out those actions necessary to implement the Agreement

5 2 The Joint Committee for Defense Industrial Cooperation will be responsible for the general administration of the Agreement Its terms of reference are contained in Annex 2 to the Agreement

5 3 Quality assurance procedures outlined in STANAGS 4107 and 4108 will apply, unless other provisions are mutually agreed to on any specific contract Reimbursement for services provided shall be afforded in accordance with the national laws and regulations of each country

T-213 Turkey Memorandum of Understanding

SUPPLEMENTARY AGREEMENT NUMBER 2

BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND OF THE REPUBLIC OF TURKEY

ON DEFENSE INDUSTRIAL COOPERATION

The Governments of the United States of America and of the Republic of Turkey,

Desiring to strengthen their respective defense capabilities as well as those of the North Atlantic Alliance as a whole through efficient cooperation in the fields of research, development, production, procurement and logistic support,

Recognizing that increased defense production capability is an integral part of a strong defense effort,

Having regard to the fact that an essential security relationship is supported by harmonious economic relations,

Bearing in mind the increasing impact of the economy and the application of new technologies on defense matters,

Taking into consideration the efforts of the NATO countries to develop and maintain an advanced industrial and technological capability and to achieve a more rational use of available resources, the standardization and interoperability of equipment and services, increased exchange of information, and better coordinated procurement policies, have agreed as follows:

27094 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

ARTICLE I

1. The Government of the United States of America and the Government of the Republic of Turkey will cooperate in order to increase their defense equipment production and maintenance capabilities and to enable their armed forces to acquire more economically and efficiently modern armaments and equipment needed for self and common defense.

2. To this end, both Governments will seek to facilitate the mutual flow of defense procurement and technological know-how in the field of defense. They will also seek to provide opportunities to compete for procurement of defense equipment and services and to promote and facilitate the co-production of defense equipment and cooperation in defense research and development and to expand programs of data exchange in defense technologies.

3. This Supplementary Agreement covers areas of possible bilateral cooperation in research, development, production, procurement and logistic support of conventional defense equipment. Measures taken under this Supplementary Agreement shall complement or be consistent with the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC). They therefore agree

that, in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this Supplementary Agreement, the Parties hereto will consult with a view to amending this Agreement.

4. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative research and development, and to all requests for production and procurement intended to enhance the standardization and/or interoperability of equipment and services within the Alliance.

5. Each Government shall normally use competitive contracting procedures in acquiring items of defense equipment developed or produced in the other's country.

6. The two Governments shall agree upon detailed procedures to implement this Agreement. These procedures will incorporate the following:

A. Offers or proposals will be evaluated without applying price differentials under "Buy National" laws and regulations and without applying the cost of import duties;

B. Full consideration will be given to all qualified industrial and governmental resources in each country;

C. Offers or proposals will be required to satisfy the applicable requirements of the purchasing Government for performance quality, delivery and costs.

7. Any item to be excluded from consideration of reciprocal defense procurement under this Supplementary Agreement for reasons of protecting national defense requirements should be identified as soon as possible in lists drawn up by the Turkish Ministry of National Defense and the Office of the U S. Secretary of Defense for their respective countries. These lists will be kept under review and may be modified only at this level

8 Each Government will ensure that Technical Data Packages (TDP's) made available under this Supplementary Agreement are not used for any purpose other than for bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information contained in TDP's. In no event shall the TDP's be transferred to a third country or any other transferee without the prior written consent of the originating Government

9 Third party transfer of defense articles or technical data made available under this Supplementary Agreement and of defense articles produced with such data will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise agreed

10. At the request of the purchasing Government, arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment purchased pursuant to this Supplementary Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

1. The Government of the United States will furnish the Government of the Republic of Turkey such assistance as may be mutually agreed upon in light of the latter's priorities for the production, maintenance, repair and overhaul of defense equipment and materials, including arms and ammunition.

2. Mutually agreed defense production projects will be designed to constitute an increment to the production capabilities of Turkish industry. Such projects may be carried out solely by Turkey, as joint United States-Turkish projects of coordinated production, or as multilateral projects with the participation of other NATO and friendly countries.

INTERNATIONAL AGREEMENTS

ARTICLE III

Each Government will permit the importation and exportation, free from customs duties and taxes or similar charges, of equipment and materials sent to its country for maintenance, repair or overhaul pursuant to this Agreement.

ARTICLE IV

1. The Government of the United States will provide to the Government of the Republic of Turkey, or assist the Government of the Republic of Turkey in obtaining wherever possible at no cost, or, on terms no less favorable than those extended by the Government of the United States to any other NATO country, industrial property rights for the purpose of promoting the defense equipment production and enhancing the rationalization, standardization and interoperability of equipment and services of the NATO Alliance.

2. The Government of the United States will waive its reimbursement claims from the Government of the Republic of Turkey, to the extent possible and on a reciprocal basis, with respect to research and development costs and nonrecurring production costs.

INTERNATIONAL AGREEMENTS

ARTICLE V

1. Each Government will call this Supplementary Agreement to the attention of relevant industries within its territory and will provide appropriate implementing guidance. Both Governments will take all necessary steps to ensure that industries comply with regulations pertaining to security and to the safeguarding of classified information.

2. Implementation of this Supplementary Agreement will involve full industrial participation. Accordingly, the Governments will inform their respective procurement and requirements offices of the principles and objectives of this Supplementary Agreement.

ARTICLE VI

1. To the extent that any items, plans, specifications, or information furnished in connection with the implementation of this Supplementary Agreement are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ security measures equivalent to those employed by the classifying Government.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27097

2. Information provided by either Government to the other on condition that it remain confidential shall either remain in its original classificiation, or be assigned a classification that ensures protection against disclosure equivalent to that required by the other Government To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of the information, that the information relates to this Supplementary Agreement, and that the information is furnished in confidence

ARTICLE VII

This Agreement shall be implemented in accordance with mutually agreed programs. To this end, the two Governments, acting through their competent authorities will enter into implementing agreements. The two Governments will seek ways to implement these programs and projects, identified in an Annex to this Agreement, at the lowest possible cost to Turkey.

ARTICLE VIII

1. This Supplementary Agreement shall have an initial term of five years, and shall remain in force from year to year

thereafter unless terminated. The Agreement shall be terminated at the end of its initial term or of an annual extension if either Party gives the other Party written notice of its intent to terminate it at least 90 days prior to the end of the term

2 Should disagreement arise from the interpretation or implementation of this Agreement, the Parties shall consult in order to resolve the matter promptly

3 Either Party may propose in writing the revision or amendment of this Agreement In such a case, consultations shall begin immediately If no result is reached in three months, either Party may terminate the Agreement upon 30 days notice in writing.

ARTICLE IX

Should the implementation of the contracts signed within the framework of this Supplementary Agreement not be completed at the time the present Agreement is terminated, provisions of this Agreement shall continue to cover said contracts until they are completed. Should this Agreement be terminated, Article I, Paragraphs 8 and 9, and Article VI will continue in force for those materials and data which were provided during the life of the Agreement.

27098 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

ARTICLE X

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March , 1980 .

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

James W. SPAIN
Ambassador of the
United States of America

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY:

Hayrettin ERKMEN
Minister of Foreign Affairs

ANNEX TO SUPPLEMENTARY AGREEMENT NUMBER 2
BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA
AND OF THE REPUBLIC OF TURKEY ON
DEFENSE INDUSTRIAL COOPERATION

Projects presently under consideration:

A. Production of Anti-Armor Ammunition:

A separate production line is required to manufacture armor piercing ammunition The objective of this project is to gain the capability of producing hollow-charge and hard-core ammunition for existing weapons in the Turkish Armed Forces and for more modern types of weapons.

B. Production of Fuses:

New facilities are required to produce various types of fuses. The objective of this project is to increase existing production capability by obtaining new technology and equipment to produce fuses for artillery ammunition, rocket and missile warheads, and various bombs and mines.

C. Production of Propellant Powders and Explosives:

An increase in production capacity of propellant powders is required. The objective of this project is to produce various kinds of propellant powders and

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27099

high explosives to support artillery ammunition and rocket warhead production programs.

D. Production of Various Kinds of Rockets:

The existing manufacturing facilities are required to be supplemented by equipment and production know-how in order to produce various kinds of rockets The objective of this project is to manufacture and supply rocket-type ammunition and rocket-assisted equipment for the requirements of the Turkish Army

E Improvement of Aircraft Rebuild Capabilities and Improvement of Facilities:

In order to improve the rebuild capability of existing aircraft in the Turkish Air Force, the development of plans and programs is required The objective of this project is to be a complete and self-sufficient rebuild capability of engine, body, avionics and other electronic equipment for the existing aircraft, including F-4 Phantoms.

