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Thursday
November 19, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Denver, CO, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

DENVER, CO

WHEN: December 15; at 9 a.m.
WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.
RESERVATIONS: Call the Denver Federal Information Center, 303-564-6575

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Rules and Regulations

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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.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1900

Delegations of Authority; Assignment of Loan Security Instruments by District Directors and County Supervisors

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to permit assignment of loan security instruments by District Directors and County Supervisors when the assignments are in connection with Agency sale of assets. The intended effect is to expedite the assignment of security instruments which evidence the loans sold and to minimize the workload on the State Director and other Agency officials.

EFFECTIVE DATE: November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Director, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, Telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION:

Classification

This final action has been reviewed under USDA procedures in Secretary's Memorandum 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves matters relating to Agency management making publication for comment unnecessary and impractical.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.410 Low income housing loans.
10.418 Water and waste disposal systems for rural communities.
10.419 Watershed protection and flood prevention loans.
10.421 Indian tribes and tribal corporation loans.
10.422 Business and industrial loans.
10.423 Community facility loans.

Intergovernmental Consultation

Catalog Nos. 10.418, 10.419, 10.421, 10.422, and 10.423 are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. Catalog No. 10.410, is excluded from Executive Order 12372.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Policy Act of 1949, Pub. L. 91-90, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1900

Loan programs—agriculture, Delegations of authority.

Therefore, Chapter XVII of Title 7, CFR is amended as follows:

PART 1900—GENERAL

1. The authority citation for Part 1900 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Delegations of Authority

2. Section 1900.2(e) is revised to read as follows:

§ 1900.2 National Office staff and State Directors.

* * * * *

(e) Consent to sale or assignment of, or sell or assign, direct or insured loans and security instruments (except that in the case of Agency asset sales, District Directors and County Supervisors are delegated the authority to assign security instruments), endorsements, reinsurance agreements, or other instruments in connection therewith; and execute agreements to insure and reinsure, and to purchase and repurchase insured loans and security instruments.

* * * * *

Dated: November 12, 1987.

Vance L. Clark,
Administrator, Farmers Home Administration.

[FR Doc. 87-26756 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-72-AD; Amdt. 39-5776]

Airworthiness Directives; Avions Marcel Dassault—Breguet Aviation Falcon 10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Falcon 10 series airplanes, which requires periodic inspections of the electrical grounding connection for the air conditioning freon compressor motor, repair of the local structure if damage due to electrical arcing is present, and ultimate replacement of the grounding cable. This amendment is prompted by the discovery of four instances of structural damage due to electrical arcing across the grounding connection, which had been loosened by vibration of the compressor motor. This condition, if not corrected, could lead to further instances of structural damage.

EFFECTIVE DATE: December 29, 1987.

ADDRESSES: The applicable service information may be obtained from the

AMD-BA Representative, c/o Falcon Jet Corporation, Teterboro Airport, Teterboro, NJ 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Meyer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-1939. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires periodic inspection; repair, if necessary; and eventual modification of the electrical grounding connection for the air conditioning freon compressor motor on Avions Marcel Dassault-Breguet Aviation Falcon 10 Series Airplanes, was published in the **Federal Register** on August 7, 1987 (52 FR 29387).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 140 airplanes of U.S. registry will be affected by this AD, that it will require approximately 8 manhours per airplane to accomplish the required replacement of the ground cable, and that the average labor cost will be $40 per manhour. The cost of materials is estimated to be $20 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $47,600.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($340). A final evaluation has been prepared for this regulation and has been placed in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. Authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Avions Marcel Dassault—Breguet Aviation (AMD-BA): Applies to all Falcon 10 airplanes, certificated in any category, unless AMD-BA modification M736 has been accomplished. Compliance is required as specified, unless previously accomplished.

To prevent structural damage to aircraft frames and skin in the vicinity of the electrical grounding connection for the air conditioning freon compressor motor, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 30 days, conduct a visual inspection and a resistance test of the electrical grounding connection, located on frame 35, for the air conditioning freon compressor motor. Perform the inspection and test in accordance with the AMD-BA Service Bulletin F100-262, dated December 22, 1986 (reference Maintenance Manual Chapter 20-40-40).

1. If the measured resistance value of the grounding connection bonding exceeds the limits referenced in paragraph B. of the Accomplishment Instructions of the service bulletin, then prior to further flight, repair the grounding connection in accordance with the service bulletin.

2. If the resistance value specified for the grounding connection bonding cannot be obtained, then prior to further flight, install a new grounding cable in accordance with paragraph C. of the Accomplishment Instructions of the service bulletin.

B. Within 4 months after the effective date of this AD, install a new electrical grounding cable for the air conditioning freon compressor motor, in accordance with the Accomplishment Instructions of AMD-BA Service Bulletin F10-262, dated December 22, 1986.

C. Installation of a new electrical grounding cable for the air conditioning freon compressor motor, in accordance with AMD-BA Service Bulletin F10-262, dated December 22, 1986, constitutes terminating action for the repetitive inspection and testing requirements of paragraph A., above.

D. Any structural damage due to the effects of existing electrical arcing across a loose grounding connection identified during the inspections required by paragraph A., above, must be repaired, prior to further flight, in a manner approved by the FAA.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

F. 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.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the AMD-BA Representative, c/o Falcon Jet Corporation, Teterboro Airport, Teterboro, NJ 07608. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 29, 1987.

Issued in Seattle, Washington, on November 6, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-26664 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-CE-19-AD; Amendment 39-5708]

Airworthiness Directives; Beech 200 and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 87-17-05, Amendment 39-5708, (52 FR 33224) applicable to certain models of the Beech 200 and 300 Series airplanes, by rectifying the time of initial compliance for airplanes which previously complied with AD 84-24-01. The AD is also clarified by specifying an upper limit of airplane serial number applicability and correcting replacement part numbers.

DATES: *Effective Date:* November 23, 1987. *Compliance:* As prescribed in the body of the AD.

ADDRESSES: Beech Service Bulletin No. 2040, Rev. 1, dated March 1987, and Beech Service Instructions No. C-12-0094, Rev. 1, dated February 1987 may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681-9111. This information may be examined at

the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Airframe Branch, ACE-120W, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of Airworthiness Directive (AD) 87-17-05, Amendment 39-5708 (52 FR 33224; Sept. 2, 1987) applicable to 200 and 300 Series airplanes, it was discovered that the initial compliance time, as stated, did not correctly account for previous accomplishment of required inspections. Also, the applicability of the AD to all airplanes in the 200 and 300 Series is not accurate in light of new information on the status of spares replacements. Finally, replacement part numbers in the AD are wrong. Therefore, the FAA is revising AD 87-17-05 by correcting the initial compliance time for airplanes which have previously accomplished the required inspections, by specifying an upper limit on airplane serial numbers in the applicability statement, and by correcting replacement part numbers.

Since this amendment corrects the AD and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedure of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft.

It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "**ADDRESSES**" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By correcting and reissuing AD 87-17-05, Amendment 39-5708, to read as follows:

Beech: Applies to Models 200 and B200 (Serial Nos. (S/Ns) BB-2 thru BB-1200 except BB-627, BB-647, BB-665, BB-798, BB-823, BB-1158, and BB-1167); 200C and B200C (S/Ns BL-7 thru BL-93 except BL-67, BL-72, BL-86, BL-87, BL-90, BL-91, BL-92, and BL-124 thru BL-127); 200CT and B200CT (S/Ns BN-1 thru BN-4); 200T and B200T (S/Ns BT-18 thru BT-30 except BT-19); A200CT (S/Ns BP-1, BP-7 thru BP-11, BP-22, BP-24 thru BP-45, GR-1 thru GR-13 and FC-1 thru FC-3); A200C (S/Ns BJ-1 thru BJ-66); and 300 (S/Ns FA-1 thru FA-19 except FA-17) airplanes certificated in any category.

Note 1.—The subject panels may have been installed as original equipment or as replacement spares. The Beech Service Bulletins referenced in this AD contain explanatory material relating to this topic.

Compliance: Required as indicated after the effective date of this AD unless previously accomplished.

To assure the continued structural integrity of the wing fuel bay upper skin panels, accomplish the following:

(a) Within the next 75 hours time-in-service (TIS) or six calendar months, whichever occurs first, unless previously accomplished within the last 225 hours TIS or six calendar months per AD 84-24-01, and thereafter at intervals not to exceed 300 hours TIS or six calendar months, whichever occurs first, inspect the wing center section fuel bay upper skin panels for possible debonding in accordance with Beech Service Bulletin No. 2040, Rev. 1, dated March 1987 (for civil registered airplanes) or Beech Service Instructions No. C-12-0094, Rev. 1, dated February 1987, (for military airplanes).

(1) If no debonding is detected, prior to further flight, accomplish the actions of paragraph (b) below.

(2) If debonding is detected in either panel, prior to further flight modify the discrepant panel by installation of Kit No. 101-4032-1 (L.H.) or 101-4032-3 (R.H.), and the accomplishment of the actions of paragraph (b) below, or by installation of replacement skin panel P/N 101-120108-603 (L.H.) or -604 (R.H.).

(3) If debonding is detected in a panel which was previously repaired per paragraph (a)(2) above or AD 84-24-01, prior to further flight remove the discrepant panel and install a replacement skin panel P/N 101-120108-603 (L.H.) or -604 (R.H.) as applicable.

(b) Seal all accessible blind rivets in both wing center section fuel bay upper skin panels as described in Service Bulletin No. 2040, Rev. 1, dated March 1987, or Service Instructions No. C-12-0094, Rev. 1, dated February 1987 (as applicable).

Note 2: Resealing of these blind rivets is recommended anytime paint is removed from this area.

(c) The requirements of this AD are no longer required when skin panels P/N 101-120108-603 (L.H.) or -604 (R.H.) have been installed.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085; or may examine the document(s) referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment corrects AD 87-17-05, Amendment 39-5708 (52 FR 33224).

This amendment becomes effective November 23, 1987.

Issued in Kansas City, Missouri, on November 6, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-26673 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWP-30]

Revision to Window Rock, AZ, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the description of the Window Rock, AZ, transition area. This will increase the size of the 700 foot transition area southwest of the Window Rock Airport and will provide controlled airspace for a new instrument approach procedure to the airport. The procedure will be a random area navigation approach to Runway 02 (RNAV RWY 02).

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-1648.

SUPPLEMENTARY INFORMATION:

History

On September 14, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the description of the Window Rock, AZ, transition area and provide controlled airspace for a new instrument approach procedure to the Window Rock Airport (52 FR 34683). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the description of the Window Rock, AZ, transition area and provides controlled airspace for a new instrument approach procedure to the Window Rock Airport.

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 25, 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.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Window Rock, AZ—[Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Window Rock Airport (lat. 35°39'08" N., long. 109°04'00" W.); within 3 miles each side of Gallup VORTAC 318° radial, extending from the 5-mile radius area to the Gallup VORTAC; and within an area bounded by a line beginning at lat. 35°38'27" N., long. 109°06'35" W., to lat. 35°31'07" N., long. 108°58'32" N., to lat 35°27'13" N., long. 109°04'34" W., to lat. 35°25'26" N., long. 109°14'05" W., to lat. 35°31'35" N., long. 109°10'58" W., to the point of beginning.

Issued in Los Angeles, California, on October 29, 1987.

Jacqueline L. Smith,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 87-26666 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-19]

Establishment of Transition Area, Burlington, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a 700 foot transition area at the Kit Carson Airport, Burlington, Colorado. The area provides controlled airspace for aircraft executing a new instrument approach procedure at the airport.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Ted Melland, ANM-536, Federal Aviation Administration, Docket No. 87-ANM-19, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2536.

SUPPLEMENTARY INFORMATION:

History

On September 14, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a 700 foot transition area at the Kit Carson Airport, Burlington, Colorado (52 FR 34682).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700 foot transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to Kit Carson Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Burlington, Colorado (New)

That airspace extending upward from 700 feet above the surface within a 12 mile radius of the Kit Carson County Airport (lat. 39°14'27" N., long. 102°17'08" W.).

Issued in Seattle, Washington, on November 9, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-26669 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-12]

Alteration of Lewistown, MT; Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the existing controlled airspace at Lewistown, Montana. This action is necessary to allow off airway vectoring of aircraft from west of Lewistown, Montana, at altitudes below 14,500 feet to position aircraft on the instrument approach procedure to the Lewistown Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-12, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

On June 22, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Lewistown, Montana, transition area (52 FR 23469). This action is necessary to allow off airway vectoring of aircraft from west of Lewistown, Montana, at altitudes below 14,500 feet to position aircraft on the instrument approach procedure to the Lewistown Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the existing controlled airspace at Lewistown, Montana, to allow air traffic controllers to radar vector aircraft off airways from west of Lewistown at altitudes below 14,500 feet to the instrument approach procedure for the Lewistown Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lewistown, Montana [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Lewistown Municipal Airport (lat. 47°02'56.9" N., long. 109°28'08.1" W.) and within 4 miles each side of the Lewistown VORTAC 289° radial, extending from the 7-mile radius area to 10.5 miles west of the VORTAC; that airspace extending upward from 1,200 feet above the surface within 16 miles north and 11 miles south of the Lewistown VORTAC 289° radial extending 31 miles west of the VORTAC, and within 5 miles north and 8 miles south of the Lewistown VORTAC 109° radial, extending from the VORTAC to 7 miles east of the VORTAC; and excluding that portion within the Great Falls, Montana, 1,200 foot transition area.

Issued in Seattle, Washington, on November 9, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-26670 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ANM-10]

Revision of Transition Area, Evanston, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 87-22472 by correcting an erroneous longitudinal point which appeared in the Final Rule description of the revised transition area for Evanston, Wyoming.

EFFECTIVE DATE: 0901 UTC, November 19, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-10, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87-22472 was published on September 30, 1987, Volume 52, Page 36566 that revised the Evanston, Wyoming, transition area. This action was necessary to ensure segregation of aircraft using the new VOR/DME-A approach procedure in instrument weather conditions and other aircraft operating in visual weather conditions.

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 will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 87-22472, as published in the **Federal Register** on September 30, 1987 (52 FR 36566) is corrected as follows: Delete long. 110°20'00" W., and substitute with 110°27'00" W. (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-499, January 12, 1983)); and 14 CFR 11.69.)

Issued in Seattle, Washington, on November 9, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-26671 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AGL-33]

Alteration of VOR Federal Airways; Grantsburg, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-13, V-55, V-505 and changes the name of the Grantsburg Compulsory Reporting Point located in the vicinity of Grantsburg, WI. The FAA has decommissioned the Grantsburg very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) located approximately 13 miles east of Grantsburg. This action amends the descriptions of all airways affected by the commissioning of Siren, WI, VOR/DME and the decommissioning of the Grantsburg VOR/DME and changes the name of the Grantsburg Compulsory Reporting Point.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On April 7, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V-13, V-55 and V-505 located in the vicinity of Grantsburg, WI (52 FR 11082). The FAA has decommissioned the Grantsburg VOR/DME and commissioned the Siren VOR/DME, and this action alters the descriptions of all airways affected. This action also changes the name of the Grantsburg Compulsory Reporting Point. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice Sections 71.123 and 71.203 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the descriptions of Federal Airways V-13, V-55, V-505 and changes the name of the Grantsburg Compulsory Reporting Point located in the vicinity of Grantsburg, WI. The FAA has decommissioned the Grantsburg VOR/DME located approximately 13 miles east of Grantsburg. This action amends the descriptions of all airways affected by the commissioning of Siren, WI, VOR/DME and the decommissioning of the Grantsburg VOR/DME and changes the name of the Grantsburg Compulsory Reporting Point to Siren, WI

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.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-13 [Amended]

By removing the words "Grantsburg, WI;" and substituting the words "INT Farmington 017° and Siren, WI, 218° radials; Siren;"

V-55 [Amended]

By removing the words "Grantsburg, WI;" and substituting the words "Siren, WI;"

V-505 [Amended]

By removing the words "Grantsburg, WI;" and substituting the words "Siren, WI;"

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Grantsburg, WI [Removed]

Siren, WI [New]

Issued in Washington, DC on November 3, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-26667 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AGL-17]

Establishment of Transition Area, Solon Springs, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to establish the Solon Springs, WI, transition area to accommodate a new NDB Runway 19 Standard Instrument Approach Procedure (SIAP) to Solon Springs Municipal Airport, Solon Springs, WI. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Thursday, September 10, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Solon Springs, WI, transition area (52 FR 34230).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes the Solon Springs, WI, transition area to accommodate aircraft utilizing a new NDB Runway 19 SIAP to Solon Springs Municipal Airport, Solon Springs, WI.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Solon Springs, WI [New]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Solon Springs Municipal Airport (lat. 46°18'30" N., long. 91°48'45" W.), and within 3 miles each side of the 003° bearing from the Solon Springs Municipal Airport extending from the 5 mile radius area to 8.5 miles north of the airport.

Issued in Des Plaines, Illinois, on October 28, 1987.

John H. Bacon,

Acting Manager, Air Traffic Division.

[FR Doc. 87-26665 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-12]

Alteration of VOR Federal Airways; Expanded East Coast Plan—Phase II

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of one Federal airway located in the vicinity of New York. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. While five airways were included in the notice only V-126 will be implemented at this time due to technical and administrative problems. This amendment is part of Phase II of the Expanded East Coast Plan (EECP); Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On July 15, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-123, V-126, V-130, V-139 and V-143 located in the vicinity of New York (52 FR 26490). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Congressman Dean A. Gallo requested that implementation of Phase II of the EECP be suspended pending a full and complete study of the noise impact over the State of New Jersey.

People Against Newark Noise commented that certain residents of New Jersey object to changes in air routes which will bring jet noise upon previously peaceful communities. Environmental assessment of airspace actions by the FAA is conducted in accordance with FAA Order 1050.1D, Policies and Procedures for Handling Environmental Impacts. Appendix 3 of the order requires environmental assessment of a Part 71 airspace action only when it would result in rerouting traffic over a noise-sensitive area at altitudes less than 3,000 feet above the surface. No such low-altitude routings were involved in the airway modification adopted in this amendment, and we do not consider that an environmental assessment is required under the National Environmental Policy Act or the Agency's Environmental Guidelines. In view of the comments of the New Jersey parties, however, the FAA is in the process of conducting a review of the environmental implications of the overall impact of Phase II of the EECP.

In consideration of the importance of the airway actions for the safe and efficient handling of air traffic on the east coast, and of the fact that the agency has complied with Federal environmental review requirements, the FAA does not believe that this action should be delayed pending the outcome of the review. With respect to the studies being conducted by the General Accounting Office and the New Jersey state government, the FAA will fully consider the results of these studies when completed, but we do not agree that important airway changes should be delayed pending the outcome of those studies.

People Against Newark Noise also questioned the basis for the FAA's determination that a regulatory evaluation is not required. The action does not meet the threshold requirements for a major rule under Executive Order 12291, and a regulatory impact analysis under that order is not required. Department of Transportation Regulatory Policies and Procedures (44 FR 11031) require an economic evaluation of agency rulemaking actions except in emergencies or when the agency determines that the economic impact is so minimal that the action does not warrant a full evaluation. Such a determination was made in this case, in consideration of the minimal economic impacts of the airway changes proposed. Similarly, a regulatory flexibility analysis is not required since this action will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

AOPA objected that this proposal will impose complicated routings and/or additional mileages. The FAA agrees there will be additional mileages on certain airways due to the realignment of the standard instrument departures and standard terminal arrival routes. Nevertheless, this change in traffic flow has resulted in more than a 40% reduction in departure/arrival delays in the New York Metroplex area, thereby saving time and fuel. This action should more than offset the slight additional distance. The FAA does not consider these actions to constitute a complication of routing. Should unforeseen problems arise as a result of this phase of the EECP, the FAA would initiate appropriate remedial action as required.

The Air Transport Association (ATA) endorsed the objective of the EECP to establish an improved air traffic system which reduces delays for aircraft departing and arriving terminals in the eastern United States. However, ATA requested an overview of the total plan. Also, ATA requested a longer response time to the NPRM's because of the large volume of very technical and complicated material. FAA appreciates the comments and will carefully review and consider their suggestion.

Due to technical and administrative problems only V-126 will be implemented at this time. Implementation of the other four airways will be delayed until a later date. With respect to V-126, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of one of five VOR Federal airways located in the vicinity of New York that was published in the notice. This airway is part of an overall plan designed to alleviate congestion and compression of traffic in the airspace bounded by Eastern, New England, Great Lakes and the Southern Regions. This amendment is a part of Phase II of the EECP; Phase I was implemented February 12, 1987. The EECP is designed to make optimum use of the airspace along the east coast corridor. This action reduces en route and terminal delays in the Boston, MA; New York, NY; Miami, FL; Chicago, IL; and Atlanta, GA, areas, saves fuel and reduces controller workload. The EECP is being implemented in coordinated segments until completed.

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.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71. 123 is amended as follows:

V-126 [Amended]

By removing the words "Huguenot, NY." and substituting the words "to Sparta, NJ."

Issued in Washington, DC, on November 4, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-26663 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-AWP-27]

Alteration of Restricted Areas and Associated Military Operations Areas; Nevada

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the descriptions of Restricted Areas R-4803S, R-4804, R-4810, R-4812, R-4816N and R-4816S located in the state of Nevada. After reviewing the subject restricted areas, the FAA and the U.S. Navy have determined that the alteration of these areas will enable the using agency, U.S. Navy, to release previously restricted airspace for public use. In conjunction with this action, several ancillary nonrulemaking actions have been taken to remove Military Operations Area (MOA) designation from other airspace.

EFFECTIVE DATE: 0901 UTC, January 14, 1988.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On December 31, 1986, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to alter the descriptions of Restricted Areas R-4803S, R-4804, R-4810, R-4812, R-4816N and R-4816S located in the state of Nevada (51 FR 47257). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Two comments objecting to the proposal

were received from local residents. Objections to the proposal included the following subjects: The adverse impact upon civil aviation in the Fallon, NV, area; the designation of R-4803, R-4804 R-4810, R-4812 and R-4813 to the surface; the effect on major visual flight rules (VFR) flyways; the request for formal hearing on the proposal; the economic concerns; the environmental concerns; and other regulatory and safety concerns.

The vast majority of input from civil and military users does not support the commenters' concerns regarding increased impact upon civil aviation. The Fallon special use airspace (SUA) structure was developed within the existing boundaries of the victor airway/jet route structure. Safety concerns require the designation of the Fallon SUA as restricted areas which are additionally supported by MOA's surrounding them. Several annual surveys conducted by the the Air Traffic Control (ATC) facility at Fallon NAS reflect minimal delays or diversions for civil aircraft transiting the Fallon area. The actions in this rule to alter Restricted Areas R-4804, R-4812 and R-4816S will permit the establishment of VFR corridors through the area for the use of the flying public. This will provide greater public access through the affected airspace. After reviewing their overall operational requirements, the Navy cancelled its request to expand R-4813.

The objecting comment raised specific questions about the proposed VFR corridor, including the designation of the corridor over an obscure highway which is not identified on road maps; conflict with Navy aircraft on bombing runs; and location of the corridor near high mountains. The FAA does not agree with the comments. The highway, State Route 722, is visible from air and is the only highway besides Route 50 that runs east-west out of the Middlegate Station. The new corridor, like the existing corridor, is capped at an altitude below the floor of the Navy's supersonic operations area, and does not conflict with Navy traffic using the MOA. The Desatoya Mountains are of equal or lower height than the mountainous terrain along the existing VFR route.

One comment suggested that R-4803, R-4804, R-4810 and R-4812 either are or would be in violation of FAA directives, because they are designated to the surface in areas in which the Navy does not own, lease, or otherwise control the surface. The FAA policy to which the comments refer applies only to new restricted airspace. None of the actions adopted in this amendment creates new restricted airspace to the surface in an area which the Navy does not own or control.

The FAA does not believe that a public hearing on the proposed rule was necessary, as suggested by one commenter. The FAA conducted an extensive review of the Fallon SUA in 1984 and 1985, including a meeting with pilots at Fallon Airport and a public meeting in Fallon, NV. On the specific proposals contained in this docket, the FAA published a request for written comments in the **Federal Register** and has fully considered the issues involved.

Fallon NAS periodically conducts surveys of civil aviation flights requesting to transit the Fallon SUA. In the great majority of cases these requests have been accommodated, and the economic impact has been determined to be minimal. In addition, the Navy has revised some of its higher altitude procedures in order to provide for more efficient use of the airspace by returning the Fallon SUA areas for public use on a short-term basis when not in use by the Navy.

Comments received relating to the environmental issues were forwarded to the Navy for action and/or response as part of the environmental review process.

In summary, it is the FAA's opinion that this rule will not cause a substantial adverse effect upon aircraft operating in the Fallon area but will provide greater access through the airspace for the flying public.

Concurrent with this action, the following MOA's are amended to provide greater access through the airspace for the flying public:

Austin 1 MOA, NV [Amended]

By removing the words "That airspace 2 NM either side of Highway 50 below 2,000 feet AGL." and by substituting the words "That airspace 2 NM either side of State Route 722 to the town of Austin, then 2 NM either side of U.S. Highway 50 to the eastern boundary of the Austin 1 MOA between 2,000 feet AGL and 10,500 feet MSL."

Austin 2 MOA, NV [Amended]

By removing the words "that airspace 2 NM either side of Highway 50 below 2,000 feet AGL." and by substituting the words "that airspace 2 NM either side of U.S. Highway 50 between 2,000 feet AGL and 10,500 feet MSL."

Ranch MOA, NV [Amended]

By removing the present times of use and by substituting the following:

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs North MOA, NV [Amended]

By removing the present boundaries and times of use and by substituting the following:

Boundaries. Beginning at lat. 39°06'05" N., long. 118°33'34" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to lat. 39°55'00" N., long. 117°26'00" W.; to lat. 40°06'00" N., long. 117°48'00" W.; to lat. 40°06'00" N., long. 118°15'00" W.; to lat. 39°57'00" N., long. 118°38'00" W.; to lat. 39°45'53" N., long. 118°37'52" W.; to lat. 39°25'00" N., long. 118°25'30" W.; to lat. 39°17'00" N., long. 118°21'00" W.; to the point of beginning; excluding R-4802, R-4804, R-4810, R-4812, R-4813, R-4816N, R-4816S, and those portions of the Fallon and Stillwater National Wildlife Refuge areas below 3,000 feet AGL. Also, excluding that airspace from the western boundary of Gabbs North MOA to lat. 39°17'20" N., long. 118°07'30" W.; within 1 NM north of U.S. Highway 50 between 2,000 feet AGL and 8,500 feet MSL; to lat. 39°18'00" N., long. 117°55'00" W.; within 1 NM north of U.S. Highway 50 and 2 NM south of U.S. Highway 50 and State Road 722 between 2,000 feet AGL and 10,500 feet MSL; to the eastern boundary of the Gabbs North MOA 2 NM either side of State Road 722 between 2,000 feet AGL and 10,500 feet MSL.

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs South MOA, NV [Amended]

By removing the present boundaries and times of use and by substituting the following:

Boundaries. Beginning at lat. 38°43'00" N., long. 118°11'30" W.; to lat. 38°40'00" N., long. 118°05'10" W.; to lat. 38°40'00" N., long. 118°00'00" W.; to lat. 38°56'00" N., long. 117°23'00" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to lat. 38°43'00" N., long. 118°02'00" W.; to the point of beginning; excluding that airspace encompassed by a 3 NM radius centered on the town of Gabbs, NV, located at lat. 38°52'12" N., long. 117°55'30" W.; below 2,000 feet AGL.

Times of use. 0715–2330 daily; other times by NOTAM.

Gabbs Central MOA, NV [New]

Boundaries. Beginning at lat. 39°06'05" N., long. 118°33'34" W.; to lat. 38°58'00" N., long. 118°42'50" W.; to lat. 38°43'00" N., long. 118°11'30" W.; to lat. 38°43'00" N., long. 118°02'00" W.; to lat. 39°10'00" N., long. 117°23'00" W.; to the point of beginning; excluding that airspace encompassed by a 3 NM radius centered on the town of Gabbs, NV located. at lat. 38°52'12" N., long. 117°55'30" W., below 2,000 feet AGL.

Altitudes. 100 feet AGL up to but not including FL 180.

Times of use. 0715–2330 daily; other times by NOTAM.

Controlling agency. FAA, Oakland ARTCC

Using agency. U.S. Navy, Fallon NAS, NV

MOA designations are not published in the **Federal Register** but are included in FAA Handbook 7400.6C. Section 73.48 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations alters the descriptions of Restricted areas R-

4803S, R-4804, R-4810, R-4812, R-4816N and R-4816S located in the state of Nevada. These actions will provide the flying public greater access through the Fallon airspace. It should also be noted that the alterations to Restricted Areas R-4804, R-4812 and R-4816S are revised to establish VFR corridors through the area for the use of the flying public in order to provide greater access through the affected airspace.

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.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 1348(a), 1354(a); 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

2. Section 73.48 is amended as follows:

R-4803S Fallon, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Designated altitudes. Surface to FL 180.

R-4804 Twin Peaks, NV [Amended]

By removing the present designated altitudes and time of designation and by substituting the following:

Designated altitudes. Surface to but not including FL 180 excluding that portion from 2,000 feet AGL up to 8,500 feet MSL which lies north of and 1 NM from U.S. Highway 50, between the intersection of U.S. Highway 50 with long. 118°25'30" W., and long. 118°07'30" W.

Time of designation. 0715-2330 local time, daily.

R-4810 Desert Mountains, NV [Amended]

By removing the present designated altitudes and by substituting the following:

Designated altitudes. Surface to and including 17,000 feet MSL.

R-4812 Sand Springs, NV [Amended]

By removing the present designated altitudes and time of designation and by substituting the following:

Designated altitudes. Surface to but not including FL 180 excluding that portion from 2,000 feet AGL up to 8,500 feet MSL which lies north of and 1 NM from U.S. Highway 50, between the intersections of U.S. Highway 50 with long. 118°25'30" W., and long. 118°07'30" W.

Time of designation. 0715-2330 local time, daily.

R-4816N Dixie Valley, NV [Amended]

By removing the present time of designation and by substituting the following:

Time of designation. 0715-2330 local time, daily.

R-4816S Dixie Valley, NV [Amended]

By removing the present boundaries and time of designation and by substituting the following:

Boundaries. Beginning at lat. 39°17'00" N., long. 118°21'00" W.; to lat. 39°30'00" N., long. 118°15'30" W.; to lat. 39°34'00" N., long. 118°12'30" W.; to lat. 39°34'00" N., long. 117°39'30" W.; thence via a line 1 NM north of U.S. Highway 50; to the point of beginning.

Time of designation. 0715-2330 local time, daily.

Issued in Washington, DC, on November 6, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-26668 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9187]

Jerome Milton, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Chicago, Illinois maker of Shane toothpaste from representing that Shane cures or alleviates the symptoms of canker or cold sores; reduces tooth sensitivity or plaque more effectively than any other toothpaste or oral hygiene product; or cures or alleviates gum problems unless they have reliable evidence that substantiates the representation.

DATES: Complaint issued September 24, 1984. Order issued Oct. 26, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/S-4002, Nancy Warder, Washington, DC 20580. (202) 326-3048.

SUPPLEMENTARY INFORMATION: On Monday, August 10, 1987, there was published in the **Federal Register**, 52 FR 29537, a proposed consent agreement with analysis In the Matter of Jerome Milton, Inc. and Jerome Milton Schulman, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; S.13.170 Qualities or properties of product or service; S.13.170-70 Preventive or protective; S.13.190 Results. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-45 Maintain records; S.13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself And Goods— Goods; S.13.1590-20 Federal Trade Commission Act; S.13.1710 Qualities or properties; S.13.1730 Results; S.13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Toothpaste, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-26723 Filed 11-18-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 235

[Docket No. R-87-1365; FR-2431]

Mortgage Insurance; Changes in Interest Rates

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

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on certain Section 232 (Mortgage Insurance for Nursing Homes) loans and on all Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for these programs into line with competitive market rates.

EFFECTIVE DATE: November 10, 1987.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under section 232 (fire safety equipment) and section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA section 232 (fire safety equipment) and section 235 insurance programs has been lowered from 11.00 percent to 10.50 percent.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately.

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (1) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities.

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects

24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage insurance, Homeownership, Grant programs: Housing and community development.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

Accordingly, the Department amends 24 CFR Parts 232 and 235 as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

1. The authority citation for 24 CFR 232 continues to read as follows:

Authority: Sections 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); Section 7(d), Department of Housing and Urban Development (42 U.S.C. 3535(d)).

2. In § 232.560, paragraph (a) is revised to read as follows:

§ 232.560 Maximum interest rate.

(a) The loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.50 percent per annum, except that where an application for commitment was received by the Secretary before November 10, 1987, the loan may bear interest at the maximum rate in effect at the time of application.

* * * * *

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

3. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Sections 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.50 percent per annum, except that where an application for commitment was received by the Secretary before November 10, 1987, the loan may bear interest at the maximum rate in effect at the time of application.

5. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after November 10, 1987, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.50 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed

upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

Dated: November 9, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-26643 Filed 11-18-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Paroling Policy Guidelines Revisions

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a number of revisions to the dollar amount thresholds in its paroling policy guidelines contained in 28 CFR 2.20. These changes are intended to make the guidelines more comprehensive and more fair.

EFFECTIVE DATE: December 21, 1987 (see "Implementation" under **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposal and Its Purposes

On September 3, 1987, the U.S. Parole Commission published in the **Federal Register** (52 FR 33431) a proposal to revise a number of dollar amount thresholds in its paroling policy guidelines contained in 28 CFR 2.20. (Due to typesetting errors, the proposal was republished on September 11, 1987 (52 FR 34392)). The Commission proposed to adjust the dollar thresholds for the following property offenses: Offense Example 303 (Property Destruction Other Than Listed Above); Offense Example 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses); Offense Example 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange); Offense Example 363 (Insider Trading); Offense Example 501 (Tax Evasion [income tax and other taxes]); Offense Example 1161 (Reports or Monetary Instrument Transactions; and Offense Example 1172 (Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. 6928(d)(1-2)]. The Commission's proposal would have the effect of lowering the offense severity ratings (and the corresponding guideline ranges) for a number of property offenses by raising the dollar value threshold required for rating offenses in the various severity categories.

The Parole Commission proposed these changes for a number of reasons, the primary reason, however, being fairness. The guidelines for property offenses have remained basically unchanged since the first set of parole release guidelines was implemented in 1973. In the intervening 14 years, no adjustment for inflation has been made for property offenses over $2,000 and the proposed modification of severity category thresholds is, therefore, only proportional to the amount of inflation during this period of time. More specifically, the degree of economic harm caused by a $20,000 property crime in 1987 is substantially less than that caused by a $20,000 crime in 1973, and the diminution in the severity ratings as proposed merely cancels the incidental increase in severity ratings which had crept into the guidelines since 1973. In addition, the change would be more comparable to the Sentencing Commission's guidelines.

Further, the Bureau of Prisons is presently more than 50% over rated capacity and these changes would assist in providing some relief for the overcrowding problems. It should be noted that the overwhelming majority of large scale property offenders have been found to be very good parole risks, and release of these offenders would not endanger the community. The changes would allow for release, in some cases, of these non-dangerous persons and thus, by assisting in the overcrowding problem, would make available more prison space for individuals who are dangerous to the community, specifically assaultive types, drug dealers, etc.

B. Public Comment

In response to these proposed changes, the Parole Commission received fifty (50) comments.

Congressman Joseph D. Early wrote to agree and concur with the proposal. Stating that "the revisions will result in more comprehensive and fair paroling procedures," he noted further that the changes would also provide "some relief for overcrowding problems." Congressman Robert W. Kastenmeier encouraged the Commission to adopt the proposed modification to adjust for inflation and reduce overcrowding. He further noted that he did not believe that the change would "reflect a softening on criminals." Congressman Carroll Hubbard wrote to note his concern about the need to relieve overcrowding.

Forty (40) individuals wrote to note their support for the changes. Mr. Gordon Loux, President of Prison Fellowship Ministries, strongly supported the Commission's proposals. Mr. Robert Gemignani, President of the National Office for Social Responsibility, expressed his strong support for the proposal because of the need to adjust for inflation and provide a measure of relief from prison overcrowding. Others indicated that the proposal was appropriate in that non-violent offenders do not require lengthy periods of confinement and cited prison overcrowding as a rationale. One individual also recommended that the change be retroactive.

Finally, comments were received from seven (7) inmates. While each indicated their support for the changes as proposed, three of the respondents argued for a revision of the various threshold levels contained in the proposal. One inmate recommended that the guidelines be reduced for all "very good" risk cases, while another questioned the Commission's commitment to fairness.

C. Changes From the Proposal

As published in both the September 3 and September 11, 1987 versions of the proposed rule, Offense Example 303(e) read as follows: "If damage of at least $2,000 but not less than $40,000 is caused, grade as Category Three." The inclusion of the word "not" was a typesetting error that was not deleted when the proposed rule was republished. The final rule contained herein has corrected that mistake.

There are no other changes from the rule as proposed.

D. Implementation

The revised dollar amount thresholds will be applied to all prisoners who have their initial parole hearing on or after December 21, 1987. The revised thresholds will also be applied to rescission and revocation hearings to be held on or after December 21, 1987. Workload considerations prohibit the Commission from providing full retroactivity by examining each case previously given an initial hearing prior to the next regularly scheduled hearing or record review. However, the revised thresholds will be calculated at all

subsequent hearings (e.g., interim hearings) and pre-release record reviews held on or after December 21, 1987. Any prisoner receiving a guideline requiring a lesser period of confinement will have that guideline retroactively applied and the case reconsidered in light of the revised guidelines. If the new guidelines are not more favorable, the previous decision will stand.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. Offense Example 303 in Chapter Three, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

303 *Property Destruction Other Than Listed Above*

(a) If the conduct results in bodily injury,* or if "serious bodily injury is the result intended",* grade as if "assault during commission of another offense";

(b) If damage of more than $1,000,000 is caused, grade as Category Six;

(c) If damage of more than $200,000 but not more than $1,000,000 is caused, grade as Category Five;

(d) If damage of at least $40,000 but not more than $200,000 is caused, grade as Category Four;

(e) If damage of at least $2,000 but less than $40,000 is caused, grade as Category Three;

(f) If damage of less than $2,000 is caused, grade as Category One;

(g) *Exception:* If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

3. Offense Example 331 in Chapter Three, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 is amended by revising paragraphs (a) through (e) to read as follows:

331 Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses*

(a) If the value of the property* is more than $1,000,000, grade as Category Six;

(b) If the value of the property* is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the value of the property* is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the value of the property* is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the value of the property* is less than $2,000, grade as Category One.

* * * * *

4. Offense Example 341 of Chapter Three, Subchapter E of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

*341 Passing or Possession of Counterfeit Currency or Other Medium of Exchange**

(a) If the face value of the currency or other medium of exchange is more than $1,000,000, grade as Category Six;

(b) If the face value is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the face value is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the face value is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the face value is less than $2,000, grade as Category Two.

5. Offense Example 363 of Chapter Three, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

363 Insider Trading

(a) If the estimated economic impact is more than $1,000,000, grade as Category Six;

(b) If the estimated economic impact is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the estimated economic impact is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the estimated economic impact is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the estimated economic impact is less than $2,000, grade as Category Two.

(f) **Note:** The term 'economic impact' includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

6. Offense Example 501 of Chapter Five, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 is amended by revising paragraphs (a) through (e) to read as follows:

501 Tax Evasion [income tax or other taxes]

(a) If the amount of tax evaded or evasion attempted is more than $1,000,000, grade as Category Six;

(b) If the amount of tax evaded or evasion attempted is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the amount of tax evaded or evasion attempted is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the amount of tax evaded or evasion attempted is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the amount of tax evaded or evasion attempted is less than $2,000, grade as Category One.

* * * * *

7. Offense Example 1161 of Chapter Eleven, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

1161 Reports on Monetary Instrument Transactions

(a) If very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000), grade as Category Six;

(b) If large scale (e.g., the estimated gross amount of currency involved is more than $200,000 but not more than $1,000,000), grade as Category Five;

(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $40,000 but not more than $200,000), grade as Category Four;

(d) If small scale (e.g., the estimated gross amount of currency involved is less than $40,000), grade as Category Three.

8. Offense Example 1172 of Chapter Eleven, Subchapter H of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

1172 Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. 6928(d)(1-2)]

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $200,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $40,000–$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truck driver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

Dated: November 29, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-26675 Filed 11-18-87; 8:45 am]

BILLING CODE 4410-01-M

* Terms marked by an asterisk are defined in Chapter Thirteen.

*Terms marked by an asterisk are defined in Chapter Thirteen.

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Paroling Policy Guidelines Revisions and Criteria for Rewarding Assistance to Law Enforcement Officials

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a revision to its paroling policy guidelines contained in 28 CFR 2.20. This change is intended to make the guidelines more comprehensive. Additionally, the Commission is revising its criteria and guidelines, as contained in 28 CFR 2.63, for rewarding a prisoner's assistance to law enforcement authorities in the prosecution of other offenders. The change is intended to eliminate uneven and inconsistent interpretations and applications of the provision and for fairness.

EFFECTIVE DATE: December 21, 1987. (See "Implementation" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposal and Its Purposes

On September 3, 1987, the U.S. Parole Commission published in the **Federal Register** (52 FR 33433) a proposal to revise Offense Example 401 (*Unlawfully Entering the United States as an Alien*) and 402 (*Transportation of Unlawful Alien(s)*) of the Offense Behavior Severity Index of 28 CFR 2.20. Additionally, it published a proposed change to 28 CFR 2.63, *Rewarding Assistance in the Prosecution of Other Offenders; Criteria and Guidelines.*

As to the first set of changes, Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 contains the offense examples involving immigration, naturalization and passports. Recent changes in the immigration statutes and policies have occasioned a revisiting of the guidelines applicable to these offenses. Since it is now more difficult for illegal immigrants to find employment which in turn has lessened the threat of illegal immigration, the Commission proposed to revise Offense Example 401 to grade unlawful entry as Category One. Next, the Commission rates the transportation of unlawful aliens as Category Three unless it involves detention and demand for payment. To differentiate those situations from where an illegal alien transports unlawful aliens without receiving any payment or other remuneration, the Commission proposed revising Offense Example 402 to grade such behavior as Category One, similar to illegal entry.

Next, the proposed revision to 28 CFR 2.63 (Rewarding Assistance in the Prosecution of Other Offenders; Criteria and guidelines) would simplify the Commission's process of rewarding cooperation by eliminating the requirement for the U.S. Attorney to personally endorse a recommendation from his office before the Commission would consider rewarding such cooperation. Further, pursuant to this proposal, when the Commission decides to reward the assistance of an inmate whose term has been continued to expiration, any reduction will be taken from the actual date of the expiration of sentence rather than from the presumptive date that would otherwise have been deemed warranted. These changes will serve to facilitate the use of this regulation, eliminating uneven and inconsistent application and will, it is felt, provide more fairness to the procedures.

B. Public Comment

As to the proposed changes in § 2.20, the Commission received two (2) comments. Commissioner Alan C. Nelson of the Immigration and Naturalization Service wrote in opposition to both changes. He noted that the revision to 401 might result in sending "conflicting messages" to the public by "putting new teeth into the immigration laws on one hand, and lessening their severity on the other." Further, he argued against the change to 402, stating that the use of "a monetary compensation standard is inhibitive" because there are often "other tangible or intangible forms of gain." Additionally, Assistant Attorney General William F. Weld commented about these proposals. He suggested that the Commission obtain the views of Mr. Nelson then proceeded to make several suggestions as to rewording 402 should the Commission decide to adopt it as a final rule.

As to the proposed changes in § 2.63, the Commission recorded four (4) comments. Assistant Attorney General William F. Weld wrote expressing support for the changes as proposed. While deferring to the Executive Office for U.S. Attorneys and Attorney General's Advisory Committee on U.S. Attorneys, Mr. Weld noted that eliminating the need for the personal endorsement of the U.S. Attorney would remove "an unnecessary clerical burden." Further, he approved of the change related to the calculation point for rewards; he saw the proposal as rectifying the problem where no reward for assistance is provided because the sentence imposed is below the appropriate guideline range.

Additionally, Neil Schuster, an attorney from Miami, Florida, wrote in support of the changes. He applauded the proposals stating that it could "provide a greater incentive to cooperate." Benson Weintraub, also a Miami attorney, wrote to urge support of the changes. He suggested, however, that the language regarding express and implied promises should be changed and cited recent case law to support his theory. Finally, one inmate wrote both to agree with the changes proposed and to suggest other changes in the guidelines.

C. Changes From the Proposal

Based upon the comments received, the Commission decided not to revise Offense Example 402 as proposed. The proposed revisions to Offense Example 401 and to § 2.63 are not changed.

D. Implementation

The guideline revisions to Offense Example 401 and § 2.63 will be applied to all prisoners who have their initial parole hearing on or after December 21, 1987. The revised guidelines will also be applied to rescission and revocation hearings to be held on or after December 21, 1987. Workload considerations prohibit the Commission from providing full retroactively by examining each case previously given an initial hearing prior to the next regularly scheduled hearing or record review. However, the revised guidelines will be calculated at all subsequent hearings (e.g., interim hearings) and pre-release record reviews held on or after December 21, 1987. Any prisoner receiving a guideline requiring a lesser period of confinement will have that guideline retroactively applied and the case reconsidered in light of the revised guidelines. If the new guidelines are not more favorable, the previous decision will stand.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. Offense Example 401 of Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 is revised to read as follows:

401 *Unlawfully Entering the United States as an Alien*
Category One

3. 28 CFR 2.63 (Rewarding Assistance in the Prosecution of other Offenders; Criteria and Guidelines) is revised to read as follows:

§ 2.63 Rewarding Assistance in the Prosecution of Other Offenders; Criteria and Guidelines.

(a) The Commission may consider as a factor in the parole release decision-making a prisoner's assistance to law enforcement authorities in the prosecution of other offenders.

(1) The assistance must have been an important factor in the investigation and/or prosecution of an offender other than the prisoner. Other significant assistance (e.g., providing information critical to prison security) may also be considered.

(2) The assistance must be reported to the Commission in sufficient detail to permit a full evaluation. However, no promises, express or implied, as to a Parole Commission reward shall be given any weight in evaluating a recommendation for leniency.

(3) The release of the prisoner must not threaten the public safety.

(4) The assistance must not have been adequately rewarded by other official action.

(b) If the assistance meets the above criteria, the Commission may consider providing a reduction of up to one year from the presumptive parole date that the Commission would have deemed warranted had such assistance not occurred. If the prisoner would have been continued to the expiration of sentence, any reduction will be taken from the actual date of the expiration of the sentence. Reductions exceeding the one year limit specified above may be considered only in exceptional circumstances.

Dated: October 29, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-26676 Filed 11-18-87; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

[DoD Directive 1342.16]

Provision of Free Public Education for Eligible Dependent Children

AGENCY: Department of Defense, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Pub. L. 81-874, as amended, 20 U.S.C. 241 (1982) ("Section 6"), and section 505(c) of Pub. L. No. 97-35, 20 U.S.C.A. 241 note (West Supp. 1985) ("section 505(c)"). Section 6 authorizes the establishment of "arrangements" for the education of certain federally-connected children when prescribed conditions are met. These arrangements may include the establishment of schools within the United States and specified possessions. 20 U.S.C. 241 (a), (c). This rule establishes Department of Defense (DoD) policies and prescribed procedures for the Secretary of Defense to make arrangements for the provision of free public education for eligible dependent children of United States military personnel and federally employed civilian personnel.

EFFECTIVE DATE: October 16, 1987.

ADDRESS: Dependents Support Policy Directorate, (FSE&S) (FM&P), Room 3C965, The Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, 202-697-0481.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the **Federal Register**, Vol 52. No 99, May 22, 1987 (52 FR 19361), for public review and comments. No comments were received from the public.

List of Subjects in 32 CFR Part 68

Education, Dependents.