F. Building a Modern Frigate and Improvement of Overhauling Capability:

The program of building a modern frigate suitable for Turkish Navy requirements is to be pursued. In parallel with the construction activity the overhauling capability of Golcuk shipyard is to be improved.

G. Tank Upgrading Program:

The objective of this project is to convert existing M48 tanks into M48A3 and/or M48A5 versions, including Turkish production of various primary components.

SUPPLEMENTARY AGREEMENT NUMBER 3

BETWEEN THE GOVERNMENTS OF THE UNITED STATES OF AMERICA AND OF THE REPUBLIC OF TURKEY

ON INSTALLATIONS

ARTICLE I

1. Pursuant to Article V of the Agreement for Cooperation on Defense and Economy between the Governments of the United States of America and of the Republic of Turkey, the Government of the Republic of Turkey authorizes the Government of the United States to participate in joint defense measures at the following Turkish Armed Forces Installations:

- Sinop (electromagnetic monitoring)
- Pirinclik (radar warning space monitoring)
- Incirlik (air operations and support)
- Yamanlar (Izmir), Sahintepe (Gemlik), Elmadag (Ankara), Karatas (Adana), Mahmurdag (Samsun), Alemdag (Istanbul), and Kurecik (Malatya) (nodal communications sites)

27100 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

- Belbasi (seismic data collection)
- Kargaburun (radio navigation)

2. The Government of the Republic of Turkey also authorizes United States administrative and support organizations and activities outside the installations Such organizations and activities shall be subject to the relevant provisions of this Agreement.

3. Where necessary, requirements specified in this Supplementary Agreement shall be elaborated in appropriate implementing agreements.

ARTICLE II

1. Technical operations and maintenance services at the installations where the primary purpose is intelligence collection, nodal communications or radio navigation shall be carried out jointly by Turkish and United States personnel. The modalities of this cooperation, including the distribution of manpower spaces for assignment by each Party and training requirements for Turkish personnel, shall be determined jointly by appropriate authorities of the two Governments. For the purposes of this cooperation, the Government of the United States shall provide access to appropriate training for Turkish personnel.

2. All intelligence information, including raw data, produced at intelligence collection installations in the Republic of Turkey shall be shared by the two Governments in accordance with arrangements determined jointly by the competent technical authorities of the two Governments.

3. Mutually agreed arrangements shall be established to enhance Turkish Armed Forces' utilization of the capacity of the Defense Communications System in Turkey to the extent feasible.

4. U.S. and Turkish authorities shall consult to avoid interference between activities of the installations authorized by this Agreement and the activities of other military and civilian installations and to avoid damage to life and property.

5. Modernization, addition or importation of the equipment related to the technical operations at the installations which would increase mission capabilities shall be subject to advance approval by the Government of the Republic of Turkey.

ARTICLE III

1. The Government of the United States of America will assign an officer as Commander of the United States Forces

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27101

at each installation, who also will function as the single point of contact with the Turkish Installation Commander The Turkish Installation Commander and the officer so assigned by the United States shall: exercise command and control over their respective forces, including equipment and material and the premises exclusively used by them, as well as providing security therefor; maintain close contact and coordination to insure that activities are conducted in a manner consistent with the spirit and provisions of this Agreement; and be responsible to insure that activities and technical operations at the installation shall be carried out in accordance with the provisions of this Agreement.

2. Turkish civilian personnel employed by the United States Forces or contractors of the United States Forces shall be under the control, responsibility and direction of their employer

3. The Turkish Installation Commander shall be responsible for relations with the local Turkish authorities, order and security of the installation as a whole, including perimeter security, consistent with Paragraph 1 of this Article and modalities mutually agreed in accordance with Paragraph 1, Article II of this Agreement

4 Access to installations shall be under the control of the Installation Commander Members and vehicles of the United States Forces and civilian component, as well as contractors, contractor employees and Turkish civilian employees of the United States Forces, shall have access to the installations on the basis of a standard identification card issued by appropriate Turkish authorities upon request of appropriate United States authorities Such identification cards shall be valid for all installations covered by this Agreement. Personnel awaiting receipt of a standard identification card and temporary duty personnel shall have access on the basis of official orders and United States identification Authorized dependents and official visitors shall have access on the basis of official United States or Turkish identification. Detailed implementing arrangements for admittance to the installations will be contained in a directive for procedures regarding admittance to the installations.

5. The United States flag may be flown at the headquarters of the United States Forces at the installation.

6. The Installation Commander may issue directives applicable to the installation as a whole consistent with the provisions of this Article.

INTERNATIONAL AGREEMENTS

ARTICLE IV

The purpose, mission, location, installation plan, authorized quantities of arms and ammunition, authorized major items of equipment and authorized personnel strengths of the United States forces and civilian component shall be detailed by mutual agreement. Increases in such authorized quantities and strengths shall be subject to prior approval of the appropriate Turkish authorities The appropriate authorities of the Government of the United States shall provide to the appropriate authorities of the Government of the Republic of Turkey a quarterly report of assigned personnel strengths including Turkish civilian personnel, as well as organization charts for United States units at each installation. The Parties acknowledge that the number of personnel assigned may at times temporarily exceed authorized levels because of the personnel assignment processes.

ARTICLE V

1. In accordance with the provisions of the "Agreement Between the Parties of the North Atlantic Treaty Regarding the Status of Their Forces" dated June 19, 1951, the Government of the United States may import into and export from

INTERNATIONAL AGREEMENTS

Turkey the equipment for its forces and reasonable quantities of provisions, supplies and other goods exclusively for the use of the United States forces, its members, civilian component, and dependents United States authorities shall notify Turkish authorities of such imports and exports by manifest.

2. The importation into and permanent transfer within Turkey of major items of equipment, arms and ammunition shall be subject to the prior approval of appropriate Turkish authorities and transfer within Turkey of arms and ammunition shall be accomplished with safeguards and protections as mutually agreed. Special procedures shall be established for the customs control of arms and ammunition as well as equipment and material of a classified nature

3. Arms and ammunition and major items of equipment needed for the operation of an installation, including such equipment as may be earmarked for replacement as a result of modernization, will not be removed from Turkey without prior notification.

4. The competent authorities of both Parties shall consult before either Party terminates its activities or reduces its capabilities significantly at the installations

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27103

ARTICLE VI

For the purposes of this Agreement, material, equipment, provisions, supplies, services, and civilian labor required by the Government of the United States shall be procured in Turkey to the extent feasible

ARTICLE VII

1. State-owned land areas including improvements, utilities, easements and rights of way already allocated by the Government of the Republic of Turkey for the purposes of this Agreement will continue to be made available without costs to or claims against the Government of the United States This Article shall not be interpreted as giving the right of ownership to such land areas, improvements, utilities, easements and rights of way to the United States and is without prejudice to the terms of existing non-intergovernmental lease contracts under which certain property is provided to the Government of the United States for the purposes of this Agreement.

2 All non-removable property, including property incorporated in the soil, constructed or installed by or on behalf of the United States on the land areas allocated by the Government of the Republic of Turkey for the purposes of this Agreement, shall, from the date of its construction or

installation, become the property of the Government of the Republic of Turkey, and shall be so registered without prejudice to the authorization by the Turkish authorities to the Government of the United States and its personnel to use such property for the purposes of this Agreement. Upon final termination of the use by the Government of the United States of any such non-removeable property, the right of such use will be transferred to the Government of the Republic of Turkey which will compensate the Government of the United States for the residual value, if any, of the property as determined by mutual agreement, taking into account past practices Such property shall include those basic utility systems and other fixtures which have been permanently installed in or affixed to the property

3. The Government of the Republic of Turkey shall have the right of priority to acquire, in accordance with mutually agreed terms, any equipment, materials, and supplies imported into or procured in Turkey by or on behalf of the Government of the United States for the purposes of this Agreement, in the event such equipment, materials and supplies are to be disposed of by the Government of the United States.

4. Construction of new buildings and other property incorporated into the soil at the installations and demolition, removal, alteration and modernization which

change the basic structure of existing buildings shall be subject to prior approval by the appropriate Turkish authorities.

ARTICLE VIII

1. The costs of operations and maintenance of the installations, except for the premises exclusively utilized for Turkish operations or by Turkish personnel, and the costs of mutually agreed construction, modernization, alterations and repairs at the installations shall be met by the Government of the United States.