Accordingly, Title 32, Chapter 1 is amended to add Part 68 as follows:

PART 68—PROVISION OF FREE PUBLIC EDUCATION FOR ELIGIBLE DEPENDENT CHILDREN PURSUANT TO SECTION 6, PUBLIC LAW 81-874, AS AMENDED

Sec.
68.1 References.
68.2 Purpose.
68.3 Applicability and scope.
68.4 Policy.
68.5 Definitions.
68.6 Responsibilities.
68.7 Effective date and implementation.

Authority: 20 U.S.C. 241.

§ 68.1 References.

(a) Public Law 97-35, "Omnibus Budget Reconciliation Act of 1981," Section 505(c), August 13, 1981 (20 U.S.C. 241 note).

(b) Public Law 81-874 dated September 30, 1950, section 6, as amended (20 U.S.C. 241).

(c) Public Law 95-561, "Defense Dependents' Education Act of 1978," Sections 1009 and 1031(a), November 1, 1978 (20 U.S.C. 241).

(d) Memorandum of Understanding Between The Department of Defense and The Department of Education, August 16, 1982.

(e) **Federal Register** Document 84-11282, "Process for Section 6 Schools Operated by the Department of Defense," **Federal Register**, Volume 49, Number 82, page 18028, April 26, 1984.

(f) Assistant Secretary of Defense (Force Management & Personnel) Memorandum, "Education of Handicapped Students in Section 6 Schools Operated by the Department of Defense," December 10, 1986.

(g) Public Law 94-142, "Education for All Handicapped Children Act of 1975," as amended (20 U.S.C. 1401 *et seq.*).

(h) DoD Directive 1020.1, "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of Defense," March 31, 1982.

(i) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983, authorized by DoD Instruction 7220.9, October 22, 1981.

(j) DoD Directive 7600.6, "Audit of Nonappropriated Funds and Related Activities," January 4, 1974.

(k) DoD Directive 5500.7, "Standards of Conduct," January 15, 1977.

§ 68.2 Purpose.

This part:

(a) Establishes policies and prescribes procedures for the Department of Defense (DoD) to make arrangements (as defined in § 68.5) for the provision of free public education to eligible dependent children as authorized by § 68.1 (a), (b), and (c).

(b) Implements § 68.1 (a), (b), (d), and (e).

§ 68.3 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) The schools operated by DoD within the Continental United States (CONUS), Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

§ 68.4 Policy.

(a) In conformity with § 68.1 (a), (b), and (c), it is DoD policy that dependent children of U.S. military personnel and federally employed civilian personnel residing on Federal property be educated, whenever suitable, in schools operated and controlled by local public school systems.

(b) When it is not suitable for the children of U.S. military personnel and federally employed civilian personnel to attend a locally operated public school, the Secretary of Defense, or designee, shall make arrangements for the free public education of such children. These arrangements may include the establishment of schools within the United States and specified possessions.

(c) The arrangements for such free public education shall be made by the Secretary of Defense, or designee, either with a local educational agency, or with the Head of a Federal Department or Agency, whichever in the judgment of the Secretary, or designee, appears to be more applicable. If such an arrangement is made with the Head of a Federal Department or Agency, either it must administer the property on which the children to be educated reside or, if the local schools are unavailable to the children of members of the Armed Forces on active duty because of official State or local action and no suitable free public education may be provided by a local educational agency, the Department or Agency must have jurisdiction over the parents of some or all of such children.

(d) Section 6 School Arrangements are required, to the maximum extent practicable, to provide educational programs comparable to those being provided by local public educational agencies in comparable communities in the State where the Section 6 School Arrangement is located. If the Section 6 School Arrangement is outside of CONUS, Alaska, or Hawaii, it shall provide, to the maximum extent practicable, educational programs that are comparable to the free public education provided by the District of Columbia.

(e) Section 6 School Arrangements operated by DoD under 68.1 (a), (b), and (d) shall comply, except as provided in this paragraph, with § 68.1(g). If the State or other jurisdiction on which a Section 6 School Arrangement's educational comparability is based has adopted a "State plan" for the implementation of § 68.1(g) that Section 6 School Arrangement shall provide its handicapped students a free appropriate public education, as defined in § 68.1(g). That education, except as follows in this paragraph, is consistent with such State plan. To satisfy this responsibility, Section 6 School Arrangements shall conform to the substantive and procedural provisions of § 68.1(g), except for those relating to impartial due process hearings in section 1415 of § 68.1(g). The procedures of such Section 6 School Arrangements for the identification, assessment, and programming of handicapped students in special education and related services must conform to the comparable State's regulatory guidelines. Complaints with respect to the identification, evaluation or educational placement of, or the free appropriate public education provided to, students in such a Section 6 School Arrangement who are or may be handicapped shall be investigated under enclosure 5 to DoD Directive 1020.1 [1] (§ 68.1(h)). If the State on which a Section 6 School Arrangement's comparability is based has not adopted a State plan, the State plan of an adjacent State must be followed. If no adjacent State has adopted a State plan, the State plan of another State that is similar to the State in which the Section 6 School Arrangement is located shall be selected.

(f) After consultation with the Military Departments, funds shall be made available for the operation and maintenance of Section 6 School Arrangements, on either a direct or reimbursable basis, to the comptroller at the respective military installation. These funds shall remain separate and distinct from the funds of the individual Military Services.

(g) Attendance in Section 6 School and Special Arrangements within CONUS, Alaska, and Hawaii is limited to eligible dependent children under § 68.1(b). Guidance, consistent with § 68.1 (b) and (c) for student eligibility for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii shall be established by the Military Department concerned after coordination and approval by the General Counsel of the Department of Defense, or designee, and the Assistant Secretary of Defense (Force Management and Personnel), or designee.

(h) Where a member of the Armed Forces is transferred or retires and the member's family moves after the start of the school year from on-base (post) housing, the member's children shall be permitted to continue in attendance at the Section 6 School Arrangement for the remainder of the school year during which the transfer or retirement occurred, if the child is residing with a parent or legal guardian or another person acting in loco parentis.

(i) Where a member of the Armed Forces is assigned to an installation on which there is a Section 6 School Arrangement and is assigned on-base (post) family housing that is expected to be available for occupancy and to be occupied within 90 school days from the reporting date, the member's children may be permitted to attend the school while residing in an area adjacent to such Federal property. Transportation for children attending a Section 6 School Arrangement under these conditions is the responsibility of the parent.

§ 68.5 Definitions.

Adjacent Area. A geographic location that is next to or near Federal property. This normally should include a student commuting area within 45 minutes of the Federal property, unless another area identified as adjacent is designated specifically by an administrator of the Federal property; i.e., the installation commander.

Arrangements. Actions taken by the Secretary of Defense to provide a free public education to dependent children under Pub. L. 81–874 through, first, Section 6 School Arrangements or, second, Section 6 Special Arrangements:

(a) *Section 6 School Arrangement.* When a DoD-operated school is established on Federal property to provide a free public education for eligible children or, if not established on such property, the eligible child resides on such property.

(b) *Section 6 Special Arrangement.* An agreement, under § 68.1(b), between the Secretary of Defense, or designee, the ASD(FM&P), or designee, or the Secretary of a Military Department, or designee, and a local public education agency whereby a school or a school system operated by the local public education agency provides educational services to eligible dependent children of U.S. military personnel and federally employed civilian personnel. Arrangements result in partial or total Federal funding to the local public education agency for the educational services provided.

Comparability. Comparability is the act of demonstrating that the educational services and programs, school plant and facilities, budget and per-pupil expenditures, and all associated activities and services provided in Section 6 School Arrangements for the free public education of eligible dependent children

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

are, to the maximum extent practicable, equivalent in quality and availability to those provided by school districts in the State where the Section 6 School Arrangement is located or the district(s) to which it is compared. Each Section 6 School Arrangement, in coordination with the Military Department concerned, shall provide an annual statement, with supporting documentation, which demonstrates its comparability.

Dependent Children. Children who reside on Federal property, or are minor dependents who are the children, stepchildren, adopted children, or wards of U.S. military sponsors or federally employed sponsors, or who are residents in the households of bona fide sponsors who stand in loco parentis to such individuals and who receive one-half or more of their support from such sponsors, and are within the age limits for which the applicable State provides free public education.

Federal Property. Real property that is owned or leased by the United States.

Free Public Education. Education that is provided at public expense under public supervision and direction without charge to the sponsor of a child, and that is provided at the elementary or secondary school level of the applicable State. The term shall not include any education provided beyond grade 12, except in the case of State policy regarding the education of handicapped students, nor does it preclude the collecting of tuition from an Agency responsible for the assignment of a child's sponsor resulting in the attendance of the child of a Section 6 School Arrangement.

Local Educational Agency. A board of education or other legally constituted local school authority having administrative control and direction of free public education in a county, township, independent, or other school district in a State. The term includes any State Agency operating and maintaining facilities for providing free public education.

Parent. Includes a legal guardian or another person standing in loco parentis.

State. A State, Puerto Rico, Wake Island, Guam, the District of Columbia, American Samoa, the Northern Mariana Islands, or the Virgin Islands.

State Educational Agency. The officer or Agency primarily responsible for State supervision of public elementary and secondary schools.

§ 68.6 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), or designee, shall:

(1) Ensure the development of policies and procedures for the operation, management, budgeting (in accordance with guidance provided by the Assistant Secretary of Defense (Comptroller) (ASD(C)), construction, and financing of Section 6 Schools and for Section 6 Special Arrangements.

(2) Ensure that arrangements shall be made for the free public education of eligible dependent children in CONUS, Alaska, Hawaii, Puerto Rico, Wake Island, Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands, under § 68.1 (a), (b), and (c).

(3) Ensure the establishment of elected school boards in Section 6 School Arrangements operating under § 68.1 (a) and (b).

(4) Ensure that the free public education being provided is, to the maximum extent practicable, of the kind and quality as that being provided by comparable public school districts in the State in which the Section 6 School Arrangement or Section 6 Special Arrangement is located or, if outside of CONUS, Alaska, and Hawaii, as that being provided by the District of Columbia public schools.

(5) Ensure the establishment of audit procedures for reviewing funding of Section 6 School Arrangements and Section 6 Special Arrangements under § 68.1 (a), (b), and (c).

(6) Ensure timely and accurate preparation of budget execution reports and full compliance with accounting requirements in accordance with DoD 7220.9-M [2] (§ 68.1(i)).

(7) Approve guidance for student eligibility established by a Military Department for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii.

(b) The *General Counsel of the Department of Defense* (GC, DoD), or designee, shall:

(1) Approve guidance established by a Military Department for student eligibility for Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii.

(2) Provide legal advice for the implementation of this part.

(c) The *Secretaries of the Military Departments*, or designees, shall:

(1) Comply with this Directive, including policies and procedures promulgated under § 68.6(a)(1), and ensure that Section 6 School Arrangements on their respective installations or under their jurisdiction are maintained and operated under this part.

(2) Submit budgets to the ASD(FM&P) for operation and maintenance, procurement, and military construction for each Section 6 School Arrangement and each Section 6 Special Arrangement under OSD guidelines.

(3) Ensure that there is an elected school board at each Section 6 School Arrangement.

(4) Ensure the establishment of a means for employing personnel and, as required, for programming manpower spaces for such employees, all subject to applicable laws and regulations.

(5) Ensure that each Section 6 School Arrangement has current operating guidelines.

(6) Ensure that nonappropriated funds and related activities of Section 6 School Arrangements are reviewed under DoD Directive 7600.6 [3] (§ 68.1(j)).

(7) Establish guidance, consistent with § 68.1 (b) and (c), for student eligibility to attend Section 6 School Arrangements located outside of CONUS, Alaska, and Hawaii and operated by the Military Department concerned. Gain the approval of the ASD(FM&P), or designee, and the GC, DoD, or designee, before implementation.

(c) The *Installation Commanders*, or for Puerto Rico, the *Area Coordinator*, shall:

(1) Provide resource and logistics support at each Section 6 School Arrangement located on the installation.

(2) Ensure the establishment and operation of an elected school board at the Section 6 School Arrangement.

(3) Ensure the implementation of DoD Directive 5500.7 [4] (§ 68.1(k)) and that all Section 6 School Arrangement personnel are counseled and familiarized with its contents.

(4) Provide installation staff personnel to advise the school board in budget, civil engineering, law, personnel, procurement, and transportation matters, when applicable.

(5) Disapprove actions of the school board that conflict with applicable statutes or regulations. Disapprovals must be in writing to the school board and shall note the specific reasons for the disapprovals. A copy of this action shall be forwarded through channels of the Military Department concerned to the ASD(FM&P), or designee.

(6) Ensure the safety of students traveling to and from the on-base (post) school(s).

[2] Copies may be obtained, at cost, from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Va 22161.

[3] See footnote 1 to § 68.4(e).

[4] See footnote 1 to § 68.4(e).

(7) Ensure that comptrollers and other support elements comply with the authorized execution of funds for Section 6 School Arrangements in accordance with the budget approved by the ASD(FM&P), or designee.

(d) The *Section 6 Dependents' School Board* shall:

(1) Review and monitor school expenditures and operations, subject to audit procedures established under this part and consistent with § 68.1 (a) and (b).

(2) Conduct meetings, approve agendas, prepare minutes, and conduct other activities incident to and associated with Section 6 School Arrangements.

(3) Recruit and select a Superintendent for the Section 6 School Arrangement under the school board's jurisdiction.

(4) Provide the Superintendent with regular constructive written and oral evaluations of his or her performance. Evaluations should be linked to goals established by the school board with the assistance of the Superintendent.

(5) Provide the Superintendent the benefit of the school board's counsel in matters on individual school board member's expertise.

(6) Ensure the attendance of the Superintendent, or designee, at all school board meetings.

(7) Review and approve school budgets prior to submission to the ASD(FM&P), or designee, through channels of the Military Department concerned.

(8) Establish policies and procedures for the operation and administration of the Section 6 School Arrangement(s).

(9) Provide guidance and assistance to the Superintendent in the execution and implementation of school board policies, rules, and regulations.

(10) Consult with the Superintendent on pertinent school matters, as they arise, which concern the school and on which the school board may take action.

(11) Channel communications with school employees that require action through the Superintendent, and refer all applications, complaints, and other communications, oral or written, to the Superintendent in order to ensure the proper processing of such communications.

(12) Establish policies and procedures for the effective processing of, and response to, complaints.

(e) The *Section 6 School Arrangement Superintendent* shall:

(1) Serve as the chief executive officer to the school board to ensure the implementation of the school board's policies, rules, and regulations.

(2) Attend all school board meetings, or send a designee when unable to attend, sitting with the school board as a non-voting member.

(3) Provide advice and recommendations to the school board and the Installation Commander or Area Coordinator on all matters and policies for the operation and administration of the school system.

(4) Recruit, select, and assign all professional and support personnel required for the school system. Teachers and school administrators shall hold, at a minimum, a current and applicable teaching or supervisory certificate, respectively, from any of the 50 States, Puerto Rico, the District of Columbia, or the DoD Dependents' Schools system. Additional certification may be necessary to comply with respective State or U.S. national accreditation association standards and requirements.

(5) Determine retention or termination of employment of all school personnel under applicable Federal regulations.

(6) Organize, administer, and supervise all school personnel to ensure that the curriculum standards, specialized programs, and level of instruction are comparable to accepted educational practices of the State or the District of Columbia, as applicable.

(7) Be responsible for the fiscal management and operation of the school system to include execution of the budget as approved by ASD(FM&P), or designee, and in accordance with school board guidance.

(8) Ensure the evaluation of all school employees on a regular basis.

(9) Ensure the maintenance of all school buildings, grounds, and property accounting records.

(10) Ensure the procurement of necessary school supplies, equipment, and services.

(11) Ensure the preparation of the annual Section 6 School Arrangement budget as approved by the school board, and as required by the ASD(FM&P), or designee, and the Military Department concerned, in accordance with guidance provided by the ASD(C), or designee, under DoD 7220.9-M.

(12) Ensure the maintenance of a professional relationship with local and State school officials.

(13) Ensure, wherever practicable, the maintenance of accreditation of the Section 6 School Arrangement by the State and/or applicable regional accreditation agencies.

(14) Operate the school consistent with applicable Federal statutes and regulations, and with State statutes and regulations that are made applicable to the Section 6 School Arrangement by this part.

(15) Ensure the submission of an annual statement to the Military Department concerned demonstrating comparability of the free public education provided in the Section 6 School Arrangement(s).

(16) Ensure the implementation of the local State plan or regulatory guidelines for compliance with § 68.1(g). If the State on which a Section 6 School Arrangement's comparability is based has not adopted a State plan, the responsible Section 6 School System Superintendent shall choose the State plan of an adjacent State to follow. If no adjacent State has adopted a State plan, the Superintendent shall select the State plan of another State that is similar to the State in which the Section 6 School Arrangement is located.

(f) *Section 6 School Board Elections.* A *school board for a Section 6 School Arrangement,* as authorized by section 1009(d) of § 68.1(c), shall be empowered to oversee school expenditures and operations, subject to audit procedures established by the Secretary of Defense and under § 68.1(b). The *Secretary of the respective Military Department* shall:

(1) Ensure that the school board is composed of a minimum of three members elected only by parents or legal guardians (military or civilian) of students attending the school at the time of the election. The terms for school board members are to be established as between one and three years.

(2) Ensure the following procedures for a school board election are observed:

(i) Parents shall have adequate notice of the time and place of the election.

(ii) Election shall be conducted by secret ballot. The candidate(s) receiving the greatest number of votes shall be elected as school board member(s).

(iii) Personnel employed in the school system shall not be school board members, except for the Superintendent, who serves as a non-voting member.

(iv) Nominations shall be by petition of parents of students attending the school at the time of the election. Votes may be cast at the time of election for write-in candidates who have not filed a nomination petition if the write-in candidates otherwise are qualified to serve in the positions sought.

(v) The election process shall provide for the continuity of school board operations.

(vi) Vacancies that occur among members of the elected school board may be filled to complete unexpired terms by either election of members by a special election process or by a school board election process if at least three school board members serving were

elected by parents. Members elected to fill unexpired terms shall not serve more than one year, unless elected by parents of the students.

(vii) The responsibility for developing the plans for and conducting the school board election rests with the Superintendent and the school board.

§ 68.7 Effective date and implementation.

This part is effective October 16, 1987. The Secretary of each Military Department shall forward two copies of the Military Department's implementing documents to the ASD(FM&P) within 120 days.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 13, 1987.

[FR Doc. 87-26698 Filed 11-18-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

32 CFR Part 552

Entry Regulations for Certain Army Training Areas in Hawaii

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This Action revises the entry regulations for certain Army training areas in Hawaii to improve readability while making minor changes in format. This revision publishes the correct maximum fine ($5,000.00) for violation of the Internal Security Act of 1950, section 21 (50 U.S.C. 797).

EFFECTIVE DATE: December 21, 1987.

FOR FURTHER INFORMATION CONTACT: Major George L. Hancock, Chief, Administrative Law Division, Office of the Staff Judge Advocate, US Army Support Command, Hawaii 96858-5000, (808) 438-2291/2292.

SUPPLEMENTARY INFORMATION: This section provides the public notice that entry into the training areas identified herein is prohibited except as authorized under the procedures established by this section. Entry upon these training areas is restricted because the continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve combat readiness. Moreover, conditions exist within these training areas which could be dangerous to any unauthorized persons who enter these areas. This section alerts the public to the fact that entry into the identified training areas in Hawaii is prohibited at all times except as authorized under the procedures established by this section.

Executive Order 12291

This rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 552

Armed Forces, Military installations, Government employees.

Accordingly, 32 CFR Part 552 is amended as follows:

PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

1. The authority citation for Part 552 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 3012, 15 U.S.C. 1601, 18 U.S.C. 1382, 31 U.S.C. 71, 40 U.S.C. 258a, 41 U.S.C. 14 and 50 U.S.C.

2. Subpart C consisting of § 552.25 is revised to read as follows:

Subpart C—Entry Regulations for Certain Army Training Areas in Hawaii

§ 552.25 Entry regulations for certain Army training areas in Hawaii.

(a) *Purpose.* (1) This regulation establishes procedures governing the entry onto certain Army training areas in Hawaii as defined in paragraph (d) of this section.

(2) These procedures have been established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and to improve the combat readiness of the U.S. Armed Forces. In addition, conditions exist within these training areas which could be dangerous to any unauthorized persons who enter these areas.

(b) *Applicability.* The procedures outlined in this regulation apply to all individuals except for soldiers and Army civilians of the United States who in performance of their official duties enter the training areas defined in paragraph (d) of this section.

(c) *References.* Related publications are listed below:

(1) Executive Order No. 11166 of 15 August 1964. (3 CFR, 1964-1965 Comp., pp 219-220).

(2) Executive Order No. 11167 of 15 August 1964. (3 CFR, 1964-1965 Comp., pp 220-222).

(3) Title 18, United States Code, section 1382.

(4) Internal Security Act of 1950, section 21 (50 U.S.C. 797).

(d) *Definition.* For the purpose of this regulation, "certain Army training areas in Hawaii" are defined as follows:

(1) Makua Valley, Waianae, Oahu, Hawaii: That area reserved for military use by Executive Order No. 11166 (paragraph c(1) of this section).

(2) Pohakuloa Training Area, Hawaii: That area reserved for military use by Executive Order No. 11167 (paragraph c(2) of this section).

(e) *Procedures.* (1) Except for soldiers and Army civilians of the United States in the performance of their duties, entry onto Army training areas described in paragraph (d) of this section for any purpose whatsoever without the advance consent of the Commander, United States Army Support Command, Hawaii, or his authorized representative, is prohibited (paragraph (c)(3) and (c)(4) of this section).

(2) Any person or group of persons desiring the advance consent of the Commander, United States Army Support Command, Hawaii, shall, in writing, submit a request to the following address: Commander, USASCH, ATTN: Chief of Staff, Fort Shafter, Hawaii 96858-5000.

(3) Each request for entry will be considered on an individual basis weighing the operational and training commitments of the area involved, security, and safety with the purpose, size of party, duration of visit, destination, and the military resources which would be required by the granting of the request.

(f) *Violations.* (1) Any person entering or remaining upon any training area described in paragraph (d) without the advance consent of the Commander, USASCH, or his authorized representative, shall be subject to the penalties prescribed by paragraph (c)(3) of this section, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation

* * * shall be fined not more than $500.00 or imprisoned not more than 6 months or both."

(2) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed $5,000.00 or imprisonment for not more than 1 year or both as provided in paragraph (c)(4) of this section.

(3) In addition, violation of this regulation by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801-940) is a violation of Article 92 of the Uniform Code of Military Justice.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87-26176 Filed 11-18-87; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3289-7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Group III CTG Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision requires reasonable available control technology (RACT) to reduce volatile organic compound (VOC) emissions from synthetic organic chemical and polymer manufacturing equipment. The intended effect of this action is to approve a regulation adopted by the State to fulfill commitments made in its fully approved ozone attainment plan. This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on December 21, 1987.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, JFK Federal Building, Room 2311, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street SW., Washington DC 20460; and the Division of Air Quality Control, Department of Environmental Quality Engineering, One Winter Street, Eighth floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lynne A. Hamjian, (617) 565-3246, FTS 835-3246.

SUPPLEMENTARY INFORMATION: On May 21, 1987 (52 FR 19175), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed to approve Regulation 310 CMR 7.18(19), "Synthetic Organic Chemical Manufacture," which requires synthetic organic chemical manufacturing facilities to implement a quarterly leak detection and repair program to control fugitive volatile organic compound (VOC) emissions. This regulation is consistent with the Group III control techniques guideline (CTG) document: *Control of Volatile Organic Compound Leaks from Synthetic Organic Chemical and Polymer Manufacturing Equipment* (EPA-450/3-83-006). This regulation was submitted to EPA in accordance with commitments made in the Massachusetts 1982 Ozone Attainment Plan.

The revision and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving Massachusetts' Regulation 310 CMR 7.18(19), "Synthetic Organic Chemical Manufacture," as a revision to the Massachusetts SIP. This regulation was submitted to EPA by the Massachusetts Department of Environmental Quality Engineering on November 5, 1986 and December 10, 1986.