2. Each party shall pay its own personnel costs

3. The costs of extention of local utilities requested by the United States and provided by the Government of the Republic of Turkey to the perimeter of the installations shall be met by the Government of the United States.

ARTICLE IX

1. The deployment into or from Turkey and operations of rotational squadron aircraft of the United States authorized to be stationed at Incirlik installation in support of NATO defense plans, their related support

units, and aircraft which support activities authorized by Article I, Paragraphs 1 and 2, of this Agreement, shall be carried out in accordance with implementing agreements. These agreements shall also include:

A. Procedures for the joint use of Incirlik installation and for the provision of air traffic control services; and

B. Procedures for training of rotational squadron aircraft at Incirlik.

2. Procedures for additional training in support of NATO defense plans will be established Implementation of this training will be accomplished through separate protocols.

3. Aircraft operating in support of these activities shall have access to designated military and civilian airfields serving such activities. Supply vessels operating in connection with these activities shall have access to Turkish seaports to be authorized by the Government of the Republic of Turkey.

4. Provisions, consistent with this Agreement, will be established to facilitate movement of United States aircraft between installations and to and from Turkey.

ARTICLE X

The provisions of the Montreux Convention are reserved

ARTICLE XI

The installations specified in Article I, Paragraph 1 above are subject to inspection by the appropriate Turkish authorities The inspections in question shall be on the basis of mutually satisfactory administrative arrangements between the competent authorities of the Parties.

ARTICLE XII

Nothing in this agreement shall be in derogation of the inherent right of the Government of the Republic of Turkey under international law to take all appropriate restrictive measures required to safeguard its national existence in case of emergency situations.

ARTICLE XIII

1. This Supplementary Agreement shall be valid for a period of five years from the date of its entry into force. Unless one of the Parties notifies the other Party of the termination of this Agreement three months

in advance of the end of this initial five year period, it will continue to be in effect from year to year until terminated by agreement of the Parties or by either Party upon 3 months' notice prior to the end of each subsequent year.

2. In the event of termination of this Agreement, the Government of the United States shall complete the process of its withdrawal and liquidation within one year after the effective date of termination. This Agreement shall be considered to remain in force for the purpose of such withdrawal and liquidation.

ARTICLE IX

Done at Ankara in duplicate, in the English and Turkish languages, each of which shall be equally authentic, on this 29th day of March , 1980

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

James W SPAIN
Ambassador of the
United States of America

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY:

Hayrettin ERKMEN
Minister of Foreign Affairs

Part 3—Defense Cooperating Country Agreements and Annexes

T-300 Scope of Part This part provides, for information purposes only, copies of Defense Cooperation Country Agreements, Memoranda of Understanding and accompanying annexes. See DAR 6-1504

T-301 Israel Memorandum of Agreement

MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN RESEARCH AND DEVELOPMENT, SCIENTIST AND ENGINEER EXCHANGE, AND PROCUREMENT AND LOGISTIC SUPPORT OF SELECTED DEFENSE EQUIPMENT

The following Agreement is provided for information purposes only

PREAMBLE

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

Noting previous agreements on Data Exchange (signed on 22 December 1970) and the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971) and

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, in order to:

- Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and

- Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and

Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by affording Israeli sources improved opportunities to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperations in conventional defense equipment research and development, and procurement and logistic support of agreed upon defense supplies and services.

ARTICLE I

PRINCIPLES GOVERNING RECIPROCAL DEFENSE COOPERATION

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto; and by affording each other's national sources improved opportunities to offer products and services identified in Annex B hereto. Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organizations for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperations. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27107

4. Technical information, including Technical Data Packages (TDPs), furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third part transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

IMPLEMENTING PROCEDURES

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logisitics, and other appropriate Department of Defense and State officials, will be responsible in the U S. Government for the implementation of this MOA. The Director, General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be

assigned this committee and the frequency of their meetings shall be further defined in Attachment 1

ARTICLE III

SECURITY

1 To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

2. The operating procedures for the implementation of the General Security Information Agreement, dated 25 March 1963, between the Governments apply to activities under this Memorandum of Agreement.

ARTICLE IV

DURATION

1 This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms Moreover, Article I, Sections 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

For the Government of Israel The Minister of Defense	For the United States Government The Secretary of Defense
E. Weizman	Harold Brown
Date 19 March 1979	Date 19 March 1979

27108 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

ANNEX A

LISTING OF COOPERATIVE R&D EFFORTS

I. Development Data Exchange Program. General revitalization of existing annexes to improve exchange of development data with specific emphasis in the following areas:

(To be jointly determined by both Governments)

II. Complementary/Competitive Development Programs

(To be jointly determined by both Governments. "Competitive Development Programs" refers to programs to be conducted in one of the countries addressing defense equipment needs that the subject of development work in the other country with the objective of affording an alternate means for satisfying such needs.)

III. Scientist-Engineer Exchange Program

(To be jointly determined by both Governments)

ANNEX B

Listing of non R&D items of equipment and services covered by this MOA.

(To be jointly determined by both Governments)

ATTACHMENT 1

Membership, terms of reference for the joint U.S. DoD Israel MOD Committee, designated points of contact, and arrangements concerning implementation of the MOA.

T-302 Egypt Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF EGYPT RELATING TO THE PRODUCTION IN EGYPT OF U.S. DESIGNED DEFENSE EQUIPMENT

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF EGYPT, HEREINAFTER REFERRED TO AS THE GOVERNMENTS:

NOTING THAT THE GOVERNMENT OF EGYPT HAS REQUESTED PRODUCTION ASSISTANCE IN THE MANUFACTURE OF DEFENSE EQUIPMENT AND TECHNICAL ASSISTANCE IN IMPROVING EXISTING SYSTEMS TO EXTEND THEIR USEFUL LIFE IN ORDER TO CONSERVE ITS HARD CURRENCY AND FOREIGN EXCHANGE, AND ENABLE EGYPT TO ECONOMICALLY MEET ITS OWN DEFENSE NEEDS; INTENDING TO UTILIZE THE DEFENSE INDUSTRIAL CAPABILITY OF EGYPT AND ACHIEVE A MORE READILY AVAILABLE SOURCE OF SPARE PARTS FOR DEFENSE ITEMS HAVE ENTERED INTO THIS MEMORANDUM OF UNDERSTANDING IN ORDER TO ACHIEVE THE ABOVE AIMS

THE MEMORANDUM OF UNDERSTANDING (MOU) SETS OUT THE GUIDING PRINCIPLES GOVERNING MUTUAL COOPERATION IN CONVENTIONAL DEFENSE EQUIPMENT, TECHNICAL DATA TRANSFERS AND PROCUREMENT AND LOGISTIC SUPPORT OF AGREED-UPON DEFENSE SUPPLIES AND SERVICES

ARTICLE I

PRINCIPLES GOVERNING TECHNICAL DATA RELEASE AND RECIPROCAL DEFENSE COOPERATION

1. THE GOVERNMENTS INTEND TO FACILITATE THE ACCOMPLISHMENT OF THE ABOVE-STATED AIMS THROUGH COOPERATION IN THE TRANSFER OF TECHNICAL DATA FOR MUTUALLY AGREED PROJECTS AND BY AFFORDING EACH OTHER'S NATIONAL SOURCES IMPROVED OPPORTUNITIES TO OFFER RELATED PRODUCTS AND SERVICES PROJECTS AND ITEMS MAY BE ANNEXED TO THE MOU BY AGREEMENT OF THE GOVERNMENTS

2. THE GOVERNMENT OF EGYPT MAY REQUEST TECHNICAL DATA PACKAGES (TDPS) WHICH IT DESIRES TO RECEIVE, (AND BE LICENSED TO USE FOR MANUFACTURE, OPERATION, MAINTENANCE OR REPAIR OF DEFENSE EQUIPMENT FOR THE USE OF THE ARMED FORCES OF EGYPT) AND SHALL SUBMIT SAME TO THE DEPARTMENT OF STATE OF THE UNITED STATES GOVERNMENT FOR APPROVAL THROUGH NORMAL CHANNELS.

3. TDPS OWNED BY THE GOVERNMENT OF THE UNITED STATES AND WHICH THE GOVERNMENT OF THE UNITED STATES APPROVES FOR TRANSFER TO THE GOVERNMENT OF EGYPT WILL BE DONE SO IN ACCORDANCE WITH DD FORM 1513, LETTER OF OFFER AND ACCEPTANCE. IN THE EVENT OF AN INCONSISTENCY BETWEEN THE TERM OF THIS MOU AND ANY SUCH DD FORM 1513, THE LATTER SHALL GOVERN COMMERCIALLY OWNED TDPS WHICH HAVE BEEN APPROVED BY THE GOVERNMENT OF THE UNITED STATES FOR TRANSFER TO THE GOVERNMENT OF EGYPT UNDER A COMMERCIAL LICENSING AGREEMENT SHALL BE DONE SO THROUGH NORMAL COMMERCIAL CHANNELS.

4. BOTH GOVERNMENTS, IN FURTHERANCE OF PROJECTS CARRIED OUT UNDER THIS MOU WILL ACCORD THE FOLLOWING TREATMENT ON A RECIPROCAL BASIS TO OFFERS OF SERVICE TO BE PERFORMED OR SUPPLIES TO BE PRODUCED, IN THE OTHER COUNTRY:

A. OFFERS WILL BE EVALUATED WITHOUT APPLYING PRICE DIFFERENTIALS RESULTING FROM BUY NATIONAL LAWS AND REGULATIONS.

B. TO THE EXTENT PERMITTED BY LAW AND REGULATION, THESE OFFERS WILL BE EVALUATED WITHOUT CONSIDERATION OF THE COST OF CUSTOM DUTIES AND PROVISIONS WILL BE MADE FOR DUTY-FREE ENTRY CERTIFICATES AND RELATED DOCUMENTATION.

C. FULL CONSIDERATION WILL BE GIVEN TO QUALIFIED INDUSTRIAL AND/OR GOVERNMENTAL SOURCES OF THE OTHER COUNTRY FOR ITEMS OR SERVICES CONSISTENT WITH THE POLICIES AND CRITERIA OF THE COGNIZANT PURCHASING AGENCIES.' IT BEING UNDERSTOOD THAT SUCH OFFERS WILL BE REQUIRED TO SATISFY REQUIREMENTS OF THE PURCHASING ORGANIZATION FOR PERFORMANCE, QUALITY, DELIVERY, AND COSTS.

D. THE OTHER REQUIREMENTS OF EACH GOVERNMENT'S LAWS AND REGULATIONS RELATING TO PURCHASES OF PROPERTY AND SERVICES (INCLUDING THE REQUIREMENTS FOR OBTAINING COMPETITION FOR SUCH PURCHASES) SHALL BE APPLICABLE.

5. BOTH GOVERNMENTS WILL PROVIDE APPROPRIATE POLICY GUIDANCE AND ADMINISTRATIVE PROCEDURES WITHIN THEIR RESPECTIVE DEFENSE PROCUREMENT ORGANIZATIONS TO FACILITATE IMPLEMENTATION OF THIS AGREEMENT AND ACHIEVEMENT OF IMPROVED DEFENSE COOPERATION EACH GOVERNMENT WILL ALSO BE RESPONSIBLE FOR CALLING TO THE ATTENTION OF THE RELEVANT INDUSTRIES WITHIN ITS COUNTRY THE BASIC UNDERSTANDING OF THIS MEMORANDUM OF UNDERSTANDING, TOGETHER WITH AN APPROPRIATE IMPLEMENTING GUIDANCE

6. TECHNICAL DATA, INCLUDING TDPS, FURNISHED TO THE OTHER GOVERNMENT OR TO PERSONS IN THE OTHER COUNTRY FOR THE PURPOSE OF OFFERING OR BIDDING ON, OR PERFORMING A DEFENSE CONTRACT FOR EITHER GOVERNMENT, SHALL NOT BE USED FOR ANY OTHER PURPOSE WITHOUT THE PRIOR AGREEMENT OF THE ORIGINATING GOVERNMENT AS WELL AS THE PRIOR AGREEMENT OF THOSE OWNING OR CONTROLLING PROPRIETARY RIGHTS IN SUCH TECHNICAL INFORMATION. EACH GOVERNMENT WILL ENSURE THAT FULL PROTECTION WILL BE GIVEN TO ITS OFFICERS, AGENTS, AND CONTRACTORS TO SUCH PROPRIETARY, OR TO ANY PRIVILEGED PROTECTED, OR CLASSIFIED DATA AND INFORMATION THEY CONTAIN. EACH GOVERNMENT WILL ALSO UNDERTAKE ITS BEST EFFORTS TO ENSURE COMPLIANCE WITH THE FOREGOING PROVISIONS ON THE PART OF OTHER PERSONS IN ITS COUNTRY. IN NO EVENT SHALL SUCH TECHNICAL INFORMATION OR TDPS DERIVED THEREFROM BE TRANSFERRED TO ANY THIRD COUNTRY OR ANY OTHER THIRD PARTY TRANSFERREE WITHOUT THE PRIOR WRITTEN CONSENT OF THE ORIGINATING GOVERNMENT

7. THE TRANSFER TO THIRD COUNTRIES OR TO ANYONE NOT AN OFFICER, AGENT OR EMPLOYEE OF RECIPIENT GOVERNMENT OF MATERIAL OR TECHNICAL DATA AND OF ARTICLES OR SERVICES DIRECTLY DERIVED THEREFROM GENERATED FROM THE MUTUAL COOPERATIVE PROGRAMS UNDER THIS MOU REQUIRES CASE-BY-CASE ADVANCE AGREEMENT OF THE ORIGINATING GOVERNMENT, OBTAINED THROUGH NORMAL CHANNELS

8. BOTH GOVERNMENTS WILL UNDERTAKE THEIR BEST EFFORTS TO ASSIST IN NEGOTIATING, LICENSING, ROYALITIES, AND TECHNICAL DATA EXCHANGES WITH THEIR RESPECTIVE INDUSTRIES, WHEN THE PROJECTS.* BOTH GOVERNMENTS WILL GIVE TIMELY CONSIDERATION TO THE NECESSARY EXPORT LICENSES REQUIRED FOR THE SUBMISSION OF BIDS OR PROPOSALS OR OTHERWISE REQUIRED FOR THE PERFORMANCE OF SUCH PROJECTS.

9. DULY AUTHORIZED UNITED STATES GOVERNMENT REPRESENTATIVES (EITHER EMPLOYEES OF THE GOVERNMENT OF THE UNITED STATES OR CONTRACTOR PERSONNEL) SHALL HAVE ACCESS TO INSPECT THE PRODUCTION, TESTING, OR EVALUATION OF ANY ITEMS MANUFACTURED FROM THE U.S. TECHNICAL DATA FURNISHED PURSUANT TO THIS MEMORANDUM OF UNDERSTANDING. IN CASES WHERE PRODUCTION, TESTING, OR EVALUATION OF SUCH ITEMS IS PERFORMED IN A SENSITIVE LOCATION, ACCESS TO SUCH ITEMS WILL BE GIVEN AFTER RECEIPT OF PRIOR NOTICE SUFFICIENT TO PERMIT THE GOVERNMENT OF EGYPT TO MAKE SECURITY ARRANGEMENTS TO PROTECT OTHER FACILITIES OR EQOIPMENT IN THE VICINITY.

10. THE GOVERNMENT OF EGYPT AGREES TO FURNISH AT NO COST TO THE GOVERNMENT OF THE UNITED STATES DETAILED TECHNICAL DATA AND INFORMATION ON INVENTIONS, IMPROVEMENTS, AND MODIFICATIONS DIRECTLY DERIVED FROM THE USE OF TECHNICAL DATA ACQUIRED BY THE GOVERNMENT OF EGYPT PURSUANT TO THIS MOU NOTWITHSTANDING PARAGRAPH 7 THE GOVERNMENT OF THE UNITED STATES SHALL HAVE THE RIGHT TO USE SUCH DATA ON A ROYALTY-FREE BASIS FOR THE USE BY THE ARMED FORCES OF THE UNITED STATES, THE MILITARY ASSISTANCE PROGRAM (GRANT AID) OF THE UNITED STATES GOVERNMENT OR FOR FOREIGN MILITARY SALES.

*THE TEXT OF THE AGREEMENT AS NEGOTIATED BY THE GOVERNMENTS INCLUDES THE FOLLOWING LANGUAGE AFTER "PROJECTS": "...CARRIED OUT UNDER THIS MOU REQUIRE SUCH EFFORTS." THE FOREGOING LANGUAGE WAS OMITTED THRU INADVERTENCE FROM THE TEXT OF THE AGREEMENT AS ACTUALLY SIGNED.