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 January 19, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, and Reporting and recordkeeping requirements.

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

Dated: October 30, 1987.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart W—Massachusetts

1. The authority citation of Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1120 is amended by adding paragraphs (c)(74) to read as follows:

§ 52.1120 Identification of Plan

. . . . .

(c) * * *

(74) Revisions to the State Implementation Plan were submitted by the Commissioner of the Department of Environmental Quality Engineering on November 5, 1986 and December 10, 1986.

(i) Incorporation by Reference.

(A) Letter dated November 5, 1986 from the Massachusetts Department of Environmental Quality Engineering (DEQE) submitting revisions to the State Implementation Plan for EPA approval.

(B) Letter from the Massachusetts DEQE dated December 10, 1986, which states that the effective date of Regulations 310 CMR 7.00, "Definitions" and 310 CMR 7.18(19), "Synthetic Organic Chemical Manufacture," is November 28, 1986.

(C) Massachusetts' Regulation 310 CMR 7.18(19) entitled, "Synthetic Organic Chemical Manufacture," and amendments to 310 CMR 7.00, "Definitions," effective in the Commonwealth of Massachusetts on November 28, 1986.

(ii) Additional materials.

(A) Nonregulatory portions of the State submittal.

3. Table 52.1167 of § 52.1167 is amended by adding the following lines. In the chart below the date approved by EPA and the Federal Register citation will be the publication date and citation of this document.

§ 52.1167 [Amended]

TABLE 52.1167.—EPA—APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.00	Statutory authority; legend; preamble; definitions.	11/5/86; 12/10/86	11/19/87	52 FR—	74	Approving the addition of definitions for synthetic organic chemical manufacturing facility, component, in gas service, light liquid, in light liquid service, leak, leaking component, monitor, repair, unit turnaround, in VOC service, quarterly, and pressure relief valve.
310 CMR 7.18(19)	Synthetic organic chemical manufacture	11/5/86; 12/10/86	11/19/87	52 FR—	74	

[FR Doc. 87-25970 Filed 11-18-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 146

[FRL-3283-6]

Underground Injection Control Program; Dual-Completion Monitoring Mechanical Integrity Test for Dual-Completion Wells; Interim Approval

Correction

FR Doc. 87-25038 was published on page 41591 in the issue of Thursday, October 29, 1987, concerning interim approval of dual-completion monitoring mechanical integrity test for dual-completion wells for certain States. It was published in the Proposed Rules section of the **Federal Register**. It should have appeared in the Rules section.

For another correction to this document, see the Corrections section in this issue of the **Federal Register**.

BILLING CODE: 1505-02-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-376; RM-5367]

Radio Broadcasting Services; Meridianville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 231A to Meridianville, Alabama, as that community's first local broadcast service, in response to a petition filed by Gant Broadcasting, Inc. With this action, the proceeding is terminated.

DATES: *Effective* December 28, 1987. The window period for filing applications on Channel 231A at Meridianville, Alabama, will open on December 29, 1987, and close on January 28, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-376, adopted October 30, 1987, and released November 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Meridianville, Channel 231A, under Alabama.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-26681 Filed 11-18-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-417, RM-5445]

Radio Broadcasting Services; Window Rock, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Class C Channel 241 to Window Rock, Arizona, as that community's second local FM service, in response to a petition filed on behalf of Western Indian Ministries, Inc. With this action, this proceeding is terminated.

DATES: *Effective* December 28, 1987. The window period for filing applications on Channel 241C at Window Rock, AZ, will open on December 29, 1987, and close on January 28, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530, regarding the allocation. For information related to the application process, contact Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-6908.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-417, adopted October 30, 1987, and released November 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding Channel 241C to the entry for Window Rock, Arizona.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-26682 Filed 11-18-87; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-311; RM-5343]

Radio Broadcasting Services; Big Bear City, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 227A to Big Bear City, California, as that community's first local FM service, in response to a petition filed by Jacqulyn A. and James W. Cottingham. With this action, this proceeding is terminated.

DATES: *Effective* December 28, 1987. The window period for filing applications on Channel 227A at Big Bear City, California, will open on December 29, 1987, and close on January 28, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-311, adopted October 30, 1987, and released November 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by adding Big Bear City, Channel 227A, under California.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-26683 Filed 11-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-246; RM-5332]

Television Broadcasting Services; Sacramento, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots and reserves UHF television Channel 52 at Sacramento, CA, as that community's second noncommercial television broadcast service, in response to a petition for rule making filed on behalf of Joan Carlino.

As a result of a recent freeze the Commission has imposed on TV allotments, or applications therefor in specified metropolitan areas, such as Sacramento, the application process for Channel 52 will be delayed until its availability is announced by the Commission. Potential applicants may seek a waiver of the freeze based on the noncommercial educational use of this channel. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28,1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process should be addressed to the Video Services Division, Television Branch, Mass Media Bureau, (202) 632-6357.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-246, adopted October 30, 1987, and released November 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended by amending the entry for Sacramento, California to add Channel *52.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-26680 Filed 11-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-188; RM-5628]

Radio Broadcasting Services; Banks, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of P-N-P Broadcasting and Don McCoun, allocates Channel 298A to Banks, Oregon, as the community's first local FM service. Channel 298A can be allocated to Banks in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. Canadian concurrence in the allotment has been received since the community is located within 320 kilometers of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: *Effective* December 28, 1987. The window period for filing applications will open on December 29, 1987, and close on January 28, 1988.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-188, adopted October 30, 1987, and released November 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oregon is amended by adding Banks, Channel 298A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-26685 Filed 11-18-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-70; RM-5640]

Television Broadcasting Services; Olympia, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF Television Channel 67 to Olympia, Washington, as that community's first commercial television service, at the request of Hawks Prairie TV Corporation. Concurrence by the Canadian government has been obtained. The Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting and this proposal is affected thereby. Applications for Channel 67 at Olympia will not be accepted until the freeze has been lifted. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-70, adopted October 30, 1987, and released November 13, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Allotments, is amended by adding Channel 67 at Olympia, Washington.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-26684 Filed 11-18-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

48 CFR Parts PHS 315 and PHS 352

Acquisition Regulations; Acceptance of Late Proposals

AGENCY: Public Health Service (PHS), HHS.

ACTION: Final rule; amendment.

SUMMARY: This rule finalizes and amends the interim rule with request for comments on alternate late proposal procedures, published in the **Federal Register** at 51 FR 43355-43357 on December 2, 1986 and corrected at 51 FR 45229 on December 17, 1986. The final rule amends Appendix A to 48 CFR Chapter 3, the Public Health Service Acquisition Regulation.

EFFECTIVE DATE: November 19, 1987.

FOR FURTHER INFORMATION CONTACT: A. Schoenberg, Office of Procurement and Logistics Policy (202-245-0361).

SUPPLEMENTARY INFORMATION: The interim rule requested comments on the alternate late proposal procedures. Three (3) comments were received from the public, and three (3) comments were received from within the Department of Health and Human Services (HHS). All comments were favorable. Based on the review of comments, the Department has decided to expand the applicability of the alternate late proposal procedures to all Public Health Service (PHS) components. The interim rule had restricted the use of alternate late proposal procedures to only two (2) PHS components, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The Department has determined that all PHS components, contracting for biomedical or behavioral research and development, should be able to take advantage of late proposals which offer significant cost or technical advantages in solving important health problems. All other portions of the interim rule remain unchanged.

As required by the Regulatory Flexibility Act of 1980, Pub. L. 96-354, the Department hereby certifies that this final rule will not have a significant impact on small business entities. Thus, a regulatory flexibility analysis has not been prepared.

In accordance with the Paperwork Reduction Act, the Department hereby certifies that this final rule does not contain any additional information collection provisions which required the approval of the Office of Management and Budget.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts PHS 315 and PHS 352

Government procurement.

Accordingly, the Department amends Appendix A to 48 CFR Ch. 3 as set forth below.

Date: November 2, 1987.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

As indicated in the preamble, the interim rule published at 51 FR 43355-43357 on December 2, 1986, and corrected at 51 FR 45229 on December 17, 1986, is adopted as final with the following change:

1. The authority citation for Parts PHS 315 and PHS 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART PHS 315—[AMENDED]

PHS 315.412 [Amended]

2. Section PHS 315.412 is amended by removing the first sentence in paragraph (c)(1).

[FR Doc. 87-26750 Filed 11-18-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for Liatris Helleri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Liatris helleri* (Heller's blazing star), a perennial herb limited to seven populations in North Carolina, to be a threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Liatris helleri* is

threatened by recreational development of the high mountain peaks where it grows and by trampling and habitat disturbance due to heavy use by hikers and climbers. This action will implement Federal protection provided by the Act for *Liatris helleri*.

DATE: The effective date of this rule is December 21, 1987.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321; FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Liatris helleri, described by T.C. Porter in 1891 from material collected in North Carolina, is a perennial herb with one or more erect or arching stems arising from a tuft of narrow, pale green basal leaves. The stems reach up to 4 decimeters in height and are topped by a showy spike of lavender flowers 7 to 20 centimeters long. Flowering occurs from July through September with fruits present from September through October (Kral 1983, Radford *et al.* 1964). Although the taxonomy of the genus is complex, *Liatris helleri* can be distinguished from other similar high altitude species of *Liatris* by its much shorter pappus, ciliate petioles, internally pilose corolla tubes, and lower, stockier habit (Gaiser 1946, Cronquist 1980). Additional work is underway on plants at two of the sites, which may result in their being redescribed as a taxonomically separate entity (Sutter, in preparation). If this is done, an editorial change to the List of Endangered and Threatened Plants will be made to also include the new taxon.

Liatris helleri is a species endemic to a few scattered summits in the northern Blue Ridge Mountains of North Carolina. The species grows on high elevation ledges of rock outcrops in shallow, acid soils where it is exposed to full sunlight. Nine populations of *Liatris helleri* have been reported historically; seven remain in existence. Four of these populations are in Avery County with one population each remaining in Caldwell, Ashe, and Burke Counties, North Carolina. Five of the remaining populations are located on privately owned lands, and two are located on public land administered by the U.S. Forest Service and the National Park Service. Two additional populations were historically known for the species, but one site (Watauga County) has since undergone residential development; and the other (Mitchell County) has been subjected to intensive recreational use. *Liatris helleri* has not been relocated at either locality during recent searches. The continued existence of *Liatris helleri* is threatened by trampling and habitat disturbance due to heavy use of its habitat by hikers and other recreational users as well as development for commercial recreation facilities and residential purposes (Massey *et al.* 1980).

Construction of new trails, other recreational improvements, significant increases in intensity of recreational use, or intensive development at any of the sites could further jeopardize this plant. Most of the populations occupy a very small total area, with fewer than 20 individual plants at 2 of the 7 sites. Three of the privately owned sites have been developed as commercial recreation facilities; development of a fourth site as a ski slope is currently underway. The fifth privately owned site belongs to The Nature Conservancy and is protected. The two sites in public ownership are located in scenic areas which attract large numbers of visitors annually.

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of its intention thereby to review the status of the plant taxa named within. *Liatris helleri* was included in the July 1, 1975, Notice of Review. On December 15, 1980, the Service published a revised Notice of Review for Native Plants in the **Federal Register** (45 FR 82480); *Liatris helleri* was included in that notice as a category-1 species. Category-1 species are those species for which the Service currently has on file substantial information on biological vulnerability and threats to support proposing to list them as endangered or threatened species. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants in the **Federal Register** (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Liatris helleri* was included as a category-2 species in the 1983 supplement and the 1985 revised notice. Category-2 species are those for which listing as endangered or threatened may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. Subsequent to that notice, the Service received a draft report on the status and taxonomy of *Liatris helleri* (Sutter, in preparation). This report and other available information indicate that the addition of *Liatris helleri* to the Federal List of Endangered and Threatened Plants is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Liatris helleri* because of the acceptance of the 1975 Smithsonian report as a petition. In October 1983, 1984, 1985, and 1986, the Service found that the petitioned listing of *Liatris helleri* was warranted but precluded by other listing actions of a higher priority and that additional data on vulnerability and threats were still being gathered. The February 19, 1987, proposal of *Liatris helleri* to be threatened constituted the next 12-month finding for this species.

Summary of Comments and Recommendations

In the February 19, 1987, proposed rule (52 FR 5156) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the *Morganton News-Herald* and the *Skyland Post-Times* on March 15, 1987, and March 11, 1987, respectively.

Nine comments were received. Of these, seven respondents expressed support for the proposal, including the North Carolina Department of Agriculture, the U.S. Forest Service, North Carolina Natural Heritage Program, the Tennessee Department of Conservation, and the Southern Appalachian Highlands Conservancy. Two additional comments were received which offered no new information and did not take a position on the proposal.

One of these latter respondents, a commercial nursery, mentioned that the species may have value for the horticultural trade. Respondents that supported the proposal also expressed strong support for the decision not to designate critical habitat, due to the probability of increasing the taking threat to the few remaining populations.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Liatris helleri* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Liatris helleri* Porter (Heller's blazing star) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Seven populations of *Liatris helleri* are known to exist in Caldwell, Avery, Ashe, and Burke Counties, North Carolina. Two other historically known populations have apparently been extirpated due to residential development and heavy recreational use. Only three of the seven extant populations are afforded some protection from human-induced habitat alterations. The four other populations occur on lands which have been or are being developed for commercial recreation use. Of the three partially protected sites, only the one owned by The Nature Conservancy receives full protection from human disturbance. Those on lands administered by the U.S. Forest Service and the National Park Service are subject to heavy recreational use. The greatest damage to *Liatris helleri* in the past has probably come from the commercial development of the open mountain summits where it occurs. The construction of trails, parking lots, roads, buildings, observation platforms, suspension bridges, and other recreational, residential, and commercial facilities has taken its toll on the species either through the actual construction process or by trampling due to hikers and sightseers (Kral 1983). Currently, heavy trampling occurs at two of the locations where *Liatris helleri* is known to survive; however, the high intensity use and potential impact from increased use and development pose serious threats to all of the the small habitats occupied by this species, particularly if additional development occurs (Massey *et al.* 1980). With anticipated increased usage by sightseers, rock climbers, and hikers at six of the remaining seven localities where *Liatris helleri* occurs, significant impact on this species in the form of increased soil erosion, soil compaction, and trampling could occur if protection is not provided. Likewise, additional development at any of the locales (such as expansion of trails or sidewalks, construction of additional visitor facilities, or residential development) could further threaten the species if proper planning does not occur.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Liatris helleri* is not currently a significant component of the commercial trade in native plants; however, other species of the genus are regularly sold in the commercial wildflower trade. As noted by one of the respondents to the proposal, *Liatris helleri*, with its compact habit and attractive lavender flowers, has potential for horticultural use, and publicity could generate an increased demand.

C. *Disease or predation.* Not applicable to this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Liatris helleri* is afforded legal protection in North Carolina by North Carolina General Statute, Chapter 106, Article 19–B, 202.12–202.19, which prohibits intrastate trade and taking of plants without a State permit and written permission of the landowner. *Liatris helleri* is listed in North Carolina as threatened. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat or unintentional damage from recreational use. The Endangered Species Act will provide additional protection and encouragement of active management for *Liatris helleri*, particularly on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in the "Background" section of this rule, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. Therefore, little genetic variability exists in this species, making it more important to maintain as much habitat and as many of the remaining colonies as possible. *Liatris helleri* is an early pioneer species growing on rock ledges in full sun. Depending upon the elevation and suitability of the site for supporting woody vegetation, invasion by ericaceous shrubs and trees may occur, which could eliminate *Liatris helleri* by overcrowding and shading. Since this type of succession is a slow process, this is not considered an immediate threat to survival of the species. However, proper management planning for *Liatris helleri* is needed to address this aspect of the species' biology. Natural rock slides, severe storms or droughts, or other natural events may also eliminate populations of this plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Liatris helleri* as threatened. With two of the nine known populations having been extirpated and six of the remaining seven subject to some form of threat, this species warrants protection under the Act. Threatened status seems appropriate because the complete extirpation of most remaining populations is not imminent. Because the areas occupied by the plant are usually small, it is easily possible for a concerned landowner or developer to preserve the habitat needed for the plant's survival. This has been done successfully in the cases of two of the commercial recreation areas where the plant occurs. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Liatris helleri* at this time. With its showy flowers, and with other members of the genus already in commercial trade, the species has high potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on the species. Although taking and reduction to possession of threatened plants from lands under Federal jurisdiction is prohibited by the Endangered Species Act, taking provisions are difficult to enforce. Publication of critical habitat descriptions would make *Liatris helleri* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the National Park Service. Also, the populations on private lands would be more vulnerable to

taking. Increased visits to population locations stimulated by critical habitat designation could therefore adversely affect the species. The Federal and State agencies and landowners involved in managing the habitat of this species have been informed of the plant's locations and of the importance of protection. Protection of the species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, the determination of critical habitat would not be prudent, and no additional benefit would result from it.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and the National Park Service have jurisdiction over portions of this species' habitat. Federal activities that could impact *Liatris helleri* and its habitat in the future include, but are not limited to, the following: construction of recreational facilities (including trails, buildings, or maintenance of such facilities), use of aerially-applied retardants in fire-fighting efforts, road construction, permits for mineral exploration, and any other activities that do not include planning for this species' continued existence. The Service will work with the involved agencies to secure protection and proper management of *Liatris helleri* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. With respect to *Liatris helleri*, it is anticipated that few trade permits would ever be sought or issued since this species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cronquist, A. 1980. Vascular flora of the southeastern U.S. Vol. I (Asteraceae). UNC Press, Chapel Hill. P. 204.

Gaiser, L.O. 1946. The genus *Liatris*. Rhodora 48:572-576.

Kral, R. 1983. A Report on some rare, threatened, or endangered forest-related vascular plants of the South. Tech. publ. R8-TP-2. USDA—Forest Service. Pp. 1191-1194.

Massey, J., P. Whitson, and T. Atkinson. 1980. Endangered and threatened plant survey of 12 species in the eastern part of Region 4. Report submitted to U.S. Fish and Wildlife Service, Region 4, under contract 14-16-004-78-108.

Porter, T.C. 1891. A new *Liatris* from North Carolina. Rhodora 18:147-148.

Radford, A.E., H.E. Ahles, and C.R. Bell. 1964. Manual of the vascular flora of the Carolinas. UNC Press, Chapel Hill. Pp. 1048-1051.

Sutter, R. In preparation. Taxonomic analysis of *Liatris helleri*, a North Carolina endemic.

Author

The primary author of this final rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the CFR, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster family:						
Liatris helleri	Heller's blazing star	U.S.A. (NC)	T	300	NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-26710 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 52, No. 223
Thursday, November 19, 1987

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amdt. No. 21; Doc. No. 4931S]

General Crop Insurance Regulations; Frost/Freeze Potato Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new subpart, 7 CFR 401.130, to be known as the Frost/Freeze Potato Option. The intended effect of this rule is to provide the regulations containing the provisions for frost/freeze crop insurance protection on potatoes as an option to the Potato Crop Insurance endorsement (7 CFR 401.128). The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than December 21, 1987 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or exports markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesss, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernment consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.130, the Frost/Freeze Potato Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring potatoes against damage from frost or freeze.

The frost freeze option is a new program for 1988 crop year. It is a modification of the frost/freeze chart used in conjunction with the 1986 loss adjustment procedures. Effective for the 1988 crop year, the frost/freeze provisions will be applicable to the Northern Potato Endorsement, proposed to be added to the General Crop Insurance Regulations (7 CFR Part 401), as 7 CFR 401.128.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Frost/freeze potato option.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.130 Frost/Freeze Potato Option, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.130 Frost/Freeze Potato Option.

The provisions of the Frost/Freeze Potato Option for the 1988 and subsequent crop years are as follows:

Federal Corp Insurance Corporation Frost/Freeze Potato Option

Upon our approval this amendment is applicable only for the 19____ crop year.

1. You must have a Federal Crop Insurance General Policy and Potato Endorsement in force. The Endorsement provides guaranteed production on a hundredweight (cwt.) basis only.

2. You must submit a signed Frost/Feeze Option Amendment to use on or before the final date for accepting applications each crop year. Failure to submit a Frost/Freeze Option for each crop year will result in your potatoes being insured under the terms and conditions of the General Policy and Endorsement without the provision of the option.

3. If you elect this option, all acreage of potatoes insured under the General Policy

and Potato Endorsement must be insured under this option.

4. In lieu of subsection 7b. of the Endorsement, the mature production (cwt.) to count for a unit damaged by frost or freeze will be adjusted according to the following chart:

Percent damage due to frost or freeze	Percent production to count
0-5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production will then be counted against your production guarantee to determine the amount of loss. We must be allowed to inspect the production prior to harvest in order to determine the amount of frost or freeze damage.

If the frost or freeze damage is 20 percent or more at the time of harvest and we give you permission, you may destroy the crop and it will be considered a total loss. You will be indemnified accordingly. You may, however, also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day we determine the potatoes to be 20 percent or more frost or freeze damaged.

Done in Washington, DC on November 13, 1987.

E. Ray Fosse,

Manager, Federal crop Insurance Corporation.

[FR Doc. 87-26751 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 401

[Amdt. No. 20; Doc. No. 4930S]

General Crop Insurance Regulations; Processed Potato Quality Option

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new subpart, 7 CFR 401.129, to be known as the Processed Potato Quality Option. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection against loss in quality on potatoes grown under a contract with a processor as an option to the potato crop insurance endorsement (7 CFR 401.128). The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 21, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is established as October 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) signficant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insurance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.129, the Processed Potato Quality Option, effective for the 1988 and succeeding crop years, to provide the provisions for insuring potatoes produced under contract between the insured and a processor.

Upon publication of 7 CFR 401.129 as a final rule, the provisions for insuring potatoes contained therein will supersede any similar provisions contained in 7 CFR Part 442, the Potato Crop Insurance Regulations, effective with the beginning of the 1988 crop year, as they relate to crop insurance on processed potatoes coverage.

The Processed Potato Quality Option is proposed to be offered on an experimental basis in Canyon County, Idaho, and Malheur County, Oregon, as a means of providing insurance on potatoes produced under contract with a processor, while leaving the current quality option intact for fresh market potatoes. This option will not be available to the grower who wishes to trade on the open market although that grower may still obtain the basic potato crop insurance policy and the frost/freeze option.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. The proposed Processed Potato Quality Option to 7 CFR Part 401, contains provisions for insuring potatoes under the Processed Potato Quality Option which differ from fresh market potato insurance as follows:

Item 3. Requires that the grower have a processor contract in force.

Item 5. The claim for indemnity (total production) of the Potato Endorsement would be superseded by this section.

Item 5.b.(3) A 25% add back is proposed because it is doubtful that a grower would store rejected potatoes unless he is confident of either reconditioning the potatoes for the processor or finding an alternatives market.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to

this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General crop insurance regulations, Processed Potato Quality Option.

Proposed Rule

Accordingly, purusant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), proposed to be effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.129 Processed Potato Quality Option, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.129 Processed Potato Quality Option.

The provisions of the Processed Potato Quality Option for the 1988 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Processed Potato Quality Option

Upon our approval this amendment is applicable only for the 19 crop year.

1. You must have a Federal Crop Insurance General Policy and Potato Endorsement in force. This Option provides guaranteed production on a hundredweight (cwt.) basis only.

2. You must submit a signed Processed Potato Option to us on or before the final date for accepting applications each crop year. Failure to submit a Processed Potato Option for the crop year will result in your potatoes being insured under the terms and conditions of the General Policy and Endorsement.

3. A sales contract must be executed with a processor on or before the acreage reporting date for potatoes. All acreage of potatoes contracted must be insured under this amendment.

5. For the purposes of this section, all potato inspections will be conducted by an inspector for the U.S. Department of Agriculture or the State.