11. THIS MEMORANDUM OF UNDERSTANDING SHALL BE EFFECTIVE FOR A PERIOD OF THREE YEARS UNLESS OTHERWISE AGREED. EITHER PARTY MAY TERMINATE THIS MEMORANDUM OF UNDERSTANDING BY GIVING NOTICE TO THE OTHER PARTY OF ITS INTENTION TO TERMINATE. IN SUCH CASE, THE MEMORANDUM OF UNDERSTANDING SHALL TERMINATE ONE YEAR AFTER SUCH NOTICE HAS BEEN GIVEN, BUT WITHOUT PREJUDICE TO OBLIGATIONS AND LIABILITIES WHICH HAVE THEN ACCRUED PURSUANT TO THE TERMS HEREUNDER, IN PARTICULAR THOSE UNDER PARAGRAPHS 3, 6, AND 7 OF THIS MOU.

12. PROMPTLY AFTER ENTRY INTO EFFECT OF THIS MOU, THE COMMITTEE ESTABLISHED PURSUANT TO ARTICLE 11 OF THE MOU WILL COMMENCE THE REVIEW OF THE CANDIDATE PROJECTS AND WILL SUBMIT RECOMMENDATIONS TO THE GOVERNMENTS CONCERNING THE PROJECTS TO BE UNDERTAKEN. PROJECTS AS TO WHICH THE REQUISITE AGREEMENTS HAVE BEEN MADE BETWEEN THE GOVERNMENTS WILL BE LISTED IN ANNEX A

13. THE ACTIVITIES OF THE UNITED STATES GOVERNMENT IN FURTHERANCE OF THIS MOU SHALL BE UNDERTAKEN IN ACCORDANCE WITH, AND SUBJECT TO, APPLICABLE UNITED STATES LAWS AND REGULATIONS, IN PARTICULAR THE ARMS EXPORT CONTROL ACT AND REGULATIONS ISSUED PURSUANT THERETO. FOREIGN MILITARY SALES CASES UNDER THIS MOU SHALL BE EXECUTED IN ACCORDANCE WITH THE U.S. ARMS EXPORT CONTROL ACT AND GOVERNED BY THE TERMS AND CONDITIONS OF THE DD FORM 1513, LETTER OF OFFER AND ACCEPTANCE.

ARTICLE II - IMPLEMENTING PROCEDURES

A JOINT U.S. EGYPT COMMITTEE SHALL BE ESTABLISHED TO PERIODICALLY REVIEW THE PROGRESS OF IMPLEMENTATION OF THIS MOU. THE DEPARTMENTS OF STATE AND DEFENSE WILL BE RESPONSIBLE IN THE U.S. GOVERNMENT FOR IMPLEMENTATION OF THIS MOU. THE EGYPTIAN MINISTRY OF DEFENSE WILL BE THE RESPONSIBLE COUNTERPART AUTHORITY FOR THE GOVERNMENT OF EGYPT OTHER DUTIES TO BE ASSIGNED THE JOINT COMMITTEE AND THE FREQUENCY OF THEIR MEETINGS SHALL BE FURTHER DEFINED AND ANNEXED TO THIS MOU

ARTICLE III - SECURITY

1. TO THE EXTENT THAT ANY ITEMS, PLANS, SPECIFICATIONS, OR INFORMATION FURNISHED IN CONNECTION WITH THE SPECIFIC IMPLEMENTATION OF THIS MOU ARE CLASSIFIED BY EITHER GOVERNMENT FOR SECURITY PURPOSES, THE OTHER GOVERNMENT SHALL MAINTAIN A SIMILAR CLASSIFICATION AND EMPLOY ALL MEASURES NECESSARY TO PRESERVE SUCH SECURITY EQUIVALENT TO THOSE MEASURES EMPLOYED BY THE CLASSIFYING GOVERNMENT THROUGH THE PERIOD DURING WHICH THE CLASSIFYING GOVERNMENT MAY MAINTAIN SUCH CLASSIFICATIONS

2. CLASSIFIED MILITARY INFORMATION AND MATERIAL SHALL BE TRANSFERRED ONLY ON A GOVERNMENT-TO-GOVERNMENT BASIS AND ONLY TO PERSONS WHO HAVE APPROPRIATE SECURITY CLEARANCE FOR ACCESS TO IT.

3. EACH GOVERNMENT WILL PERMIT SECURITY EXPERTS OF THE OTHER GOVERNMENT TO MAKE PERIODIC VISITS TO ITS TERRITORY, WHEN IT IS MUTUALLY CONVENIENT, TO DISCUSS WITH ITS SECURITY AUTHORITIES ITS PROCEDURES AND FACILITIES FOR THE PROTECTION OF CLASSIFIED MILITARY INFORMATION FURNISHED TO IT BY THE OTHER GOVERNMENT. EACH GOVERNMENT WILL ASSIST SUCH EXPERTS IN DETERMINING WHETHER SUCH INFORMATION PROVIDED TO IT BY THE OTHER GOVERNMENT IS BEING ADEQUATELY PROTECTED

4. THE RECIPIENT GOVERNMENT WILL INVESTIGATE ALL CASES IN WHICH IT IS KNOWN OR THERE ARE GROUNDS FOR SUSPECTING THAT CLASSIFIED MILITARY INFORMATION FROM THE ORIGINATING COUNTRY HAS BEEN LOST OR DISCLOSED TO UNAUTHORIZED PERSONS. THE RESPONSIBLE GOVERNMENT AGENCY OF THE ORIGINATING COUNTRY WILL, WITHOUT DELAY, BE FULLY ADVISED OF SUCH OCCURRENCES AND OF THE FINAL FINDINGS AND CORRECTIVE ACTION TAKEN TO PRECLUDE RECURRENCES.

6. THIS MOU SHALL ENTER INTO FORCE AND EFFECT AFTER EXCHANGE OF NOTIFICATIONS AMONG THE GOVERNMENTS THAT EACH HAS COMPLIED WITH THE REQUIREMENTS OF ITS NATIONAL LAWS AND PRACTICES THAT ARE PREREQUISITES TO ENTRY INTO FORCE OF THIS AGREEMENT.

FOR THE GOVERNMENT OF EGYPT

K. H. Ali

GENERAL KAMAL HASSAN ALI

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

William J Perry

DOCTOR WILLIAM J PERRY

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF EGYPT RELATING TO THE PRODUCTION IN EGYPT OF U S. DESIGNATED DEFENSE EQUIPMENT, DATED 21 OCTOBER 1979.

TERMS OF REFERENCE

1 The members of the Egypt/U S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, of the MOU, respectively, responsible for the implementation of the MOU

2. In particular, the Committee will be responsible for monitoring implementation of the MOU governing the mutual cooperation in Defense Production Assistance, research and development, production, acquisition and logistic support of conventional defense equipment which is related to the Defense Production Assistance Program To this end the Committee members will meet as required, but not less than semi-annually, to review progress in implementing the MOU. In this review:

2 1 The Committee will discuss Defense Production Assistance, research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields relating to the Defense Production Assistance Program

2.2 The Committee will, exchange information as to the way the stipulations of the MOU have been carried out and, if need be, prepare proposals for amendments of the MOU and/or its annexes.

2 3 The Committee will consider any other matters relevant to the MOU

2 4 After each meeting the Committee will advise the authorities listed in Article II as appropriate.

2.5 The Committee will alternately meet in the United States and in Egypt The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting

For the Government of Egypt

Gen. K.H Aly

For the Government of the United States

William J Perry
11 April 1980

SCIENTIST AND ENGINEER EXCHANGE AGREEMENT BETWEEN EGYPT AND THE UNITED STATES

INTRODUCTION

1 1 The Government of Egypt and the Government of the United States, agree to provide on-site working assignments to selected scientists and engineers from the other country in defense organizations, industries and universities associated with defense contracts covering technical areas of interest related to Army, Navy and Air Force conventional weapons systems and equipment This agreement is intended to further implement the Memorandum of Underatanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of U S Designed Defense Equipment, dated 21 October 1979

SELECTION OF CANDIDATES

2 1 Participation in the Egypt and US scientist and engineer exchange program is restricted to military officers and civilian employees of the Egyptian Ministry of Defense (MOD) and the US Department of Defense (DOD) (including wholly owned government industries or facilities)

2 2 The placement of each candidate nominated under this program is conditional upon the ability of the activity involved to provide working assignments for a mutually agreed period

2 3 Candidates should hold at least baccalaureate degrees and have at least four years practical experience in the discipline to which they are to be exposed

2 4 To assist in the evaluation of candidates, the MOD and the DOD will forward background resumes and assignment objectives to each other at least six months prior to the desired date of assignment Final selection of candidates will be by mutual agreement between the MOD and the DOD.

Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations 27111

2 5 Selected candidates from the MOD must be proficient in English and have a working knowledge of US technical terms Candidates from the DOD may be required to be proficient in Egyptian and have a working knowledge of Egyptian technical terms (as may be necessary on a case by case basis)

COSTS

3 1 Costs incurred on account of participation of a country in assigning scientists and engineers under this program will be borne by the country of which that scientist or engineer is a national ("country of Origin").

3 2 Incurred costs to be borne by the country of origin will include, but not be limited to salary, per diem costs, housing allowances, differential relocation pay, family allowances, cost of movement of dependents and household effects, cost of shipment of remains and funeral expense in event of death, travel to and from the host country, travel in connection with assigned duties within the host country, and hospitalization, medical, dental and any other associated personnel costs occasioned by assignment of its nationals under this program

3 3 The country of origin will make arrangements to defray costs of this program directly to its personnel rather than by reimbursement to the host country

3 4 Incurred costs to be borne by the country of origin, will not include costs of host country personnel or charges for the use of host country owned facilities, tooling, plant or laboratory equipment

SECURITY

4 1 During the selection process, each country will inform the other of the level of security clearance required to permit candidates access to selected work areas Access will be limited to classifications based on the participants need-to-know to accomplish the work assignment Security clearance will be authorized for the work program identified for participation Additional or modified work assignments will require separate disclosure authorization

4 2 Each country will cause to be filed, through its Embassy in the host country, appropriate security assurances for each selected candidate.

4 3 Any violation of security procedures by a participant during his assignment will be reported to the country of origin for appropriate action

4 4 All classified items, plans, specifications, or other information available to personnel participating in this program will be considered as classified information furnished to or by the country of origin, and will be subject to all provisions and safeguards provided for under arrangements in force between the United States and Egypt

4 5 The country of origin will insure, by appropriate means (e g , indoctrination on applicable security laws and statutes, retention agreement equal to three times the length of the assignment, etc), the protection of proprietary, classified, and other information disclosed under this program, after termination of a participant's assignment

4 6 The data and information to be exchanged under this program as well as access to facilities, equipment and sites shall not extend to those disclosing "RESTRICTED DATA" or FORMERLY RESTRICTED DATA" as those terms are used in the United States Atomic Energy Act of 1954 as amended

4 7 Technical data (classified or unclassified, in written or other documentary form) received by a participant shall not be transmitted by the participant unless prior review and approval have been obtained by the appropriate host country disclosure authority

TECHNICAL AND ADMINISTRATIVE MATTERS

5 1 The host country will provide, at no cost to the country of origin, such technical and administrative support as is deemed necessary for the efficient performance of a participant's assigned task

5 2 Participants assigned under this program will be subject to the same restrictions, conditions, and privileges as local personnel of comparable rank in the area of assignment, unless modified by the local director or commander or equivalent of the facility to which assigned

5 3 Participants and their authorized dependents shall be briefed regarding their specific entitlements, privileges, and obligations prior to or immediately following their arrival in the host country

5.4 As a general rule, except for religious holidays, participants will observe holidays of the host orgnization rather than their own national holidays Exceptions to this rule may be made by the local director, commander or equivalent of the installation to which personnel are assigned

5 5 All participants will work under the guidance and control of a host supervisor who will, upon completion of a participant's tour of duty, submit an evaluation report to the participant's country of origin

5 6 Supervisors will insure daily observation of participant's performance in order to provide a basis for counseling and reporting.

5 7 Supervisors may submit interim reports to appropriate recipients as deemed useful

INVENTIONS AND TECHNICAL INFORMATION

6 1 The respective rights of the exchange scientist or engineer and the two governments, to use inventions made and technical information developed by an exchange scientist or engineer while working in a host organization under this program shall be governed by the laws and regulations of the respective government of origin

27112 Federal Register / Vol. 49, No. 127 / Friday, June 29, 1984 / Rules and Regulations

6 2 To the extent that the right, title and interest to an invention is assigned to the government of origin under the provision established in paragraph 6 1, the government of origin agrees to grant:

a. To the host government for its own governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license for such inventions made (conceived or first actually reduced to practice under this program); and

b To a non-government host facility a non-exclusive, royalty-free license to make, use and sell each such invention within the host country, coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility

6 3 As a condition for participating in this program, the government of origin shall obtain from each exchange scientist or engineer selected, a written agreement to grant:

a To the government of origin and the host government, for their respective governmental purposes, worldwide, irrevocable, non-exclusive, royalty-free licenses in inventions made and technical information developed by the individual during the period of and as a result of his participation in the program; and

b. To a non-government host facility a non-exclusive, royalty-free license to use technical information developed by the individual, and to make, use and sell within the host country each invention made by the individual coupled with the right to use and sell throughout the world any product manufactured pursuant to such license, if the technical information is developed or the invention is made while the participating scientist or engineer is engaged in work at such non-government owned facility

6 4 In order to permit the host government to adequately protect its interest in inventions referred to in paragraph 6 2 within its territory, the host government as a licensee may file and prosecute patent applications within its territory for such inventions

6 5 To the extent it can do so without incurring liability to a third party, each government agrees to grant to the other government for its governmental purposes a worldwide, irrevocable, non-exclusive, royalty-free license in technical information:

a. Furnished to or by the host government through an exchange scientist or engineer; and

b. Relevant to technical information developed by an exchange scientist or engineer working in a host organization under this program

6 6 Any additional compensation or award under an incentive award program or similar program due to the participating scientist or engineer for the work performed under this program shall be the responsibility of the government of origin.

DURATION AND TERMINATION

7 1 This program will cover a period coincident with the Memorandum of Understanding Between the Government of the United States of America and the Government of Egypt Relating to the Production in Egypt of US Designed Defense Equipment, dated 21 October 1979, unless sooner terminated by agreement between the parties

7 2 In the event of termination or expiration, the commitments regarding security, the protection of technical and other information against unauthorized use, disclosure, or transfer, and industrial property rights that accrued prior to termination will continue without the limit of time

FOR THE GOVERNMENT OF EGYPT

Gen. K.H. Ali

11 April 1980

General Kamal Hassan Ali

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

William J Perry

11 April 1980

Dr William J Perry

[FR Doc 84-17488 Filed 6-28-84; 8:45 am]

BILLING CODE 3810-01-C

Federal Register

Friday
June 29, 1984

Part VIII

Department of Energy

Federal Energy Regulatory Commission

Interstate Commerce Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, 347, and 389

49 CFR Part 1300

Oil Pipeline Regulations; Correction; Change of Effective Date; and Notice of OMB Control Number; Final Rule

49 CFR Part 1300

Revision of Tariff Regulations, All Carriers; Final Rule Change of Effective Date

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 346, 347, and 389

49 CFR Part 1300

[Docket No. RM83-78-000]

Oil Pipeline Regulations; Correction; Change of Effective Date; and Notice of OMB Control Number

June 27, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule, correction, change of effective date, and notice of OMB control number.

SUMMARY: On March 23, 1984, the Federal Energy Regulatory Commission issued a final rule in Docket No. RM83-78-000, 49 FR 12898 (March 30, 1984) (Order No. 367), transferring oil pipeline regulations from Title 49 to Title 18 of the Code of Federal Regulations. This document changes the effective date for the new Part 341, 18 CFR Part 341, and provides the OMB control number for the information collection requirements imposed on oil pipelines.

EFFECTIVE DATE: The effective date for 18 CFR Part 341 is October 2, 1984. The effective date for 18 CFR Parts 342, 343, 344, 345, 346, and 347 remains July 2, 1984. The effective date for the amendment to § 389.109(b) is July 2, 1984.

FOR FURTHER INFORMATION CONTACT: Joseph Hartsoe, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On March 23, 1984, the Interstate Commerce Commission (ICC) in conjunction with the Federal Energy Regulatory Commission (FERC) redesignated 49 CFR Part 1300 as 18 CFR Part 341, effective July 2, 1984. Recently, the ICC decided to change the effective date of this redesignation to October 2, 1984. Since the FERC cannot redesignate 49 CFR Part 1300 without the concurrence of the ICC, the effective date of 18 CFR Part 341 is changed to October 2, 1984.

The Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1984), require that OMB approve certain information collection requirements imposed by agency rule. On May 25, 1984, OMB approved the information collection requirements imposed on oil pipelines, and issued Control No. 19020089 for those requirements.

List of Subjects in 18 CFR Part 389

Reporting and recordkeeping requirements.