In lieu of subsection 7b. of the endorsement, the total production (cwt.) to be counted for a unit will include all harvested and appraised production as follows:

a. For any unharvested mature potatoes, for which the production of U.S. #2 potatoes is reduced due to insurable causes, the production to count will be determined by dividing the percent of potatoes grading U.S. #2 [1] or better for processing by an appraised APH factor, and multiplying the result (not to exceed 1.000) by the number of cwt. of potatoes. Appraised potatoes which exceed the processor contract tolerances due to:

(i) Internal defects;

(ii) Dark fry color; or

(iii) Low specific gravity,

will not be considered production to count.

b. The production to count for potatoes placed in storage will be determined as follows:

(1) 100% of the gross weight will be counted if you do not have an acceptable inspection at time of harvest;

(2) If you have an acceptable Federal or State inspection at the time of harvest and the potatoes, due to insurable causes, contain a portion of potatoes grading less than U.S. #2, production to count will be determined by dividing the percent of potatoes grading U.S. #2 [1] or better for processing, by the approved APH factor, and multiplying the result (not to exceed 1.000) by the number of cwt. of stored potatoes; or

(3) If you have an acceptable Federal or State inspection, production to count will be 25% of such stored production which due to insurable causes exceeds the processor contract tolerances based on an acceptable inspection, at time of harvest due, for: internal defects; dark fry color; or low specific gravity.

c. Production to count for production which is sold and accepted by a processor, and which due to insurable causes contains a portion of potatoes that grade less than U.S. #2 [1] processing will be determined by dividing the actual percentage of potatoes grading U.S. #2 [1] or better for processing, by the approved APH factor, and multiplying the result (not to exceed 1.000) by the number of cwt. of field run potatoes.

d. Production to count which is not accepted by the processor because it exceeds the contract tolerances for: internal defects; dark fry color; or low specific gravity, due to insurable causes, will be adjusted by dividing the market value of such production by the highest price election and multiplying the result by the cwt. of such potatoes.

e. For the purposes of the Processed Potato Quality Option the term "factor" means the actual average percentage of potatoes grading U.S. #2 [1] or better, determined from your records. If more than four continuous years of records are available, the percentage factor will be the simple average of the available records, not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the Actuarial Table. The Actuarial Table may provide for percentage factors by type.

[1] The actuarial table may provide U.S. #1.

Done in Washington, DC, on November 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

November 13, 1987.

[FR Doc. 87–26753 Filed 11–18–87; 8:45 am]

BILLING CODE 3410–08–M

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7 CFR Part 401

[Amdt. No. 19; Doc. No. 4868S]

General Crop Insurance Regulations; Northern Potato Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, by adding a new subpart, 7 CFR 401.128, to be known as the Northern Potato Endorsement. The intended effect of this rule is to provide the regulations containing the provisions of crop insurance protection on potatoes in the Northern tier of states in an endorsement to the general crop insurance policy which contains the standard terms and conditions common to most crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than December 21, 1987, to be sure of consideration.

ADDRESS: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulations 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. This sunset review date established for these regulations is established as Octobere 1, 1992.

E. Ray Fosse, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive

Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC herewith proposes to add to the General Crop Insuance Regulations (7 CFR Part 401), a new section to be known as 7 CFR 401.128, the Northern Potato Endorsement, effective for the 1988 and succeeding crop years, to provide the provisions for insuring potatoes in northern states.

Upon publication of 7 CFR 401.128 as a final rule, the provisions for insuring potatoes contained therein will supersede those provisions contained in 7 CFR Part 422, the Potato Crop Insurance Regulations, effective with the beginning of the 1988 crop years, as they relate to potato crop insurance coverage in Alaska, Colorado, Connecticut, Idaho, Iowa, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, Wisconsin, and Wyoming.

The present policy contained in 7 CFR Part 422 will be maintained for all other states and countries wherein potato crop insurance is authorized.

Minor editorial changes have been made to improve compatibility with the new general crop insurance policy. These changes do not affect meaning or intent of the provisions. In adding the new Northern Potato Endorsement to 7 CFR Part 401, FCIC, is proposing other changes in the provisions for insuring potatoes presently contained in 7 CFR Part 422 as follows:

1. *Section 4*—The end of insurance period is changed in certain Minnesota counties and all of North Dakota to October 10. The October 31 end of insurance period date is also changed to October 25 where applicable.

2. *Section 5*—Unit division guidelines were changed for five states to allow for units by potato type. There will no longer be units by Farm Serial Number or section in these five states. The unit guidelines were amended in these five states becasue it is easier to track potatoes by type than real estate description.

FCIC is soliciting public comment on this proposed rule for 30 days following publication in the **Federal Register.** Written comments received pursuant to this proposed rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

General Crop Insurance Regulations, Northern Potato Endorsement.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR Part 401), effective for the 1988 and succeeding crop years, as follows:

PART 401—[AMENDED]

1. The authority citation for 7 CFR Part 401 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR Part 401 is amended to add a new section to be known as 7 CFR 401.128 Northern Potato Endorsement, effective for the 1988 and Succeeding Crop Years, to read as follows:

§ 401.128 Northern Potato Endorsement.

The provisions of the Northern Potato Endorsement for the 1986 and subsequent crop years are as follows:

Federal Crop Insurance Corporation Northern Potato Endorsement

1. Insured Crop.

a. The crop insured will be potatoes planted for harvest as certified seed stock or better (meaning Premiere Foundation or Foundation Seed) or for human consumption.

b. In addition to the potatoes not insurable in section 2 of the general crop insurance policy, we do not insure any potatoes:

(1) Planted with noncertified seed unless specifically allowed by the actuarial table; or

(2) Planted for the development or production of hybrid seed or for experimental purposes.

c. If insurance is provided for an irrigated practice, then any loss of production caused by failure to carry out a good potato irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

2. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions, excluding frost;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual premium.

a. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the potato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance period.

a. Insurance attaches when the potatoes are planted.

b. Insurance ends the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvesting or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which the potatoes are normally harvested:

(a) Alaska, October 1;

(b) Clay, Kittson, Marshall, Norman, E. Polk, W. Polk, and Red Lake Counties,

Minnesota; Nebraska; North Dakota; South Dakota; and Wyoming, October 10;

(c) Colorado; Iowa; Michigan; all other Minnesota counties except as otherwise listed; Montana; Rhode Island; Wisconsin; Utah; and for all types except Russets in Idaho; Maine; Oregon; and Washington, October 15;

(d) Connecticut; Massachusetts; New York; Pennsylvania; Vermont, New Hampshire; and for Russet type only, Idaho; Maine; Oregon; and Washington, October 25;

5. Unit Division.

a. For Alaska, Colorado, Connecticut, Idaho, Massachusetts, Montana, Nebraska, New Hampshire, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming potato acreage that would otherwise be one unit, as defined in section 17 of the general policy, may be divided into more than one unit if you agree to pay additional premium as provided for on the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee and either:

(1) Acreage planted to insured potatoes is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified be separate ASCS Farm Serial Numbers, provided:

(a) The boundaries of the sections or Farm Serial Numbers are clearly identifiable, and the insured acreage is easily determined;

(b) The potatoes are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

(2) The acreage planted to potatoes is located in a single section or Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practices are carried out, provided:

(a) Potatoes planted on irrigated acreage does not continue into nonirrigated acreage in the same rows and/or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit); and

(b) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area respectively

or

b. For Iowa, Maine, Michigan, Minnesota, North Dakota, and Wisconsin potato acreage that would otherwise be one unit, as defined in the general policy, may be divided into units by potato type (Red, White, or Russet) if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit by type you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee and either:

(1) The acreage boundaries between potato types is clearly identifiable, and the insured acreage is easily determined and the potatoes are planted in such a manner that the planting pattern does not continue into the adjacent field of different type; or

(2) The acreage planted to potatoes consists of acreage on which both an irrigated and nonirrigated practice is carried out, provided:

(a) Potatoes planted on irrigated acreage does not continue into nonirrigated acreage in the same rows and/or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit); and

(b) planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area respectively.

6. Notice of Damage or Loss.

The representative sample required by section 8.a.(3) of the general crop insurance policy must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee:

(2) Subtracting therefrom the total production of potatoes to be counted (see subsection 7b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised production.

(1) The extent of any loss may be determined no later than the date potatoes are placed in storage or delivered to a processor.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged soley by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is;

(a) Not put to another use before harvest of potatoes becomes general in the country for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Date.

The cancellation and termination date is April 15th.

9. Contract Changes.

The contract change date is December 31 preceding the cancellation date.

10. Meaning of Terms.

a. "Harvest" means the digging of potatoes on the unit.

b. "Section" is a unit of measure under the rectangular Survey System describing a tract of land generally one mile square and containing approximately 640 acres.

Done in Washington, DC, on November 13, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-26752 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-32-AD]

Airworthiness Directives; Piper PA-31 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain Piper Model PA-31 Series airplanes which would require initial and repetitive dye penetrant or zyglo inspection for cracks in the main landing gear forward side brace, and replacement of any cracked sidebrace with a serviceable part if cracks are found. The repetitive inspections would no longer be required after new improved side braces are installed. Several reports have been received of cracks in the main landing gear forward side brace. A failed side brace would prevent landing gear retraction and could cause landing gear collapse under high side load conditions. The inspections and replacement of any cracked side braces with serviceable or new improved braces would prevent these conditions.

DATES: Comments must be received on or before December 22, 1987.

ADDRESSES: Piper Service Bulletin No. 845A, dated October 9, 1987, applicable to this AD may be obtained from Piper Aircraft Corporation, 29265 Piper Drive, Vero Beach, Florida 32960, Telephone No. 305-567-4361 or may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 87-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta

Aircraft Certification Office, FAA, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349; Telephone (404) 991-2910.

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 or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. 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 NPRMS

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 87-CE-32-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

Reports have been received of cracks in the main landing gear forward side brace on certain Piper Model PA-31 Series airplanes. It has also been determined that any operation of the landing gear above maximum landing gear operating speed (V_{LO}) greatly increases stress and could cause side brace failure. A failed side brace would prevent landing gear retraction and could cause landing gear collapse under high side load conditions. Piper Aircraft Corporation has issued Service Bulletin No. 845A, dated October 9, 1987, which specifies initial and repetitive dye penetrant or zyglo inspection for cracks in main landing gear forward side braces having 1000 or more hours time-in-service. Service Bulletin No. 805A also includes a figure showing the area where side braces should be inspected for cracks. The inspections and/or replacement of affected side braces will prevent these conditions. Since the condition described is likely to exist or develop in other Piper Model PA-31 Series airplanes of the same design, an AD is being proposed which would require initial and repetitive dye penetrant or zyglo inspection for cracks in the main landing gear forward side brace on airplanes with 1000 or more hours time-in-service, and replacement with serviceable or new improved parts if cracks are found.

The FAA has determined there are approximately 4,196 airplanes affected by the proposed AD. The cost of inspecting and modifying these airplanes as required by the proposed AD is estimated to cost $40 per inspection for every 100 operating hours and/or $580 replacement cost per airplane. The total cost is estimated to be $2,601,520 to the private sector. The cost of compliance with the AD is so small that it will not have a significant economic impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

2. By adding the following new AD:

Piper Aircraft Corporation: Applies to Models PA-31, PA-31-300, PA-31-325 (S/Ns 31-2 through 31-8312019); PA-31-350 (S/Ns 31-5001 through 31-8553002); PA-31P (S/Ns 31P-2 through 31P-7730012); PA-31P-350 (S/Ns 31P-8414001 through 31P-8414050); PA-31T (S/Ns 31T-7400002 through 31T-8120104); PA-31T1 (S/Ns 31T-7804001 through 31T-1104017); PA-31T2 (S/Ns 31T-8166001 through 31T-1166008) airplanes certificated in any category. Compliance: Required within 100 hours time-in-service (TIS) after the accumulation of 1000 hours airplane TIS for those airplanes with less than 1000 hours TIS on the effective date of this AD and, within 100 hours TIS after the effective date of this AD for those airplanes with more than 1000 hours TIS on the effective date of this AD.

To preclude landing gear collapse accomplish the following:

a. Dye penetrant or Zyglo inspect the right and left main landing gears forward side brace for cracks in accordance with the Part 1 Instructions Section of Piper Sevice Bulletin No. 845A, dated October 9, 1987.

(1) If no cracks are found, repeat the inspection each 100 hours TIS thereafter.

(2) If cracks are found, prior to further flight replace the cracked part with an uncracked serviceable part having the same part number or appropriate new improved parts as follows:

(i) One (1) each Left Side Brace, Piper Part Number 85165-02 for PA-31T2, per airplane.

(ii) One (1) each Right Side Brace, Piper Part Number 85165-03 for PA-31T2, per airplane.

(iii) One (1) each Left Side Brace, Piper Part Number 85166-02 for PA-31, PA-31-300, PA-31-325, PA-31P, PA-31P-350, PA-31T and PA-31T1 Models, per airplane.

(iv) One (1) each Right Side Brace, Piper Part Number 85166-03 for PA-31, PA-31-300, PA-31-325, PA-31P, PA-31P-350, PA-31T and PA-31T1 Models, per airplane.

(v) Two (2) each AN6-16 Bolts, Piper Part Number 400-211 per sidebrace replaced with new improved part.

(b) The repetitive inspection requirements in paragraph (a)(1) of this AD may be discontinued on a sidebrace when it is replaced with a new improved part listed in paragraph (a)(2).

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) The intervals between the repetitive inspection required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance on the airplane.

(d) An equivalent means of compliance with this AD may be used if approved by Manager of the Atlanta Aircraft Certification Office, FAA, Central Region, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone

(305) 567-4361; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 6, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-26672 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9199]

Rochester Anesthesiologists; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, 31 anesthesiologists of Rochester, NY, to cease and desist from agreeing, combining, or taking any joint action against competing anesthesiologists; from engaging in price fixing or tampering with the reimbursement levels or terms of any third-party payor for anesthesia services; from fixing or setting their fees; or from refusing to deal with them, based on his or her participation in any third-party payor's program.

DATE: Comments must be received on or before January 19, 1988.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/S-3115, Elizabeth Gee, Washington, DC 20580, (202) 326-2756.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Anesthesiologists, Trade practices.

Agreement Containing Consent Order to Cease and Desist

In the matter of Rochester Anesthesiologists.

The agreement herein, by and between Jose F. Calimlim, M.D.; Frank J. Colgan, M.D.; Marjanne H. Crino, M.D.; Svend Eldrup-Jorgensen, M.D.; Theodore G. Ford, Jr., M.D.; Bridget A. Fraser, M.D.; Jim E. Fuller, M.D.; Robert P. Geraci, M.D.; Manuel Gonzalez, M.D.; David Hwei-Yu Hsu, M.D.; Shirley D. Hunter, M.D.; Stuart L. Kaplan, M.D.; Gary C. Kent, M.D.; Jacob Krieger, M.D.; Robert M. Lawrence, M.D.; Paul P. Marocco, M.D.; Sylvia H. Marshall, M.D.; Mehdi-Mohtashemi, M.D.; John A. Moreland, Jr., M.D.; Sriyalatha I. Nadaraja, M.D.; Kariappa Narayan, M.D.; Seymour J. Sandler, M.D.; Pratima M. Shah, M.D.; David A. Sherman, M.D.; Naseer A. Tahir, M.D.; Michael M.H. Tan, M.D.; Richard C. Templeton, M.D.; Jaimala Thanik, M.D.; Balkrishna Venkatesh, M.D.; Judit S. Wagner, M.D.; and Tae B. Whang, M.D., hereinafter referred to as respondents, and their attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. (a) The address of respondents Jacob Krieger, M.D.; Mehdi-Mohtashemi, M.D.; Kariappa Narayan, M.D.; David A. Sherman, M.D.; and Tae B. Whang, M.D., is Rochester General Hospital, 1425 Portland Avenue, Rochester, New York 14621.

(b) The address of respondent Stuart L. Kaplan, M.D., is 2966 Clover Street, Pittsford, New York 14534.

(c) The address of respondents Marjanne H. Crino, M.D.; Theodore G. Ford, Jr., M.D.; Bridget A. Fraser, M.D.; Robert P. Geraci, M.D.; Manuel Gonzalez, M.D.; David Hwei-Yu Hsu, M.D.; Shirley D. Hunter, M.D.; Gary C. Kent, M.D.; Paul P. Marocco, M.D.; Naseer A. Tahir, M.D.; Michael M.H. Tan, M.D.; Richard C. Templeton, M.D.; and Balkrishna Venkatesh, M.D., is Genesee Hospital, 224 Alexander Street, Rochester, New York 14607.

(d) The address of respondents Jose F. Calimlim, M.D.; Frank J. Colgan, M.D.; Svend Eldrup-Jorgensen, M.D.; Jim E. Fuller, M.D.; Robert M. Lawrence, M.D.; John A. Moreland, Jr., M.D.; Sriyalatha I. Nadaraja, M.D.; Seymour J. Sandler, M.D.; Pratima M. Shah, M.D.; and Jaimala Thanik, M.D., is Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, New York 14642.

(e) The address of respondent Judit S. Wagner, M.D., is Highland Hospital, 1000 South Avenue, Rochester, New York 14620.

(f) The address of respondent Sylvia M. Marshall, M.D., is Lakeside Memorial Hospital, Inc., 156 West Avenue, Brockport, New York 14420.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and have filed answers to said complaint denying said charges and asserting affirmative defenses.

3. Respondents admit all of the jurisdictional facts set forth in the Commission's complaint in this proceeding, but for purposes of any subsequent action pursuant to the Federal Trade Commission Act for violation of this order, respondents employed by the University of Rochester note their denial that the Commission has jurisdiction over them in their capacity as employees of the University of Rochester.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint issued by the Commission or in any other way.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant

to the provisions of § 3.25(f) of the Commission's Rules of Practice, the Commission may, without further notice to respondents, (a) issue its decision containing the following order in disposition of the proceeding, and (b) make information public in respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondents' addresses stated in this agreement shall constitute service. The respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. The respondents have read the complaint and order contemplated hereby. Respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I

It is ordered that for purposes of this Order, the following definitions shall apply:

A. "Blue Shield" means Genesee Valley Medical Care, Inc., also known as Blue Shield of the Rochester Area.

B. "Third-party payor" means any person or entity that engages in any aspect of the process of reimbursing for, purchasing, or paying for health care services provided to any other person. Third-party payors include, but are not limited to, health insurance companies; prepaid hospital, medical or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing such self-insured health benefits programs.

C. "Blue Shield's service area" means Monroe, Livingston, Ontario, Seneca, Wayne, and Yates counties in New York State.

D. "Competing anesthesiologist[s]" as to any respondent means one or more anesthesiologist[s] practicing in the same geographic area as said respondent, for example Blue Shield's service area; but an anesthesiologist is not a "competing anesthesiologist" if he or she is a member of the same single entity or group practice as said respondent, for example the anesthesiologists who are employed by the University of Rochester's Strong Memorial Hospital.

E. "Participating physician in Blue Shield" and "participate in Blue Shield" includes both direct participation in Blue Shield and indirect participation through an employing hospital.

II

It is further ordered that each respondent shall forthwith cease and desist from, directly or indirectly,

A. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, with any competing anesthesiologist[s] to fix, stabilize, set, or tamper with (1) the amount or any term of reimbursement or payment from, or the price or any term of purchase by, any third-party payor for any anesthesiologist's services, or (2) any pricing formula, conversion factor, or fee for any anesthesiologist's services; Provided, however, that this paragraph shall not prohibit any agreement, combination, or concerted action solely to provide information or views to any third-party payor concerning any issue, including reimbursement.

B. Agreeing or combining, attempting to agree or combine, or taking any action in furtherance of any agreement or combination, with any competing anesthesiologist[s] to (1) boycott, refuse to deal with, departicipate from, or not participate in, any health plan or program offered by any third-party payor, or (2) threaten to boycott, threaten to refuse to deal with, threaten to departicipate from, or threaten not to participate in, any health plan or program offered by any third-party payor, or (3) boycott or threaten to boycott any anesthesiologist on the basis of his or her participation in any health plan or program offered by any third-party payor.

III

It is further ordered that for a period of ten (10) years from the date this Order becomes final each respondent shall forthwith cease and desist from, directly or indirectly:

A. Taking any action, individually or concertedly, to establish or implement a policy, practice, or work assignment schedule, on a rotational basis or otherwise, under which anesthesiologists are assigned to hospital patients in a manner intended to (1) limit, reduce, or suppress any anesthesiologist's incentive to participate in a third-party payor's health plan or program, or (2) prevent the accommodation of requests for an anesthesiologist who participates in a specific health plan or program offered by a third-party payor; Provided, however, that this paragraph shall not prohibit any respondent from taking any action, individually or concertedly, to establish or implement a policy, practice, or work assignment schedule, on a rotational basis or otherwise, that is no broader than reasonably necessary for the efficient provision of quality care, and is uniformly applied.

B. Taking any action, individually or concertedly, to deter, hinder, limit, or impede the obtaining of medical staff membership or clinical privileges by any anesthesiologist on the basis of his or her participation status in any plan or program offered by any third-party payor, or on the basis of the level of his or her fees.

IV

It is further ordered that for a period of five (5) years from the date this Order becomes final, each respondent shall forthwith cease and desist from directly or indirectly entering into or continuing, or attempting to enter into or continue, any partnership or corporate agreement that encompasses a majority of the anesthesiologists on the active medical staff at Rochester General Hospital or a majority of the anesthesiologists on the active medical staff at Genesee Hospital, and that has or would have the purpose or the effect of eliminating or restraining competition among anesthesiologists at either of those hospitals.

V

It is further ordered that:

A. During any period of time within seven (7) years after the date this Order becomes final that any respondent is a member of the active medical staff of any hospital in Blue Shield's service area and is not a participating physician in Blue Shield, that respondent shall disclose clearly and conspicuously to patients and prospective patients, as soon as reasonably possible after the patient or prospective patient is referred to or contacts that respondent, or is scheduled to receive anesthesia from that respondent, whichever occurs first, the following written notice:

Notice to Blue Shield Subscribers

I do not participate in Blue Shield. You will be personally liable for my entire bill, and Blue Shield will reimburse you for only a portion of my bill. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield. If you wish to obtain the names of anesthesiologists at this or other hospitals who do participate in Blue Shield, contact Blue Shield, your surgeon, or the hospital's department of anesthesia.

_____

[name]

Provided, however, that this notice need not be disclosed to patients or prospective patients who are known by the respondent not to be enrolled in or covered by any Blue Shield plan or program.

B. Paragraph V.A need not be complied with by a respondent during any portion of the seven (7) years after the date this Order becomes final if, instead, during that period, the following notice is provided to patients and prospective patients who will be receiving anesthesia services at the hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice to Blue Shield Subscribers

Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield. If you wish to try to arrange for an anesthesiologist who participates in Blue Shield to provide your anesthesia, please contact your surgeon or the hospital's department of anesthesiology as soon as possible. The name and current Blue Shield participation status of each anesthesiologist who normally practices at this hospital is: [followed by a list specifying the names of all anesthesiologists on the hospital's active medical staff who participate in Blue Shield, and the names of all anesthesiologists on the hospital's active medical staff who do not participate in Blue Shield].

If provided, the above notice shall be provided to the patient or prospective patient before admission to the hospital if reasonably possible; otherwise it shall be provided as soon after admission as is reasonably possible.

Provided, however, that during any period of time that no anesthesiologist on the hospital's active medical staff participates in Blue Shield, the notice contained in this paragraph V.B shall read as follows:

Notice to Blue Shield Subscribers

The anesthesiologists who normally practice at this hospital do not participate in Blue Shield. You will be personally liable for the entire anesthesia bill, and Blue Shield will reimburse you for only a portion of the bill. Anesthesiologists who do participate have agreed to charge Blue Shield subscribers whose income does not exceed a specified level no more than a certain fee. If you wish to try to make special arrangements for treatment by an anesthesiologist who participates in Blue Shield, direct your inquiry to the hospital's anesthesia department, or your surgeon. If you wish to discuss the possibility of admission to a different hospital that has participating anesthesiologists, contact your surgeon.

VI

It is further ordered that:

A. Within thirty (30) days after this Order becomes final, each respondent who does not participate in Blue Shield shall send the following notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice Regarding Blue Shield Subscribers

In helping your patients at _____ Hospital select an anesthesiologist, it may be useful for you to know that I do not participate in Blue Shield, and that I use a conversion factor of _____ in calculating my fee. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist, such as myself, than if they use an anesthesiologist who participates in Blue Shield.

_____

[name]

B. Within thirty (30) days after this Order becomes final, each respondent who does participate in Blue Shield shall send the following notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice Regarding Blue Shield Subscribers

In helping your patients at _____ Hospital select an anesthesiologist, it may be useful for you to know that I participate in Blue Shield. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield.

_____

[name]

C. For a period of seven (7) years from the date this Order becomes final, each respondent shall send, within twenty (20) days of any change in his or her participation status with respect to Blue Shield or, if respondent does not participate in Blue Shield, any change in his or her conversion factor, an appropriately revised notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff.

D. For a period of seven (7) years from the date this Order becomes final, on each anniversary of the date that this Order becomes final, each respondent shall send the appropriate notice to each physician who has surgical privileges at any hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff.

E. Paragraphs VI.A, VI.B, VI.C, and VI.D need not be complied with by a respondent during any portion of the seven (7) years after the date this Order becomes final if, instead, during that period, the following notice is sent to each physician with surgical privileges at the hospital(s) in Blue Shield's service area where that respondent is a member of the active medical staff:

Notice Regarding Blue Shield Subscribers

In helping your patients at _____ Hospital select an anesthesiologist, it may be useful for you to know which anesthesiologists participate in Blue Shield. Anesthesiologists who participate in Blue Shield have agreed to charge their patients who are Blue Shield subscribers, and whose income does not exceed a specified level, no more than a certain fee. Most patients who are Blue Shield subscribers will personally have to pay more out-of-pocket if they use a non-participating anesthesiologist than if they use an anesthesiologist who participates in Blue Shield. The name and current Blue Shield participation status of each anesthesiologist who normally practices at this hospital is: [followed by a list specifying the names of all anesthesiologists on the hospital's active medical staff who participate in Blue Shield, and the names of all anesthesiologists on the hospital's active medical staff who do not participate in Blue Shield].

If sent, the above notice shall be sent within thirty (30) days after the date this Order becomes final. Thereafter, for a period of seven (7) years, the notice, with any revisions, shall be sent on each anniversary of the date that this Order becomes final, and within sixty (60) days of any change in the participation status of any anesthesiologist who is a member of the active medical staff.

VII

It is further ordered that each respondent shall provide any patient, prospective patient, or physician who requests information from that respondent or respondent's agent regarding respondent's fees, prices, or participation status in any third-party payor's plan or program, with the requested information, including, when requested, respondent's fee or price, or the best estimate thereof, and an explanation of how respondent's fee or

price will be determined, including the exact conversion factor that will be used, if one will be used.

VIII

It is further ordered that this Order shall not prohibit any respondent from:

A. Participating in professional peer review of fees charged by individual physicians in individual cases; or

B. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

IX

It is further ordered that:

A. Within thirty (30) days after this Order becomes final, respondent Robert P. Geraci shall provide a copy of this Order and Complaint to each anesthesiologist who is a member of the Genesee Hospital Department of Anesthesia and who is not a respondent in this matter, that respondent Jacob Krieger shall provide a copy of this Order and Complaint to each anesthesiologist who is a member of the Rochester General Hospital Department of Anesthesia and who is not a respondent in this matter, and that respondent Robert M. Lawrence shall provide a copy of this Order and Complaint to each anesthesiologist who is a member of the Strong Memorial Hospital Department of Anesthesia and who is not a respondent in the matter.

B. Sixty (60) days after this Order becomes final, and at such other times as the Commission may by written notice require, each respondent shall submit in writing to the Federal Trade Commission a verified report setting forth in detail the manner and form in which he or she is complying, or has complied, with this Order.

C. For a period of seven (7) years from the date this Order becomes final, each respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any change in his or her practice that may affect compliance with the obligations arising from this Order.

Dissenting Statement of Commissioner Azcuenaga

I have voted not to accept for public comment the proposed consent agreement in *Rochester Anesthesiologists*, Docket No. 9199, because it fails to contain a jurisdictional admission for some respondents. As required by Rule 2.32, Paragraph 3 of the Agreement Containing Consent Order To Cease and Desist recites that "Respondents admit all of the jurisdictional facts set forth in the Commission's complaint in this proceeding." Paragraph 4, also in compliance with Rule 2.32, recites in part that the respondents waive "[a]ll rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement." Paragraph 3 of the agreement also states, however, that for purposes of any enforcement action, "respondents employed by the University of Rochester note their denial that the Commission has jurisdiction over them in their capacity as employees of the University of Rochester." Most, if not all, of the respondents now employed by the University of Rochester were also so employed at the time of the alleged violation. With this language, the agreement is inconsistent on its face, and it does not settle the jurisdictional question, as Rule 2.32 plainly anticipates it should.

Although there may be a difference between admitting jurisdictional facts and admitting that those facts confer jurisdiction, Rule 2.32 plainly requires that a respondent entering into a consent agreement admit both. The purpose of a consent agreement is to settle the case, to resolve the issues that the parties would have litigated. The policy underlying Rule 2.32, which is unequivocal in requiring jurisdictional admissions in every case, is the necessity that the Commission assert jurisdiction only when it has jurisdiction. Any departure from the standard jurisdictional admission invites speculation as to the scope of the limitation and creates uncertainty about the Commission's authority to issue and enforce the order.

If jurisdiction is in question, the Commission should decide the issue now. If the Commission is uncertain of its jurisdiction, it should not impose an order by consent with a respondent any more than it would do so following litigation. If we are sure of our jurisdiction, as in this case, then we should not accept a qualified jurisdictional admission. It is the responsibility of the Commission, not the courts, to determine its jurisdiction in the first instance. *See FTC* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 647 (1972); American General Insurance Co. v. *FTC*, 496 F.2d 197 (5th Cir. 1974). When we waiver in asserting jurisdiction but still impose a law enforcement remedy, we abdicate our most fundamental responsibility.

I dissent.

Rochester Anesthesiologists—Docket No. 9199; Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the respondents in Rochester Anesthesiologists.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Description of the Complaint

On September 30, 1985, the Commission issued a complaint charging 35 anesthesiologists in Rochester, New York, with conspiring to raise fees in violation of Section 5 of the Federal Trade Commission Act. At the time of the activities challenged in the complaint, the respondents were all the anesthesiologists practicing at the three largest hospitals in Rochester, New York. The complaint alleged that the respondents agreed to undertake, and did engage in, the following activities: collective negotiation over the pricing terms on which they would participate in plans offered by third-party payors; threatening to departicipate from the programs of certain third-party payors if their fees were not increased; and departicipating from the programs of certain third-party payors in furtherance of their efforts to obtain higher fees.

The complaint further alleged that these actions restrained competition among anesthesiologists, raised or fixed anesthesia fees, adversely affected the ability of third-party payors to compete, and increased costs for anesthesia services or increased premiums for programs offered by third-party payors.

The complaint provided two examples of the alleged illegal activity. First, in 1980 respondents jointly negotiated with Blue Shield to obtain substantially higher payments from Blue Shield. When their demands were not met, respondents departicipated from Blue Shield, and Blue Shield subscribers then had to pay substantially higher fees for anesthesia services. (Complaint ¶ 8). In the fall of 1985, at about the time that the complaint was issued, Blue Shield increased its fees for anesthesia services to approximately the level desired by the anesthesiologists. The second example in the complaint is the joint negotiations by the respondents at

Genesee Hospital with Preferred Care, a health maintenance organization, for higher payments. Preferred Care acceded to the respondents' demands and incurred higher costs, leading to increased premiums for subscribers. (Complaint ¶ 9).

The Proposed Consent Order

The proposed consent order is designed to remedy the violations charged in the Commission's complaint, to prevent the respondents from engaging in similar allegedly illegal acts in the future, and to restore competition in the anesthesia services market in Rochester. All of the respondents have signed the proposed consent order except for four respondents who were dismissed from the proceedings due to their permanent retirement from the practice of medicine. The proposed consent includes all the prohibitions and requirements contained in the Notice of Contemplated Relief issued with the Complaint.

The proposed order provides that the respondents must cease and desist permanently from engaging in the conduct challenged in the complaint: *i.e.*, agreeing or combining, or taking any joint action among competing anesthesiologists, to fix or tamper with reimbursement levels or terms of any third-party payor for anesthesia services, or to fix or set their fees for anesthesia services and to boycott, or refuse to deal with, or threaten to boycott, any third-party payor, or any anesthesiologist, based on his or her participation in any third-party payor's program. The proposed order also includes remedial "fencing-in" provisions that restrict conduct that, while not challenged in the complaint and not necessarily illegal, could undermine the effectiveness of the order and perpetuate the anticompetitive effects of the alleged conspiracy.

Part I of the proposed order contains definitions of some of the terms used in the order. The term "competing anesthesiologist[s]" is defined so as to make clear that members of the same single entity or group practice—for example, the Strong respondents—are not considered competitors of each other under the order.

Part II of the proposed order requires the respondents to cease and desist from the anticompetitive and *per se* illegal conduct alleged in the complaint. These provisions are intended to ensure that future decisions about prices and participation in programs of third-party payors will be made individually, not jointly, by anesthesiologists, and that payors will not be subjected to collective negotiation or coercive tactics by anesthesiologists in obtaining their participation in the payors' programs.

Part II(A) of the proposed order prohibits the respondents from agreeing or taking any concerted action with competing anesthesiologists, or taking any action in furtherance of such an agreement or combination, to fix or tamper with either anesthesiologists' fees or the amount or terms of reimbursement from any third-party payor for anesthesiologists' services. This part of the order also contains a proviso making clear that Part II(A) does not prohibit "any agreement, combination, or concerted action solely to provide information or views to any third-party payor concerning any issue, including reimbursement."

Part II(B) prohibits the respondents from agreeing to take or taking any concerted action with competing anesthesiologists, or taking any action in furtherance of such an agreement or combination, to: "boycott, refuse to deal with, departicipate from, or not participate in" any third-party payor's programs; threaten such actions; or boycott or threaten to boycott any anesthesiologist on the basis of his or her participation status in any third-party payor's program.

Part III of the proposed order contains "fencing-in" provisions that prohibit respondents from eliminating competition among anesthesiologists through policies or practices of their hospital anesthesia department's case assignment system, or the hospital privilege process. These provisions, which include prohibitions on conduct that is not illegal, are limited to a period of 10 years from final entry of the order.

Part III(A) prohibits respondents from abusing the hospital anesthesia department mechanism for assigning cases to anesthesiologists in a manner intended to limit, reduce, or suppress any anesthesiologist's incentive to participate in a third-party payor's program. Part III(A) also prohibits use of the case assignment mechanism to prevent the accommodation of requests by patients and physicians for an anesthesiologist who participates in a third-party payor's programs. Part III(A) contains a proviso that the prohibition does not include actions to establish or implement a case assignment mechanism "that is no broader than reasonably necessary for the efficient provision of quality care, and is uniformly applied."

Part III(B) prohibits respondents from using the mechanism for obtaining hospital medical staff privileges as a vehicle for effectuating a conspiracy to fix prices or boycott any third-party payor. Part III(B) would prohibit such abuse, while not interfering in the normal, legitimate processes for granting hospital privileges.

Part IV prohibits respondents at two of the three hospitals from forming, for a period of five years, any partnership or corporate arrangement that encompasses a majority of the anesthesiologists in the hospital's anesthesia department and that has an anticompetitive purpose or effect. The conspiracy among anesthesiologists alleged in the complaint in this matter involved anticompetitive agreements and concerted action both among anesthesiologists practicing at different hospitals and, at Genesee and Rochester General Hospitals, among anesthesiologists practicing within the same hospital anesthesia department. The respondents practicing at Strong Memorial Hospital all are employees of the University of Rochester, and, therefore, are not competitors of each other. Part IV of the proposed order is intended to prevent the respondents at Genesee and Rochester General Hospitals, for a limited period of time, from substantially eliminating intra-hospital competition among anesthesiologists by adopting a partnership or corporate form of practice among most or all department members.

Parts V–VII of the proposed order are intended to help reinstate and facilitate competition that was eliminated by the alleged conspiracy, by requiring respondents to provide to patients and other physicians information concerning respondents' fees or charges and their participation status in the programs of third-party payors. Part V requires that, for a period of seven years, respondents must provide to patients and prospective patients one of several alternative forms of notice identifying, if appropriate, that the respondent does not participate in Blue Shield, and explaining the adverse financial consequences and payment arrangements to the patient who uses a non-participating anesthesiologist. In order to permit such notice to be given most efficiently, Part V permits it to be done through the hospital anesthesia department, rather than insisting upon multiple individual notices.

Part VI of the proposed order requires that respondents provide to all physicians with surgical privileges at the hospital(s) where the respondent practices a notice similar to the notice to patients required by Part V of the proposed order. Part VI is limited in time to seven years. As with the notice to subscribers in Part V, Part VI also

permits use of a combined notice to physicians.

Part VII of the proposed order simply requires that respondents provide to any patient, prospective patient, or physician information about the respondents' "fees, prices, or participation status in any third-party payor's plan or program," when so requested. It is not time limited. Such information will help patients seeking an anesthesiologist to make comparisons, and thus should help generate competition among anesthesiologists.

Part VIII makes clear that the proposed order does not prohibit any respondent from: (1) Participating in professional peer review of fees charged by individual physicians in individual cases; or (2) exercising his or her First Amendment rights to petition the government or to participate in any federal or state administrative or judicial proceeding.

Part IX of the proposed order requires that certain named respondents provide a copy of the complaint and order to non-respondent anesthesiologists at their respective hospitals. It also requires respondents to file compliance reports and notify the Commission of certain changes in their practices.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way its terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 87-26724 Filed 11-18-87; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 145 and 147

Financial Reporting Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to its financial reporting requirements for futures commission merchants ("FCMs") and applicants for registration as FCMs and those introducing brokers ("IBs") and applicants for registration as IBs not operating or intending to operate pursuant to a guarantee agreement (i.e., independent IBs). The rule amendments are being proposed in conjunction with the development of proposed new financial reporting forms, Form 1-FR-FCM and Form 1-FR-IB, to replace the current Form 1-FR.

Amendments to the financial reporting rules and the final reporting form have been necessitated by the Commission's recent adoption of rules to govern foreign futures and foreign options transactions. Those rules introduced the concept of a secured amount of funds held in separate accounts for foreign futures and options customers, which requires the addition of a separate schedule on the financial reporting form for FCMs to report information related to the secured amount. Since the secured amount also affects an FCM's minimum adjusted net capital requirement, certain line items on other financial statements are also affected.

The Commission is proposing the creation of the new Form 1-FR-IB largely in response to requests from the National Futures Association ("NFA") for a financial reporting form shorter than the current Form 1-FR used by both FCMs and IBs that is tailored specifically to independent IBs. Such IBs would have the option of filing the new Form 1-FR-IB in lieu of the new Form 1-FR-FCM, which is similar to the current Form 1-FR. The Commission is also taking this opportunity to propose that an additional Statement of Financial and Operational Data be included in the new Form 1-FR-FCM and Form 1-FR-IB. The Commission further proposes conforming amendments to its rules under the Freedom of Information Act ("FOIA") and Government in the Sunshine Act ("GINSA") to set forth portions of the new 1-FR forms will generally not be made public or released under the FOIA or discussed at open Commission meetings. The proposed new Form 1-FR-FCM and Form 1-FR-IB appear as exhibits to this release.

DATE: Comments must be submitted on or before December 21, 1987.

ADDRESS: Comments must be sent to: Commodity Futures Trading Commission, Office of the Secretariat, 2033 K Street, NW., Washington, DC 20581. Reference should be made to Financial Reporting Rules.

FOR FURTHER INFORMATION CONTACT: Paul H. Bjarnason, Jr., Deputy Director, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets at the above address, telephone: (202) 254-8955, or Henry J. Matecki, Branch Chief, Central Region, Audit and Financial Review Unit, Division of Trading and Markets, 233 South Wacker Drive, Suite 4600, Chicago, Illinois 60606, telephone: (312) 353-6642.

I. Background

The Commission's recent adoption of rules to govern foreign futures and foreign options transactions, 52 FR 28980 (August 5, 1987), requires FCMs to maintain in a separate account the foreign futures or foreign options secured amount on behalf of foreign futures and options customers. The requirements related to the secured amount, which are more fully described in the August 5 **Federal Register** release and later in this release, are somewhat similar to an FCM's segregation requirements with respect to customer funds related to trades on domestic contract markets or dealer options, but the secured amount requirements are not the same as the segregation requirements. Therefore, the Commission must amend its financial reporting form for FCMs to include a new statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers. The Commission is hereby proposing to do so and to make certain other minor, technical changes in its financial reporting and recordkeeping requirements as described below.

II. Foreign Futures and Foreign Options Secured Amount

The Commission originally proposed a separate segregation rule to govern the treatment of foreign futures or foreign options customer funds, which would have imposed upon FCMs carrying foreign futures or options customers funds virtually the same obligations with respect to funds in their possession as they have with respect to domestic futures or option customer funds as long as such funds are held in the United States. This rule would have required, in effect, excess margin funds for foreign transactions to be retained in the United States.

In response to the concerns of many commenters that such a separate segregation requirement would create numerous accounting and transmission problems affiliated with the requirement that all such excess funds be accounted for and maintained in the United States, the Commission adopted a more flexible approach to ensuring protection of customer funds by requiring the creation of one or more accounts in which firms must maintain the "secured amount." In essence, the foreign futures and foreign options secured amount is an amount equal to the money, securities and property held by, or held for or on behalf of, an FCM from, for, or on behalf of

foreign futures or foreign options customers required to margin, guarantee or secure *open* foreign futures contracts or representing premiums paid or received, plus other funds required to guarantee or secure open options transactions, plus any unrealized gain or minus any unrealized loss on such transactions. This is also the amount to which the existing four percent miniumum capital requirement will be applied, and the amount will also be used in calculating the early warning level for firm capital.

Pursuant to paragraph (a) of Rule 30.7 as adopted, the Commission will require futures commission merchants to maintain in a *separate* account or accounts at least that amount of money, securities and property defined in new Rule 1.3(rr) which is equal to original client margins set by the FCM plus accruals and less losses. (However, the secured amount cannot be a negative number.) This amount must be deposited in an account accessible only on behalf of customers. This rule specifies only the minimum amount required to be maintained in such an account(s), and nothing prohibits a firm from maintaining additional money, securities and property received from the appropriate customers in such separate account or accounts provided that these amounts are not subject to a competing security interest or claim for noncustomers.

The Commission's foreign futures and options rules also permit FCMs to deposit money, securities and property belonging to any customer in respect of nonregulated transactions such as spot currency transactions in the same account as the secured amount, subject only to certain recordkeeping and reporting requirements. These requirements include, but are not limited to, the provisions of Rule 1.10(d), which, in essence, requires FCMs to include such nonregulated funds in addition to the foreign futures and options "secured amount" in completing their financial reports; the requirements of new paragraph (e) of Rule 30.7, which parallels Commission Rule 1.27(a), 17 CFR 1.27(a) (1987), and requires FCMs to account strictly for the investment of funds of foreign futures or foreign options customers; and new paragraph (f), which parallels Commission Rule 1.32, 17 CFR 1.32 (1987), which requires a daily calculation of all funds on deposit, and the total amount of money, securities and property required to be on deposit, in such separate account(s), and, finally, the amount of the FCM's residual interest in such funds.

The Commission is also proposing certain amendments to Rule 1.16 (17 CFR 1.16 (1987)) regarding the duties of an FCM's independent public accountant with respect to the foreign futures and foreign options secured amount. The purpose of these proposed amendments is to conform the accountant's duties with respect to the secured amount to his duties with respect to domestic customer funds. The Commission is therefore proposing to amend: (1) Rule 1.16(d)(1) to require as specific audit objectives an examination of the FCM's procedure for safeguarding the secured amount so that the accountant can be reasonably assured that any material inadequacies in such procedures will be discovered, and a review of the practices and procedures followed by the FCM in making its daily secured amount computation; and (2) Rule 1.16(d)(2)(iv) to include in the definition of a material inadequacy any conditions which contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to result in violations of the secured amount requirements to the extent that the FCM could be inhibited from promptly completing transactions or discharging responsibilities to customers or other creditors, could suffer material financial loss, or could have material misstatements in its financial reports.[1] The Commission further proposes to amend Rule 1.16 so that if an extension of time is sought for filing the certified year-end financial report, the request for such an extension of time must include a secured amount computation as of the latest date available, and the letter from the accountant required to accompany such a request must include a response based on the work to date as to whether the accountant believes that the firm was or is not meeting the secured account requirements.

III. Changes to Financial Reports Which are Not Related to Foreign Futures and Options Transactions

The Commission is proposing to add a statement to the new Form 1-FR-FCM and 1-FR-IB which is not included in the current Form 1-FR, the Statement of Financial and Operational Data. The statement would have to be filed with each quarterly (or semi-annual) financial report filed pursuant to § 1.10(d)(1), the year-end certified financial report filed pursuant to § 1.10(d)(2), and each monthly early warning report filed pursuant to § 1.12(b). The Statement of Financial and Operational Data would not need to be filed with financial reports requested by the Commission or a self-regulatory organization under the special call provisions of § 1.10(b)(4), unless the special call specifically requires it. The statement would be deemed to be a non-public document under § 145.5(d)(1)(i) (C) and (D) if the provisions for separate binding set forth in § 1.10(g) are complied with.

The Commission believes that the statement will allow the Commission and self-regulatory organizations ("SROs") to make a more meaningful evaluation of registrants' financial positions by highlighting areas which have historically been most financially troubling to registrants. These are areas of registrants' operations which subject registrants to the greatest financial exposure if not properly controlled. They are areas where aberrations must be promptly identified and brought under control, and brought to the attention of the appropriate regulatory and self-regulatory bodies: undermargined accounts; outtrades at exchange clearing organizations; unprocessed trades; and unresolved reconciling items affecting balances with banks and carrying brokers. The Commission believes the statement will result in financial reports that are more accurate and which highlight for the Commission, the SROs and the managements of the registrants areas of financial concern. The Commission recognizes that the data provided in the statement can be up to 90 days old when filed. However, such data is no older than the financial data reported in the balance sheet and net capital computation, and will be useful in analyzing the data reported in those statements. In addition, the financial and operational data will identify negative trends in the reported data and worsening relationships between data, as well as negative relationships between data based on groups of like firms.

Since the proposed new Form 1-FR-FCM and 1-FR-IB will have the Statement of Changes in Ownership Equity, which is currently required to be filed with interim financial reports and the year-end certified report, and the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors, which is currently only

[1] Each certified financial report must be accompanied by the accountant's report on material inadequacies. Rule 1.16(c)(5). An accountant which discovers a material inadequacy during the course of an audit or interim work must notify the firm of such discovery, and the firm must in turn make the appropriate notification required under the financial early warning system. The accountant may have further responsibilities if the firm fails to make the appropriate early warning notifications. Rules 1.16(e)(2) and 1.12(d).

required with a certified year-end report, appearing on the same page, the Commission is proposing to require that the subordinated liabilities statement also be included with interim financial reports. *See* proposed § 1.10(d)(1)(iii). Certain other minor line item changes would also be made on the new Form 1-FR-FCM and 1-FR-IB as compared to the current Form 1-FR.

The current Form 1-FR contains instructions relating to the preparation of the form. In developing the new Form 1-FR-FCM and Form 1-FR-IB, the Commission is separating the instructions from the forms. The Commission's staff will instead prepare a comprehensive set of report preparation instructions to be published as a separate booklet. The booklet will contain more specific instructions with respect to the reporting of particular line items appearing in the Form 1-FR-FCM and 1-FR-IB than is the case with the instructions to the current Form 1-FR, and it will be updated periodically as registrants bring reporting questions to the Commission's attention.