Accordingly, Part 389, Chapter 1, Title 18, Code of Federal Regulations, is amended as set forth below:

PART 389—[AMENDED]

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by adding "341", "342", "343", "344", "345", and "346" in numerical order in the Section column, and "0089" in the corresponding positions in the OMB Control Number column.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-17503 Filed 6-28-84; 8:17 am]

BILLING CODE 6717-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1300

[No. 37321]

Revision of Tariff Regulations, All Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule change of effective date.

SUMMARY: In this proceeding the Interstate Commerce Commission (ICC) has proposed a revision and consolidation of its regulations in 49 CFR Parts 1300 to 1310 (48 FR 31265, July 1983). New regulations would be located at 49 CFR Part 1312 and 49 CFR 1300 to 1310 would be removed from the Code of Federal Regulations (CFR). The Federal Energy Regulatory Commission (FERC) also uses portions of 49 CFR Part 1300 in its regulation of rates and charges for the transportation of oil by pipeline. At 49 FR 12914, 3-30-84, the ICC issued a notice to transfer 49 CFR Part 1300 from Title 49 of the CFR to Title 18 of the CFR, instead of removing the Part from the CFR. Since the ICC is still considering the revisions of its tariff regulation, it is necessary to postpone the effective date of this final rule.

EFFECTIVE DATE: October 2, 1984.[1]

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, (202) 275-7428; Charles E. Langyher, (202) 275-7739.

SUPPLEMENTARY INFORMATION: The action we are taking by this notice concerns solely matters of agency practice and procedure because it merely postpones the effective date of the transfer of existing regulations from Title 49 CFR to Title 18 CFR. Therefore, we find pursuant to Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), that prior notice and opportunity for public comment is unnecessary.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1300

Pipeline.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10321.

Decided: June 26, 1984.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 84-17570 Filed 6-28-84; 8:17 am]

BILLING CODE 7035-01-M

[1] The FERC is publishing a document contemporaneously with this notice that postpones the effective date for transfer of the rules for the establishment of rates or charges for the transportation of oil by pipeline from Title 49 to Title 18 of the CFR.

Reader Aids

Federal Register

Vol. 49, No. 127

Friday, June 29, 1984

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

22751-23018.....1
23019-23156.....4
23157-23330.....5
23331-23596.....6
23597-23824.....7
23825-24006.....8
24007-24106.....11
24107-24364.....12
24365-24508.....13
24509-24704.....14
24705-24872.....15
24873-24986.....18
24987-25216.....19
25217-25420.....20
25421-25608.....21
25609-25832.....22
25833-26022.....25
26023-26184.....26
26185-26542.....27
26543-26696.....28
26697-27118.....29

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders:

Presidential Determinations:

No. 84-9 of May 31, 1984.....24107
No. 84-10 of May 31, 1984.....23025
12426 (Amended by EO 12482).....26023
12480.....25611
12481.....25613
12482.....26023

Executive Orders:

11888 (Amended by EO 12483).....26185
12483.....26185

Proclamations:

5201.....22751
5202.....22753
5203.....22755
5204.....23019
5205.....23021
5206.....23023
5207.....24365
5208.....24873
5209.....24875
5210.....25217
5211.....25219
5212.....25421
5213.....25609
5214.....26025

5 CFR

1201.....26697

Proposed Rules:

Ch. XIV.....25243
831.....26746

7 CFR

28.....26543
33.....23825
35.....23825
46.....23825
51.....23825, 26706
52.....23825
54.....23331
56.....25221
61.....26543
68.....26547
70.....25221
245.....26027
250.....25615
301.....26187
319.....24877, 24987
360.....25222
400.....22757, 22758
411.....26189
420.....24007
431.....26192
435.....26197, 26201
436.....26551
441.....26555
717.....24371
800.....26560
810.....22761, 24509
900.....23825
904.....23157
905.....23157
908.....23158, 24372, 24878, 26035
910.....22767, 23826, 24705, 25616, 26703
918.....24509
928.....24109
930.....24510, 26564
953.....23333
989.....26708
1004.....23029
1036.....23034
1049.....23029
1062.....23029
1064.....23029
1065.....23029
1207.....23825, 26202
1250.....24009
1421.....23597, 23827
1427.....25223
1430.....26203
1434.....24878
1464.....23334, 24372
1736.....24511
2012.....24010

Proposed Rules:

Ch. IX.....23186
Ch. X.....26239
418.....23348
427.....23852, 24522
429.....23856
430.....24528
431.....24539
432.....24533
435.....26238
438.....24144
447.....24145
504.....23351
724.....24540
725.....26536
810.....23651, 25004
911.....25243
916.....24895
917.....24895
939.....23193, 25635
931.....23061
1006.....23353
1007.....25879
1012.....23353
1093.....25879
1094.....25879
1139.....24736
1765.....23360
1872.....26072
1900.....23359
1901.....23359
1951.....23359, 26072
1955.....23359

1965.....26072
2900.....23061

8 CFR

100.....22767
103.....22767, 24010
204.....23827
238.....23159, 26203, 26564
316a.....23335

9 CFR

3.....26674
50.....26566
53.....26711
78.....25616
81.....24011
91.....24013
92.....23036
112.....22770
309.....23602
310.....23602
318.....23602

Proposed Rules:

94.....25004
113.....23862, 24025
145.....23391
147.....23391
313.....26240
318.....26242
319.....26242

10 CFR

2.....24110, 24111, 24512
20.....24512
30.....24512, 24705
40.....24512, 24705
50.....24111, 24512, 26036
51.....24512
61.....24512
70.....24512
72.....24512
110.....24512
150.....24705
170.....24112
840.....24374

Proposed Rules:

2.....24748
9.....25482
50.....24748
70.....25005
73.....23867
430.....23142

11 CFR

Proposed Rules:

6.....26244
9007.....26596
9038.....26596

12 CFR

8.....26204
207.....23606
220.....23606
221.....23606
224.....23606
265.....25224
507.....25618
508.....25618
509.....25618
509a.....25618
512.....25618
513.....25618
618.....23159

Proposed Rules:

5.....24748
12.....24748
210.....26597
211.....26002

13 CFR

101.....25833
120.....24879

14 CFR

39.....23335, 23336, 24014, 24015, 24514, 24708, 24710, 25423, 25623, 26045, 26567
71.....23037, 24514–24516, 24880, 25424, 25624–25626, 26046, 26047, 26205–26207, 26569, 26712
75.....25425, 26207
97.....23337
252.....25408
291.....23338, 25225
296.....25226
297.....25226
375.....24711
382.....24988
398.....24711

Proposed Rules:

Ch. I.....25880
25.....24749, 25638
39.....25638, 26747, 26748
71.....23392, 24030, 24896, 25639, 26102, 26253, 26600, 26601, 26749
73.....23392, 26749
75.....26602, 26750
93.....23788, 23806, 24626, 24982, 25244, 26603
108.....24974
129.....24974

15 CFR

921.....26502

Proposed Rules:

377.....26751
930.....22825
1400.....26254

16 CFR

13.....23812, 25226, 25228, 25628, 25833
1017.....22770

Proposed Rules:

13.....24385, 25881
1032.....25005

17 CFR

1.....25425
31.....25426, 25834
229.....25228
240.....23828

Proposed Rules:

1.....22827
33.....25483
230.....23393
239.....23393, 23653
240.....23653, 25244, 26603, 26751

18 CFR

11.....22770
154.....22778, 24880
271.....23339, 26047, 26048
282.....26050
290.....23609
300.....25230
341.....27116
342.....27116
343.....27116
344.....27116
345.....27116
346.....27116
347.....27116
389.....27116

Proposed Rules:

35.....22831
301.....24146

19 CFR

6.....23038
10.....23161
12.....26570
19.....23161
24.....23161
101.....23832, 26050
103.....23339
113.....23161
125.....23161
133.....26570
134.....22793
141.....23161
142.....23161
143.....23161
144.....23161
146.....23161
177.....25836

Proposed Rules:

4.....25884
24.....26604

20 CFR

404.....24112
621.....25837
655.....26208

Proposed Rules:

10.....23658

21 CFR

73.....23832
74.....23832
81.....23039, 23040
100.....24118
101.....26571
102.....26541
103.....23832
105.....23832
109.....24892
131.....23832
133.....23832
135.....23832
136.....23832
137.....23832
139.....23832
145.....23832
146.....23832
150.....23832
155.....23832
160.....23832
161.....23832
163.....23832
164.....23832
166.....23832
168.....23832
169.....23832
177.....25628
178.....23348, 25630
179.....24988
182.....24118, 26713
184.....22796, 24118, 25428, 26713
193.....26572
430.....25845
436.....24016, 25845
442.....25845
450.....24016
510.....23041
520.....24019, 23341, 26714
522.....23834, 26715
540.....23042
556.....26715
558.....23041, 23341, 24119, 24120, 26716
600.....23833
601.....23833
606.....23833
607.....23833
610.....23833, 26717
620.....23833
630.....23004, 23833
640.....23833
650.....23833
660.....23833
680.....23833, 25430
882.....26573
1308.....25849