IV. Filing Options

The Commission is proposing a new § 1.10(k) which will permit an independent IB or applicant for registration as an independent IB to use the new Form 1-FR-IB in lieu of the new Form 1-FR-FCM. The Commission has developed the proposed new Form 1-FR-IB principally at the request of the NFA, which is the only designated self-regulatory organization ("DSRO") with member IBs and thus the only DSRO responsible for monitoring compliance with minimum financial requirements of its members IBs. *See* proposed § 1.52(a). The proposed new Form 1-FR-IB is considerably shorter than the new Form 1-FR-FCM and is tailored specifically to the financial requirements of independent IBs. For example, since IBs cannot handle any funds of customers, there are no segregation or secured amount statements included in Form 1-FR-IB.

The Commission also notes that the Securities and Exchange Commission ("SEC") is in the process of amending its basic financial reporting forms, the Financial and Operational Combined Uniform Single ("FOCUS") Report under the Securities Exchange Act of 1934. The Commission staff has been in contact with the SEC's staff in its continuing effort to harmonize the basic financial reporting forms of the two agencies. Previous efforts in this area have made it possible for an FCM or IB which is also a securities broker or dealer to take advantage of a filing option whereby such a dually-registered firm can file a FOCUS Report, Part II or Part IIA, in lieu of Form 1-FR. *See* Commission Rule 1.10(h) (17 CFR 1.10(h) (1987)). The Commission notes, however, that Rule 1.10(h) contains a proviso which permits the use of such a filing option so long as all information which is required to be furnished on and submitted with a Form 1-FR is provided with the FOCUS Report. When the Commission originally adopted Rule 1.10(h), it stated that the proviso was included "[t]o take into account the possibility that the Commission might in the future require additional information in Form 1-FR and the SEC did not amend its financial reporting system accordingly." 44 FR 65970, 65971 (November 16, 1979). The Commission therefore wishes to make clear that if the revision of its financial reporting forms is completed before the SEC completes the revision of its financial reporting forms, FCMs wishing to make use of the filing option available in Rule 1.10(h) would have to file the new statement of secured amount, and both FCMs and IBs wishing to use the option would have to file the new Statement of Financial and Operational Data, together with a copy of this FOCUS Report.

V. Amendments to the Commission's FOIA and GINSA Rules

The FOIA basically requires that, upon request, the Commission, like most federal agencies, must make its records available to the public unless the records fall within an exemption set forth in the FOIA. The fourth exemption set forth in the FOIA provides that records which constitute "trade secrets and commercial or financial information obtained from a person and privileged or confidential" are exempt from mandatory public disclosure. 5 U.S.C. 552(b)(4) (1982). Commission Rule 145.5(d) promulgated under the FOIA, 17 CFR 145.5(d) (1987), repeats the language of the FOIA's fourth exemption quoted in the preceding sentence, and further specifies particular records which the Commission generally treats as nonpublic. Commission Rule 145.5(d)(1)(i) currently contains six subparagraphs, denoted (A) through (F), describing the portions of various financial reporting forms filed by those registrants and applicants for registration subject to minimum financial requirements which the Commission generally treats as nonpublic, provided such portions of the forms are separately bound from the generally public portions of the forms.[2]

The Commission is proposing to amend § 145.5(d)(1)(i) to take account of the new Form 1-FR-FCM and new Form 1-FR-IB, which are being developed for the reasons discussed above. The Commission is proposing to redesignate current paragraphs (d)(1)(i) (C) through (d)(1)(i) (F) of Rule 145.5, which relate to financial reporting forms other than Form 1-FR, as paragraphs (d)(1)(i) (E) through (d)(1)(i) (H). The Commission is also proposing to adopt new paragraphs (d)(1)(i) (C) and (d)(1)(i) (D) of Rule 145.5 to set forth which portions of the new Form 1-FR-FCM and new Form 1-FR-IB, respectively, would generally be treated as nonpublic provided the separate binding procedure of Commission Rule 1.10(g) is followed by the submitter of the form.[3] This would result in a consecutive display of the provisions of Rule 145.5(d)(1)(i) which relate to Form 1-FR in its various manifestations, in subparagraphs (A) through (D) thereof, with the provisions of the rule relating to other financial reporting forms set forth in the succeeding subparagraphs.

The Commission is proposing to treat as generally nonpublic, provided that the separate binding procedure in Rule 1.10(g) is followed, those portions of the new Form 1-FR-FCM and new Form 1-FR-IB which correspond to the portions of the current Form 1-FR accorded such treatment. These statements include: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement of Changes in Ownership Equity, the Statement of

[2] Subparagraph (A) relates to the Form 1-FR in use prior to December 20, 1978 and subparagraph (B) relates to the Forms 1-FR in use on and after that date. Subparagraphs (C) and (D) relate to the FOCUS Report, Part II and Part IIA, respectively. Subparagraph (E) relates to a compilation report of financial statements of warehousemen for purposes of Uniform Grain Storage Agreements. Subparagraph (F) relates to Form 2-FR. The Form 1-FR is the financial reporting form for FCMs and applicants for registration therefor, and it has served the same function for independent IBs and applicants for registration therefor since the creation of the IB registrant category in 1983. The FOCUS Report is a filing option available to FCMs, independent IBs, and applicants for registration in either category, which are also securities brokers or dealers. The compilation report referred to in subparagraph (E) is a filing option available to an independent IB or applicant for registration therefor which is also a country elevator. The Form 2-FR is required to be filed by a leverage transaction merchant or an applicant for registration therefor.

[3] It is the Commission's view that the separate binding procedure of Rule 1.10(g) is a waivable option, and when an FCM, independent IB, or an applicant for registration in either category, fails to follow the procedure, the entity consents to the public release of information that might otherwise be protected by FOIA Exemption 4. However, failure to follow the separate binding procedure does not constitute consent to the release of information protected by FOIA Exemption 3 (*i.e.*, information subject to the general protection from public disclosure under section 8(a) of the Act, 7 U.S.C. 12(a) (1982)).

Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement, and the accountant's report on material inadequacies filed under Commission Rule 1.16(c)(5). In addition, the proposed new Statement of Financial and Operational Data to be included in the new Form 1-FR-FCM and the new Form 1-FR-IB would be generally accorded nonpublic treatment. The Commission notes that a Statement of Financial and Operational Data with respect to certain securities-related items is currently part of the FOCUS Report, Part II, and such statement is eligible for nonpublic treatment under current Rule 145.5(d)(1)(i)(C).

The Commission would therefore generally make available under the FOIA, consistent with its treatment of the same portions of the current Form 1-FR, the following portions of the new Form 1-FR-FCM: the Statement of Financial Condition; the Statement of the Computation of the Minimum Capital Requirements; the Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; and the Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Option Accounts. In addition, the proposed new Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers in Accordance with Commission Regulation 30.7 would also generally be made available under the FOIA. Although the Commission does not require segregation of funds on behalf of foreign futures and options customers, the concept of a secured amount held by an FCM on behalf of a foreign futures or foreign options customer is somewhat akin to the segregated funds held by an FCM on behalf of a customer trading on or subject to the rules of a domestic contract market. Accordingly, the Commission believes the segregated funds and secured amount financial statements should be treated consistently for FOIA purposes.

With respect to the new Form 1-FR-IB, only the Statement of Financial Condition and the Statement of the Computation of the Minimum Capital Requirements would generally be made available under the FOIA. Since an IB cannot handle customer funds or the funds of foreign futures and options customers, an IB is not subject to segregation requirements or the requirements relating to the foreign futures and options customers secured amount, and thus the new Form 1-FR-IB will not contain any statements related thereto.

The GINSA basically requires that Commission meetings be open to public observation and that certain information pertaining to such meetings be disclosed to the public. However, these reuqirements do not apply in cases where the Commission determines that a meeting or a portion thereof is likely to disclose certain types of information. The exemptions in the GINSA are similar to those set forth in the FOIA, including the exemption relating to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Thus, the Commission's rules promulgated under the GINSA closely track those promulgated under the FOIA. For example, Commission Rule 147.3(b)(4)(i)(A) promulgated under the GINSA corresponds to Commission Rule 145.5(d)(1)(i) promulgated under the FOIA with respect to the treatment of various financial reporting forms filed with the Commission. Accordingly, the Commission is proposing to amend Rule 147.3(b)(4)(i)(A) in a manner identical to that being proposed for Rule 145.5(d)(1)(i) for the reasons set forth above in the discussion of the latter rule.

VI. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rule amendments and proposed new forms, and their associated information collection requirements, to the Office of Management and Budget ("OMB").

Persons wishing to comment on the information which would be required by these proposed rule amendments and proposed new forms should contact Bob Neal, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joseph G. Salazar, CFTC Clearance Officer, 2033 K Street, NW, Washington, DC 20581, (202) 254-9735.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments being proposed herein would affect FCMs and independent IBs. The Commission has previously determined that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirements that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[4]

With respect to introducing brokers, the Commission stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on such entities at that time.[5] In this regard, the Commission notes that the rule amendments being proposed herein with respect to independent IBs would allow such entities the option of using a new financial reporting form, Form 1-FR-IB, which is specifically tailored for their use and is considerably shorter than both the current Form 1-FR which they are now required to use and the proposed new Form 1-FR-FCM. Therefore, the financial reporting and recordkeeping burdens on independent IBs should be no greater than they are currently if the proposed rule amendments contained herein are adopted. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Acting Chairman certifies that these proposed rule amendments will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rule amendments may have on small entities.

List of Subjects

17 CFR Part 1

Financial requirements, Reporting and recordkeeping requirements, Foreign futures, Foreign options, Segregated funds, Introducing brokers.

17 CFR Part 145

Freedom of information, Commission records.

17 CFR Part 147

Sunshine Act, Commission records.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 29(a)(1), 2(a)(11), 4, 4b, 4c, 4d, 4f, 4g, 5a, 8, 8a, 15, and 17 thereof, 7 U.S.C. 2, 4, 4a(j), 6, 6b, 6c, 6d, 6f, 6g, 7a, 12, 12a, 19, and 21 (1982), as

[4] *See* 47 FR 18618, 18619 (April 30, 1982).

[5] 48 FR 35248, 35275-78 (August 3, 1983).

amended by Pub. L. 96-641, 100 Stat. 3556, and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: Sections 2(a)(1), 4, 4a, 4b, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5 5a, 6(a), 6(b), 6b, 6c, 8, 8a, 8c, 12, 15, 17, and 20 of the Commodity Exchange Act, 7 U.S.C. 2, 2a, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 19, 21, and 24.

2. Section 1.10 is proposed to be amended by adding a new paragraph (a)(1), by redesignating paragraphs (d)(1)(iii) through (d)(1)(v) as paragraphs (d)(1)(v) through (d)(1)(vii), by adding new paragraphs (d)(1)(iii), and (d)(1)(iv), and by revising paragraphs (d)(1)(vi), (d)(2)(ii) and (d)(2)(iv), by revising paragraphs (g)(1) and (g)(2), and by adding a new paragraph (k) to read as folows:

§ 1.10 Financial reports of futures commission merchants and introducing brokers.

(a) *Application for registration.* (1) Except as otherwise provided, a futures commission merchant or an applicant for registration as a futures commission merchant, in order to satisfy any requirement in this part that it file a Form 1-FR, must file a Form 1-FR-FCM, and any reference in this part to Form 1-FR with respect to a futures commission merchant or applicant therefor shall be deemed to be a reference to Form 1-FR-FCM. Except as otherwise provided, an introducing broker or an applicant for registration as an introducing broker, in order to satisfy any requirement in this part that it file a Form 1-FR, must file a Form 1-FR-IB, and any reference in this part to Form 1-FR with respect to an introducing broker or applicant therefor shall be deemed to be reference to Form 1-FR-IB.

* * * * *

(d) * * *

(1) * * *

(iii) A statement of changes in liabilities subordinated to claims of general creditors for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

(iv) A statement of financial and operational data for the period between the date of the most recent statement of financial condition filed with the Commission and the date for which the report is made;

* * * * *

(vi) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, and the statements of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter as of the date for which the report is made; and

* * * * *

(2) * * *

(ii) Statements of income (loss), changes in financial position, changes in ownership equity, changes in liabilities subordinated to claims of general creditors, and of financial and operational data, for the period between the date of the most recent certified statement of financial condition filed with the Commission and the date for which the report is made: *Provided,* That for an applicant filing pursuant to paragraph (a)(2) of this section the period must be the year ending as of the date of the statement of financial condition;

* * * * *

(iv) For a futures commission merchant only, the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter as of the date for which the report is made; and

* * * * *

(g) *Nonpublic treatment of reports.* (1) All of the Forms 1-FR filed pursuant to this section will be public: *Provided, however,* That if the statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer option accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of Form 1-FR, trade secrets and certain other commerical or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter.

(2) All of the copies of the Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, filed pursuant to paragraph (h) of this section will be public: *Provided, however,* That if the statement of financial condition, the statement of the computation of the minimum capital requirements, the statements (to be filed by a futures commission merchant only) of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement (to be filed by a futures commission merchant only) of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter are bound separately from the other financial statements (including the statement of income (loss)), footnote disclosures and schedules of the Financial and Operational Combined Uniform Single Report under the Securities and Exchange Act of 1934, Part II of Part IIA, trade secrets and certain other commerical or financial information on such other statements and schedules will be treated as nonpublic for purposes of the Freedom of Information Act and the Government in the Sunshine Act and Parts 145 and 147 of this chapter.

* * * * *

(k) *Filing option available to an introducing broker.* (1) Any introducing broker or applicant for registration as an introducing broker which is not operating or intending to operate pursuant to a guarantee agreement may comply with the requirements of this section by filing (in accordance with paragraphs (a), (b), and (c) of this section) a Form 1-FR-IB in lieu of a Form 1-FR-FCM.

(2) If an introducing broker or applicant therefor avails itself of the filing option available under paragraph (k)(1) of this section, the report required to be filed in accordance with § 1.16(c)(5) of this part must be filed as of the date of the Form 1-FR-IB being filed, and such an introducing broker or applicant therefor must maintain its financial records and make its monthly formal computation of its adjusted net capital, as required by § 1.18 of this part,

in a manner consistent with Form 1-FR-IB.

3. Section 1.12 is proposed to be amended by revising paragraph (a)(2) to read as follows:

§ 1.12 Maintenance of minimum financial requirements by futures commission merchants and introducing brokers.

(a) * * *

(2) If the person is a futures commission merchant or applicant therefor, within 24 hours after giving such notice file a statement of financial condition, a statement of the computation of the minimum capital requirements pursuant to § 1.17 (computed in accordance with the applicable capital rule), the statements of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges and for customers' dealer options accounts, and the statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers in accordance with § 30.7 of this chapter, all as of the date such applicant's or registrant's adjusted net capital is less than the minimum required; or

* * * * *

4. Section 1.16 is proposed to be amended by revising paragraphs (d)(1), (d)(2)(iv), (f)(1)(iv) and (f)(1)(vii)(C) to read as follows:

§ 1.16 Qualifications and reports of accountants.

* * * * *

(d) *Audit objectives.* (1) The audit must be made in accordance with generally accepted auditing standards and must include a review and appropriate tests of the accounting system, the internal accounting control, and the procedures for safeguarding customer and firm assets in accordance with the provisions of the Act and the regulations thereunder, since the prior examination date. The audit must include all procedures necessary under the circumstances to enable the independent licensed or certified public accountant to express an opinion on the financial statements and schedules. The scope of the audit and review of the accounting system, the internal controls, and procedures for safeguarding customer and firm assets must be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (i) the accounting system, (ii) the internal accounting controls, and (iii) the procedures for safeguarding customer and firm assets (including, in the case of a futures commission merchant, the segregation requirements of section 4d(2) of the Act and these regulations and the secured amount requirements of the Act and these regulations) will be discovered. Additionally, as specified objectives the audit must include reviews of the practices and procedures followed by the registrant in making (A) periodic computations of the minimum financial requirements pursuant to § 1.17 and (B) in the case of a futures commission merchant, daily computations of the segregation requirements of section 4d(2) of the Act and these regulations and the secured amount requirements of the Act and these regulations.

(2) * * *

(iv) Result in violations of the Commission's segregation or secured amount (in the case of a futures commission merchant), recordkeeping or financial reporting requirements to the extent that could reasonably be expected to result in the conditions described in paragraphs (d)(2)(i), (ii), or (iii) of this section.

* * * * *

(f) * * *

(1) * * *

(iv) In the case of a futures commission merchant, be accompanied by the latest available computation of required segregation and by a computation of the amount of money, securities, and property segregated on behalf of customers, and by a computation of secured accounts and funds held in separate accounts for foreign futures and foreign option customers in accordance with § 30.7 of this chapter, as of the date of the latest available computation;

* * * * *

(vii) * * *

(C) Do you have any indication from the part of your audit completed to date that would lead you to believe that the firm was or is not meeting the minimum capital requirements specified in § 1.17 or (in the case of a futures commission merchant) either the segregation requirements of section 4d(2) of the Act and these regulations or the secured amount requirements of the Act and these regulations, or has any significant financial or recordkeeping problems?

* * * * *

5. Section 1.52 is proposed to be amended by revising paragraph (a) to read as follows:

§ 1.52 Self-regulatory organization adoption and surveillance of minimum financial requirements.

(a) Each self-regulatory organization must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered futures commission merchants. Each self-regulatory organization other than a contract market must adopt, and submit for Commission approval, rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each contract market which elects to have a category of membership for introducing brokers must adopt and submit for Commission approval rules prescribing minimum financial and related reporting requirements for all its members who are registered introducing brokers. Each self-regulatory organization shall submit for Commission approval any modification or other amendments to such rules. Such requirements must be the same as, or more stringent than, those contained in §§ 1.10 and 1.17 of this part and the definition of adjusted net capital must be the same as that prescribed in § 1.17(c) of this part: *Provided, however,* A designated self-regulatory organization may determine the number of Form 1-FRs it receives from its member registrants so long as it requires at least semiannual Form 1-FRs, one of which must be certified in accordance with § 1.16 of this part for each such registrant, except that such a requirement shall not apply to an introducing broker which is operating pursuant to a guarantee agreement and which is not also a securities broker or dealer: *And, provided further,* A designated self-regulatory organization may permit its member registrants which are registered with the Securities and Exchange Commission as securities brokers or dealers to file (in accordance with § 1.10(h) of this part) a copy of their Financial and Operational Combined Uniform Single Report under the Securities Exchange Act of 1934, Part II or Part IIA, in lieu of Form 1-FR: *And, provided further,* A designated self-regulatory organization may permit its member introducing brokers to file a Form 1-FR-IB in lieu of a Form 1-FR-FCM.

* * * * *

PART 145—COMMISSION RECORDS AND INFORMATION

6. The authority citation for Part 145 continues to read as follows:

Authority: Pub. L. 89-554, 80 Stat. 383, Pub. L. 90-23, 81 Stat. 54, Pub. L. 93-502, 88 Stat. 1561-1564 (5 U.S.C. 552); Sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)); Pub. L. 99-570.

7. Section 145.5 is proposed to be amended by redesignating paragraphs (d)(1)(i)(C) through (d)(1)(i)(F) as

paragraphs (d)(1)(i)(E) through (d)(1)(i)(H), and by adding new paragraphs (d)(1)(i)(C) and (d)(1)(i)(D) to read as follows:

§ 145.5 Disclosure of nonpublic records.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) The following portions, and footnote disclosures thereof, of the Form 1-FR-FCM required to be filed pursuant to § 1.10 of this chapter (effective on and after January 1988), provided the procedure set forth in § 1.10(g) of this chapter is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

(D) The following portions, and footnote disclosures thereof, of the Form 1-FR-IB filed pursuant to § 1.10(k) of this chapter, provided the procedure set forth in § 1.10(g) of this chapter is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

PART 147—OPEN COMMISSION MEETING

8. The authority citation for Part 147 continues to read as follows:

Authority: Sec. 3(a), Pub. L. 94-409, 90 Stat. 1241 (5 U.S.C. 552b); sec. 101(a)(11), Pub. L. 93-43, 88 Stat. 1391 (7 U.S.C. 4a(j)).

9. Section 147.3 is proposed to be amended by redesignating paragraphs (b)(4)(i)(A)(*3*) through (b)(4)(i)(A)(*6*) as paragraphs (b)(4)(i)(A)(*5*) through (b)(4)(i)(A)(*8*), and by adding new paragraphs (b)(4)(i)(A)(*3*) and (b)(4)(i)(A)(*4*) to read as follows:

§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(A) * * *

(*3*) The following portions, and footnote disclosures thereof, of the Form 1-FR-FCM required to be filed pursuant to § 1.10 of this chapter (effective on and after January 1988), provided the procedure set forth in § 1.10(g) of this chapter is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

(*4*) The following portions, and footnote disclosures thereof, of the From 1-FR-IB filed pursuant to § 1.10(k) of this chapter, provided the procedure set forth in § 1.10(g) of this chapter is followed: the Statement of Income (Loss), the Statement of Changes in Financial Position, the Statement of Changes in Ownership Equity, the Statement of Changes in Liabilities Subordinated to the Claims of General Creditors Pursuant to a Satisfactory Subordination Agreement, the Statement of Financial and Operational Data, and the accountant's report on material inadequacies filed under § 1.16(c)(5) of this chapter;

* * * * *

Issued in Washington, DC on November 13, 1987, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[**Editorial note:** The following forms will not appear in the Code of Federal Regulations]

BILLING CODE 6351-01-M

Exhibit A

FORM 1-FR-FCM |0005| OMB No. ####-####

Name of Company:	Employer ID No:	NFA ID No:
_____ |0010|	_____ |0020|	_____ |0030|
Address of Principal Place of Business:	Person to Contact Concerning This Report:	
_____	_____ |0040|	
_____	Telephone No:	
_____ |0050|	_____ |0060|	

1. Report for the period beginning _____ |0070| and ending _____ |0080|

2. Type of report |0090|: |__| Certified |__| Regular quarterly/semiannual |__| Monthly 1.12(b)

   |__| Special call by: _____ |__| Other -- Identify: _____

3. Check whether |0095|: |__| Initial filing |__| Amended filing

4. Name of FCM's Designated Self-Regulatory Organization: _____ |0100|

5. Name(s) of consolidated subsidiaries and affiliated companies:

Name	Percentage Ownership	Line of Business
_____ |0110|	_____ |0120|	_____ |0130|
_____ |0140|	_____ |0150|	_____ |0160|
_____ |0170|	_____ |0180|	_____ |0190|
_____ |0200|	_____ |0210|	_____ |0220|
_____ |0230|	_____ |0240|	_____ |0250|

The futures commission merchant, or applicant for registration therefor, submitting this Form and its attachments and the person whose signature appears below represent that, to the best of their knowledge, all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted. It is further understood that any intentional misstatements or omissions of facts constitute Federal Criminal Violations (see 18 U.S.C. 1001).

Signed this _____ day of _____, 19___

Manual signature_____

Type or print Name_____

|__| Chief Executive Officer |__| Chief Financial Officer Corporate Title _____

|__| General Partner |__| Sole Proprietor

AUTHORITY: Sections 4c, 4d, 4f, 4g, 5a, 8a, and 17 of the Commodity Exchange Act (7 U.S.C. §§ 6c, 6d, 6f, 6g, 7a, 12a, and 21))

(10-27-87)

FORM 1-FR-FCM |0005| OMB No. ####-####

Name of Company:	Employer ID No:	NFA ID No:
_____ |0010|	_____ |0020|	_____ |0030|
Address of Principal Place of Business:	Person to Contact Concerning This Report:	
_____	_____ |0040|	
_____	Telephone No:	
_____ |0050|	_____ |0060|	

1. Report for the period beginning _____ |0070| and ending _____ |0080|

2. Type of report |0090|: |__| Certified |__| Regular quarterly/semiannual |__| Monthly 1.12(b)

   |__| Special call by: _____ |__| Other -- Identify: _____

3. Check whether |0095|: |__| Initial filing |__| Amended filing

4. Name of FCM's Designated Self-Regulatory Organization: _____ |0100|

5. Name(s) of consolidated subsidiaries and affiliated companies:

Name	Percentage Ownership	Line of Business
_____ |0110|	_____ |0120|	_____ |0130|
_____ |0140|	_____ |0150|	_____ |0160|
_____ |0170|	_____ |0180|	_____ |0190|
_____ |0200|	_____ |0210|	_____ |0220|
_____ |0230|	_____ |0240|	_____ |0250|

The futures commission merchant, or applicant for registration therefor, submitting this Form and its attachments and the person whose signature appears below represent that, to the best of their knowledge, all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted. It is further understood that any intentional misstatements or omissions of facts constitute Federal Criminal Violations (see 18 U.S.C. 1001).