Proposed Rules:

3.....23194
102.....22831, 22834
131.....23194
133.....24031, 25247
155.....25007
158.....25007
161.....22834
182.....25248
184.....25248
193.....24749
250.....24031
886.....25008

23 CFR

635.....24374
658.....23302

Proposed Rules:

635.....23663

24 CFR

7.....26692
52.....24634
58.....23610
200.....23580, 24121
202.....24989, 26574
203.....23580
207.....24634
220.....23580
221.....23580
232.....23342
234.....23580
235.....23342, 23580
255.....24634
390.....23586, 24892
800.....26718
811.....24634
813.....26718
850.....24634
880.....26718
881.....26718
882.....26575, 26718
883.....26718
884.....26718
886.....26718
888.....25850
889.....26718
904.....26719
905.....26719
913.....26719
960.....26719
965.....26719

3282.....26576, 26579
Proposed Rules:
115.....25640
200.....23394
203.....23063
205.....24147
220.....23063
221.....23063
234.....23063
235.....23063

25 CFR

140.....25433
Proposed Rules:
700.....23663

26 CFR

1.....26208
31.....25238
49.....25238
601.....25238
Proposed Rules:
1.....23074, 25008, 26102, 26106, 26256
301.....23074, 26106

27 CFR

9.....24711, 24714
Proposed Rules:
55.....23872

28 CFR

2.....26579
524.....24104
Proposed Rules:
2.....22834

29 CFR

697.....26719
1601.....24721
1908.....25082
1910.....23175, 25734
1956.....22994
2619.....24721
Proposed Rules:
530.....25641
1926.....25248

30 CFR

250.....26225
913.....24019
916.....23834
935.....23178
942.....26580
944.....23836
Proposed Rules:
15.....23281
16.....23281
17.....23281
25.....23281
901.....23074
914.....26106
915.....23872
917.....26605
926.....24542
935.....26108
942.....26898

31 CFR

317.....24021
321.....24021
500.....24993

32 CFR

Ch. XII.....26721
1-39.....26924-27033
64.....23616
96.....23042
216.....22800
955.....23343

33 CFR

3.....26582
4.....26583
100.....23043-23045, 23180, 24517, 25436-25443, 25631, 25632, 26584-26586
110.....24722, 25444, 26587
117.....25445, 26588, 26721
147.....25446
162.....26722
165.....23180, 23617-23620, 25446, 26588-26590
240.....24021
Proposed Rules:
100.....23075-23077, 26606
110.....26607
117.....25642, 26608
151.....25196, 26761
158.....25196, 26761
181.....23663
183.....23663

34 CFR

241.....23494
250.....23760
251.....23760
252.....23760
253.....23760
254.....23760
255.....23760
256.....23760
257.....23760
259.....23760
260.....23760
261.....23760
262.....23760
305.....25996
320.....25984
338.....25990
356.....24978
661.....24362

36 CFR

7.....24892, 25852
211.....26590
251.....25447
261.....25447
Proposed Rules:
13.....22835

37 CFR

Proposed Rules:
1.....24751
2.....24033
201.....26722

38 CFR

17.....26226
21.....26226
36.....22807
Proposed Rules:
3.....24035
8.....24148
9.....24148
21.....26609

39 CFR

111.....26227
775.....23181

40 CFR

1.....26727
52.....22809-22814, 23181, 24022, 24128, 24518, 24723-24725, 25451, 26736
60.....22815, 23837, 26228, 26229, 26522, 26739, 26984
61.....23478, 23498, 23837, 25453, 26229, 26230
81.....23045, 23046, 23343, 24124, 24128, 25451
85.....24320
122.....25978
124.....25978
125.....25978
147.....24133, 25633
162.....26230
180.....23394, 24375, 24376, 24864, 25239
204.....26738
205.....26738
228.....23148
261.....23284
271.....23837, 24377, 25955
420.....24726, 25634
421.....26738
712.....24135, 25956, 25959
717.....23182, 25453
747.....24653
761.....25239
Proposed Rules:
23.....23152
52.....23195, 23873, 24149, 24543-24549, 24751, 24752, 24897, 24898, 25251, 26761-26764
60.....22835, 24151, 25102, 25152, 25156
61.....23522, 23558, 23568
81.....23195, 24898, 25008, 25252
87.....25643
100.....23152
124.....25885
141.....24330
144.....25885
145.....24037
146.....24037, 25885
147.....25885
180.....23394, 24387, 24752
260.....23290
264.....23290, 25885
265.....23290, 25885
421.....26352
434.....24388
455.....24492
756.....23664
761.....23836
763.....23664, 24552
773.....25009, 25013

41 CFR

Ch. 109.....25564
105-53.....24994
201-36.....24726
Proposed Rules:
101-21.....26259

42 CFR

57.....25634
405.....23620
Proposed Rules:
405.....23078
432.....23078
433.....23078

43 CFR

3100.....26918
3110.....26918
5400.....23838
Public Land Orders:
4289 (Amended by PLO 6546).....26052
6401 (Corrected by Public Land Order 6542).....23626
6542.....23626
6543.....23626
6544.....26051
6545.....26052
6546.....26052
6547.....26053
6548.....26053
6549.....26231
Proposed Rules:
2880.....25972

44 CFR

8.....24518
61.....26591
64.....24519, 24729, 26592
65.....23839
67.....25861
Proposed Rules:
67.....23664, 23874, 23889, 26103
83.....23664

45 CFR

612.....23049
1180.....24731
1601.....23050
1611.....24733
1612.....23627
1620.....22816
1628.....23056
Proposed Rules:
1629.....23395

46 CFR

26.....25453
30.....25453
31.....25453
32.....25453
35.....25453
42.....26593
67.....23627
70.....25453
71.....25453
75.....25453
77.....25453
78.....25453
90.....25453
91.....25453
94.....25453
96.....25453
97.....25453
107.....25453
108.....25453
109.....25453
163.....25453
188.....25453
189.....25453
192.....25453
195.....25453
196.....25453

502.....26054
530.....23183
536.....22817, 24023, 24696, 26231
538.....24696
572.....24521, 24697
580.....22817, 23183, 24023, 24696, 24701, 24703, 26231

Proposed Rules:
151.....23085
251.....26766

47 CFR

1.....23628
21.....25456
22.....23628
25.....26739
63.....22817
64.....24733, 24996, 26056
67.....23649, 24023
73.....23057-23059, 23344, 23345, 23840-23846, 26594
76.....23348
83.....24378
90.....26066
94.....24135

Proposed Rules:
Ch. I.....22837, 23397, 26109
15.....23397, 26115
21.....25486
31.....26115
73.....23896-23901, 24151, 24388-24415, 25254, 26115, 26116
74.....26260
90.....24038, 25255, 26264

48 CFR

Ch. 5.....25872
Ch. 12.....22922
Ch. 15.....24733
4.....26740
15.....26740
17.....26740
31.....26740
52.....26740
53.....26740
553.....26071
970.....26743

Proposed Rules:
Ch. 5.....23197
Ch. 29.....25160
309.....24552

49 CFR

1.....26594
23.....26744
171.....24306
172.....24306
173.....24306, 24684
176.....24306
178.....24306, 24684
179.....24306
575.....24024
700.....24378
701.....24378
800.....26232
1033.....26235
1039.....26745
1152.....24735
1300.....27116

Proposed Rules:
215.....25645
218.....24252, 26266, 26610
225.....24252, 26266, 26610
1201.....24554

50 CFR

26.....24139
32.....22819
33.....22819
371.....25877
611.....23355
630.....24380
652.....23184, 23355
661.....23185
672.....23355, 24142
675.....23355

Proposed Rules:
Ch. II.....25016
10.....23197
13.....24898
14.....24898
17.....23399-23409, 23794, 24416, 24903, 24906, 25342, 26610
20.....24417, 25646
21.....23665
222.....25017
285.....22838
628.....23668
630.....23668
642.....24038, 26267
669.....25258
671.....26117

List of Public Laws

Last List June 28, 1984

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

H.R. 1149 / Pub. L. 98-328

Oregon Wilderness Act of 1984. (June 26, 1984; 98 Stat. 272) Price: $1.75