Signed this _____ day of _____, 19___

Manual signature_____

Type or print Name_____

|__| Chief Executive Officer |__| Chief Financial Officer Corporate Title _____

|__| General Partner |__| Sole Proprietor

AUTHORITY: Sections 4c, 4d, 4f, 4g, 5a, 8a, and 17 of the Commodity Exchange Act (7 U.S.C. §§ 6c, 6d, 6f, 6g, 7a, 12a, and 21))

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF FINANCIAL CONDITION
AS OF _____

Assets

	Current		Non-Current		Total	
1. Funds segregated or in separate accounts pursuant to the CEAct and the regulations						
A. Section 4(d)2 funds (page 11, line 12)	$	1000			$	1005
B. Section 32.6 funds (page 12, line 2.C.)		1010				1015
C. Section 30.7 funds (page 14, line 7)		1020				1025
(Do not duplicate line 1. assets below)						
2. Cash						
A. Unrestricted cash		1030				1035
B. Other restricted cash		1040	$	1045		1050
3. Securities, at market value						
A. Firm owned		1055		1060		1065
B. Noncustomer-owned		1070				1075
C. Other customer-owned, not on line 1.		1080				1085
D. Individual partners' securities accounts		1090				1095
E. Stock in clearing organization - cost		1100		1105		1110
4. Securities purchased under resale agreements		1115		1120		1125
5. Receivables from and deposits with U.S. commodity clearing organizations						
A. Margins		1130				1135
B. Variation receivable		1140				1145
C. Guarantee deposits		1150				1155
6. Receivables from and deposits with foreign commodity clearing organizations						
A. Margins		1160		1165		1170
B. Variation receivable		1175				1180
C. Guarantee deposits				1185		1190
7. Receivables from registered FCMs						
A. Net liquidating equity		1195		1200		1205
B. Security deposits				1210		1215
C. Other		1220		1225		1230
8. Receivables from foreign commodity brokers						
A. Net liquidating equity		1235		1240		1245
B. Security deposits				1250		1255
C. Other		1260		1265		1270

9. Receivables from traders on U.S. commodity exchanges			
A. Customer debit and deficit accounts	____ |1275|	____ |1280|	____ |1285|
B. Noncustomer and proprietary accounts	____ |1290|	____ |1295|	____ |1300|
C. Other	____ |1305|	____ |1310|	____ |1315|
D. Allowance for doubtful accounts		(____ |1320|)	(____ |1325|)
10. Receivables from traders on foreign boards of trade			
A. Customer debit and deficit accounts	____ |1330|	____ |1335|	____ |1340|
B. Noncustomer and proprietary accounts	____ |1345|	____ |1350|	____ |1355|
C. Other	____ |1360|	____ |1365|	____ |1370|
D. Allowance for doubtful accounts		(____ |1375|)	(____ |1380|)
11. Inventories of cash commodities, raw materials, work in progress and finished goods			
A. Covered	____ |1385|	____ |1390|	____ |1395|
B. Not covered	____ |1400|	____ |1405|	____ |1410|
12. Secured demand notes (Value of collateral $____ |1415| Safety factor $____ |1420|)	____ |1425|	____ |1430|	____ |1435|
13. Other receivables and advances			
A. Merchandising receivable	____ |1440|	____ |1445|	____ |1450|
B. Notes receivable	____ |1455|	____ |1460|	____ |1465|
C. Commissions and brokerage receivable	____ |1470|	____ |1475|	____ |1480|
D. Receivables from employees and associated persons	____ |1485|	____ |1490|	____ |1495|
E. Advances on cash commodities	____ |1500|	____ |1505|	____ |1510|
F. Dividends and interest	____ |1515|	____ |1520|	____ |1525|
G. Taxes receivable	____ |1530|	____ |1535|	____ |1540|
H. Receivables from subsidiaries and affiliates	____ |1545|	____ |1550|	____ |1555|
I. Other (itemize on a separate page)	____ |1560|	____ |1565|	____ |1570|
J. Allowance for doubtful accounts		(____ |1575|)	(____ |1580|)
14. Unrealized gains on forward contracts and commitments	____ |1585|	____ |1590|	____ |1595|
15. Exchange memberships, at cost (Market value $____ |1600|)		____ |1605|	____ |1610|
16. Investments in subsidiaries		____ |1615|	____ |1620|
17. Plant, property, equipment and capitalized leases (cost net of accumulated depreciation and amortization of $____ |1625|)	____ |1630|	____ |1635|	____ |1640|
18. Prepaid expenses and deferred charges		____ |1645|	____ |1650|
19. Other assets (itemize on a separate page)	____ |1655|	____ |1660|	____ |1665|
20. Total Assets	$____ |1670|	$____ |1675|	$____ |1680|

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Name of Company	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF FINANCIAL CONDITION
AS OF _____

Liabilities & Ownership Equity

Liabilities

21 Payables to banks		
A. Secured loans	$	2000
B. Unsecured loans		2010
C. Overdrafts		2020
22. Equities in commodity accounts		
A. Customers trading on U.S. commodity exchanges		2030
B. Customers trading on foreign exchanges		2040
C. Noncustomers accounts		2050
D. General partners trading accounts (not included in capital)		2060
E. Dealer option accounts		2070
23. Payable to U.S. commodity clearing organizations		2080
24. Payable to foreign commodity clearing organizations		2090
25. Payable to registered futures commission merchants		2100
26. Payable to foreign commodity brokers		2110
27 Accounts payable, accrued expenses and other payables		
A. Accounts payable and accrued expenses		2120
B. Salaries, wages, commissions and bonuses payable		2130
C. Taxes payable		2140
D. Deferred income taxes		2150
E. Security deposits held		2160
F Advances against commodities		2170
G. Unrealized losses on forward contracts and commitments		2180
H. Due to subsidiaries and affiliates		2190
I Notes, mortgages and other payables due within twelve months		2200
J. Other (itemize on a separate page)		2210
28. Notes, mortgages and other payables not due within twelve months of the date of this statement		
A. Unsecured		2220
B. Secured		2230

29. Securities sold under agreements to repurchase		_____ |2240|
30. Securities sold not yet purchased, at market value		_____ |2250|
31. Liabilities subordinated to claims of general creditors		
A. Subject to a satisfactory subordination agreement		_____ |2260|
B. Not subject to a satisfactory subordination agreement		_____ |2270|
32. Total liabilities		$_____ |2280|

Ownership Equity

33. Sole proprietorship	$_____ |2500|	
34. Partnership		
A. Partnership contributed and retained capital	$_____ |2510|	
B. Additional capital per partnership agreement (equities in partners' trading accounts, etc.)	_____ |2515|	
C. Total	$_____ |2520|	
35. Corporation		
A. Preferred stock	$_____ |2530|	
B. Common stock	_____ |2535|	
C. Additional paid in capital	_____ |2540|	
D. Retained earnings	_____ |2545|	
E. Subtotal	$_____ |2550|	
F. Less: capital stock in treasury	_____ |2555|	
G. Total	$_____ |2560|	
36. Total ownership equity (line 33, 34.C. or 35.G)		$_____ |2570|
37. Total liabilities and ownership equity (add lines 32 and 36)		$_____ |2580|

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF THE COMPUTATION OF THE MINIMUM CAPITAL REQUIREMENTS
AS OF _____

Net Capital

1. Current assets (page 3, line 20)			$	3000
2. Increase/(decrease) to U.S. clearing organization stock to reflect margin value				3010
3. Net current assets			$	3020
4. Total liabilities (page 5, line 32)		$ 3030		
5. Deductions from total liabilities				
A. Liabilities subject to satisfactory subordination agreements (page 5, line 31.A)	$ 3040			
B. Certain deferred income tax liability (see regulation 1.17(c)(4)(iv))	3050			
C. Certain current income tax liability (see regulation 1.17(c)(4)(v))	3060			
D. Long term debt pursuant to regulation 1.17(c)(4)(vi)	3070			
E. Total deductions		(3080)		
F. Adjusted liabilities				3090
6. Net capital (subtract line 5.F from line 3)			$	3100

Charges Against Net Capital

7. Excess of advances paid on cash commodity contracts over 95% of the market value of commodities covered by such contracts	$	3110
8. Five percent (5%) of the market value of inventories covered by open futures contracts or commodity options (no charges applicable to inventories registered as deliverable on a contract market and which are covered by futures contracts)		3120
9. Twenty percent (20%) of the market value of uncovered inventories		3130
10. Ten percent (10%) of the market value of commodities involved in fixed price commitments and forward contracts which are covered by open futures contracts or commodity options		3140
11. Twenty percent (20%) of the market value of commodities involved in fixed price commitments and forward contracts which are not covered by open futures contracts or commodity options		3150

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12 Charges as specified in section 240.15c3-1(c)(2)(vi) and (vii) against securities owned by firm, including securities representing investments of domestic and foreign customers' funds:

	Market Value		Charge			
A. U.S. and Canadian government obligations	$	3160	$	3170		
B. State and Municipal government obligations		3180		3190		
C. Certificates of deposit, commercial paper and bankers' acceptances		3200		3210		
D. Corporate obligations		3220		3230		
E. Stocks and warrants		3240		3250		
F. Other securities charges		3260		3270		
G. Total (add lines 12.A. - 12.F.)						3280

13. Charges as specified in section 240.15c3-1(c)(2)(iv)(F)
A. Against securities purchased under agreements to resell 3290
B. Against securities sold under agreements to repurchase 3300

14. Charges on securities options as specified in section 240.15c3-1, Appendix A 3310

15. Undermargined commodity futures and commodity option accounts -- amount in each account required to meet maintenance margin requirements less the amount of current margin calls in that account, and the amount of any noncurrent deficit in the account
A. Customer accounts 3320
B. Noncustomer accounts 3330
C. Omnibus accounts 3340

16. Charges against open commodity positions in proprietary accounts
A. Uncovered exchange-traded futures and granted options contracts
i. percentage of margin requirements applicable to such contracts $ 3350
ii. less: equity in proprietary accounts included in liabilities (3360) 3370

B. Ten percent (10%) of the market value of commodities which are the subject of commodity options not traded on a contract market carried long by the applicant or registrant which has value and such value increased adjusted net capital (this charge is limited to the value attributed to such options) 3380

C. Commodity options which are traded on contract markets and carried long in proprietary accounts. Charge is the same as would be applied if applicant or registrant was the grantor of the options (this charge is limited to the value attributed to such options) 3390

17. Four percent (4%) of the market value of commodity options granted (sold) by option customers on contract markets and foreign boards of trade (section 1.17(c)(5)(iii)) 3400

18. Five percent (5%) of all unsecured receivables from foreign brokers 3410

19. Secured demand note deficiency 3420

20. Adjustment to eliminate benefits of consolidation (explain on separate page) 3430

21 Total charges (add lines 7 through 20) $ 3440

Net Capital Computation

22. Adjusted net capital (subtract line 21 from line 6) $_____ |3500|

23. Net Capital Required

A. Amounts required to be segregated on set aside in separate accounts for customers pursuant to the CEAct and regulations

i. U.S. futures & options (page 11, line 6) $_____ |3510|

ii. Dealer options (page 12, line 1) _____ |3520|

iii. Foreign futures & options (page 13, line 1) _____ |3530|

iv. Subtotal $_____ |3540|

B. Deduction for open long U.S. and foreign options in customers' accounts

i. Value of long options included in line 23.A. _____ |3550|

ii. With respect to each option customer, the amount of long values included in line 23.B.i. which exceeds the net liquidating equity in that option customer's account (_____ |3560|)

iii. Net deduction for open long customer options (_____ |3570|)

C. Amount subject to 4% net capital factor $_____ |3580|

D. Enter 4% of line 23.C. $_____ |3590|

E. Enter the greater of line 23.D. or $50,000 ($100,000 if the firm is not a member of a self-regulatory organization). _____ |3600|

24. Excess net capital (line 22 less line 23.E.) $_____ |3610|

Computation of Early Warning Level

25. Enter 150% of line 23.E. $_____ |3620|

This is your early warning capital level. If this amount is greater than the amount on line 22, you must immediately notify your DSRO and the Commission and begin filing monthly financial reports pursuant to section 1.12 of the regulations.

Guaranteed Introducing Brokers

26. List all IBs with which guarantee agreements have been entered into by the FCM and which are currently in effect.

_____	|3700|	_____	|3710|
_____	|3720|	_____	|3730|
_____	|3740|	_____	|3750|
_____	|3760|	_____	|3770|
_____	|3780|	_____	|3790|

(List additional IBs on a separate page)

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF INCOME (LOSS)
FOR THE PERIOD FROM _____ THROUGH _____

Revenues		
1. Commissions and brokerage		
A. Commodity transactions on U.S. commodity exchanges	$	4000
B. Commodity transactions on foreign commodity exchanges		4010
C. Securities transactions		4020
D. Other brokerage activities (describe on a separate page)		4030
2. Firm trading accounts		
A. Commodity transactions		4040
B. Securities transactions		4050
C. Other firm trading (describe on a separate page)		4060
3. Income from advisory services		4070
4. Interest and dividends		
A. Interest earned on investments of customers' funds		4080
B. Interest earned on investments of other than customers' funds		4090
C. Dividends		4100
5. Other income (itemize on a separate page)		4110
6. Total revenue	$	4120
Expenses		
7. Sales personnel commissions	$	4200
8. Floor brokerage		4210
9. Clerical and administrative employees' expenses		4220
10. Commissions to other FCMs		4230
11. Exchange clearance fees		4240
12. Occupancy and equipment costs		4250
13. Promotional costs		4260
14. Communications		4270
15. Data processing		4280
16. Bad debt expense		4290
17. Trade errors		
A. Customers' accounts		4300
B. Other		4310
18. Interest		4320
19. Other expenses (itemize on a separate page)		4330
20. Total expenses	$	4340
21. Income (loss) before income taxes and items below	$	4400
22. Provision for income taxes		4410
23. Equity in earnings (losses) of unconsolidated subsidiaries, less applicable tax		4420
24. Extraordinary gains (losses), less applicable tax		4430
25. Cumulative effect of changes in accounting principles, less applicable tax		4440
26. Net income (loss)	$	4450

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF CHANGES IN OWNERSHIP EQUITY
FOR THE PERIOD FROM _____ THROUGH _____

1. Total ownership equity as previously reported	$_____	4500
2. Net income (loss) for period	_____	4510
3. Other additions to capital (explain below)	_____	4520
4. Dividends	_____	4530
5. Other deductions from capital (including partner and proprietary withdrawals) (explain below)	_____	4540
6. Balance (page 5, line 36)	$_____	4550

Date	Explanation	Amount

+ + + +

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION
FOR CUSTOMERS TRADING ON U.S. COMMODITY EXCHANGES
AS OF _____

SEGREGATION REQUIREMENTS (Section 4d(2) of the CEAct)

1. Net ledger balance			
A. Cash		$	5000
B. Securities (at market)			5010
2. Net unrealized profit (loss) in open futures contracts traded on a contract market			5020
3. Exchange traded options			
A. Market value of open option contracts purchased on a contract market			5030
B. Market value of open option contracts granted (sold) on a contract market		(	5040)
4. Net equity (deficit) (add lines 1, 2 and 3)		$	5050
5. Accounts liquidating to a deficit and accounts with debit balances - gross amount	$ 5060		
Less: amount offset against U.S. Treasury obligations owned by particular customers	(5070)		5080
6. Amount required to be segregated (add lines 4 and 5)		$	5090

FUNDS IN SEGREGATED ACCOUNTS

7. Deposited in segregated funds bank accounts		
A. Cash	$	5100
B. Securities representing investments of customers' funds (at market)		5110
C. Securities held for particular customers or option customers in lieu of cash (at market)		5120
8. Margins on deposit with clearing organizations of contract markets		
A. Cash		5130
B. Securities representing investments of customers' funds (at market)		5140
C. Securities held for particular customers or option customers in lieu of cash (at market)		5150
9. Net variation margin due from (to) clearing organizations of contract markets		5160
10. Exchange traded options		
A. Value of open long option contracts		5170
B. Value of open short option contracts	(	5180)
11. Net equities with other FCMs		
A. Cash		5190
B. Securities representing investments of customers' funds (at market)		5200
C. Securities held for particular customers or option customers in lieu of cash (at market)		5210
12. Total amount in segregation (add lines 7 through 11)	$	5220
13. Excess (insufficiency) funds in segregation (subtract line 6 from line 12)	$	5230

(10-27-87)

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM

STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS
IN SEGREGATION FOR CUSTOMERS' DEALER OPTIONS ACCOUNTS
AS OF _____

1. Amount required to be segregated in accordance with Commission regulation 32.6		$_____	5400
2. Funds in segregated accounts			
A. Cash	$_____ 5410		
B. Securities (at market)	_____ 5420		
C. Total		_____	5430
3. Excess funds in segregation		$_____	5440

(10-27-87)

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS
FOR FOREIGN FUTURES AND FOREIGN OPTIONS CUSTOMERS
PURSUANT TO COMMISSION REGULATION 30.7
AS OF _____

FOREIGN FUTURES AND FOREIGN OPTIONS SECURED AMOUNTS - SUMMARY

I. Check the appropriate box to identify the amount shown on line 1. below:

|__| |5600| Secured amounts in only U.S.-domiciled customers' accounts

|__| |5610| Secured amounts in U.S. and foreign-domiciled customers' accounts

|__| |5620| Net liquidating equities in all accounts of customers trading on foreign boards of trade

|__| |5630| Amount required to be set aside pursuant to law, rule or regulation of a foreign government or a rule of a self-regulatory organization authorized theneunder

II. Has the FCM changed the method of calculating the amount to be set aside in separate accounts since the last financial report it filed?

|__| Yes |__| No |5640| If Yes, attach an explanation of the change.

1. Amount to be set aside in separate section 30.7 accounts	$_____	|5660|
2. Total funds in separate section 30.7 accounts (page 14, line 7)	_____	|5670|
3. Excess (Deficiency) - Subtract line 1 from line 2.	$_____	|5680|

(10-27-87)

Name of Company	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS
FOR FOREIGN FUTURES AND FOREIGN OPTIONS CUSTOMERS
PURSUANT TO COMMISSION REGULATION 30.7
AS OF _____

FUNDS DEPOSITED IN SEPARATE REGULATION 30.7 ACCOUNTS

1 Cash in banks			
A. Banks located in the United States	$_____	5700	
B. Other banks designated by the Commission			
Name(s) _____	5710	_____ 5720	$_____ 5730
2. Securities			
A. In safekeeping with banks located in the United States	$_____	5740	
B. In safekeeping with other banks designated by the Commission			
Name(s) _____	5750	_____ 5760	_____ 5770
3. Equities with registered futures commission merchants			
A. Cash	$_____	5780	
B. Securities	_____	5790	
C. Unrealized gain (loss) on open futures contracts	_____	5800	
D. Value of long option contracts	_____	5810	
E. Value of short option contracts	(_____	5815)	_____ 5820
4 Amounts held by clearing organizations of foreign boards of trade			
Name(s) _____	5830		
A. Cash	$_____	5840	
B. Securities	_____	5850	
C. Amount due to (from) Clearing house daily variation	_____	5860	
D. Value of long option contracts	_____	5870	
E. Value of short option contracts	(_____	5875)	_____ 5880
5 Amounts held by members of foreign boards of trade			
Name(s) _____	5890		
A. Cash	$_____	5900	
B. Securities	_____	5910	
C. Unrealized gain (loss) on open futures contracts	_____	5920	
D. Value of long option contracts	_____	5930	
E. Value of short option contracts	(_____	5935)	_____ 5940
6. Amounts with other depositories designated by a foreign board of trade			
Name(s) _____	5950		_____ 5960
7 Total funds in separate section 30.7 accounts (page 13, line 2)			$_____ 5970

A. If any securities shown above are other than the types of securities referred to in Commission regulation 1.25, attach a separate schedule detailing the obligations shown on each such line.

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-FCM
STATEMENT OF FINANCIAL AND OPERATIONAL DATA
AS OF _____

1. The registrant carries the following types of trading accounts:
(Check appropriate box for each and show accounts to nearest hundred)

	Yes	No	No. of Accounts	
A. Customers trading on U.S. commodity exchanges	☐	☐	_____	8015
B. Noncustomers trading on U.S. commodity exchanges	☐	☐	_____	8025
C. Customers trading on foreign commodity exchanges	☐	☐	_____	8035
D. Noncustomers trading on foreign commodity exchanges	☐	☐	_____	8045
E. Any type of account trading dealer options	☐	☐	_____	8055
F. Company-owned commodity trading accounts	☐	☐	_____	8065

2. Undermargined accounts (use FCM-established levels)

	Number		Total Amount	
A. Customers trading on U.S. commodity exchanges	_____	8100	$_____	8105
B. Customers trading on foreign commodity exchanges	_____	8110	$_____	8115
C. Noncustomers trading on all commodity exchanges	_____	8120	$_____	8125

3. Uncleared trades at commodity exchange clearing organizations (foreign markets included)

Board of Trade		Number of Contracts		Gain (Loss) at Current Settlement	
_____	8200	_____	8205	$_____	8210
_____	8215	_____	8220	$_____	8225
_____	8230	_____	8235	$_____	8240
_____	8245	_____	8250	$_____	8255
_____	8260	_____	8265	$_____	8270

4. Trades executed and cleared for which accounts have not been identified (unprocessed items)

Number of contracts _____ 8300 Gain (Loss) at current settlement $_____ 8305

5. Trade errors written off to error account

	Number of Contracts		Gain (Loss)			Number of Contracts		Gain (Loss)	
Current month	_____	8340	$_____	8345	Current quarter	_____	8350	$_____	8355

6. Bank account reconciling amounts unresolved for more than 30 days

No. of debits ____ 8360 Amount $_____ 8365 No. of credits ____ 8370 Amount $_____ 8375

7. Carrying broker reconciling amounts unresolved for more than 30 days

No. of debits ____ 8380 Amount $_____ 8385 No. of credits ____ 8390 Amount $_____ 8395

8. Letters of credit deposited as margin with commodity clearing organizations

Customers' accounts $_____ 8400 House accounts $_____ 8410

(10-27-87)

9. Net income: Current month $_____ |8500| Fiscal year-to-date $_____ |8510|

10. Are there any reductions in permanent capital or subordinated debt contemplated within the next six months?

|__| Yes |__| No |8520| If yes, attach a complete explanation.

11. Will any subordinated debt be maturing within the next six months?

|__| Yes |__| No |8530| If yes, attach a schedule of such amounts and a statement as to whether additional subordinated debt or permanent capital will be substituted.

12. Equity Capital Withdrawal Restriction

A. Amounts required to be segregated or set aside in separate accounts (page 8, line 23.C)	$_____	|8540|	
B. 7% of amount shown on line A.	$_____	|8550|	
C. Enter the greater of $60,000 or the amount on line B.		$_____	|8560|
D. Capital to be withdrawn during the next 6 months		_____	|8570|
E. Subordinated debt maturing during the next 6 months		_____	|8580|
F. Adjusted net capital needed to permit withdrawal (add lines C. through E.)		$_____	|8590|

13. Computation of Compliance with Debt-Equity Ratio (Regulation 1.17(d))

This section should be completed only by those FCMs that carry subordinated debt or which have negative ownership equity.

A. Total satisfactory subordinated debt (page 5, line 31.A)	$_____	|8600|
B. Total ownership equity (page 5, line 36)	_____	|8610|
C. Debt-equity total (add lines A. and B.)	$_____	|8620|
D. Excess net capital (page 8, line 24)	_____	|8630|
E. Required debt-equity total (subtract line D. from line C.)	$_____	|8640|
F. Total ownership equity	$_____	|8650|
G. Subordinated debt that qualifies as equity capital (Regulation 1.17(d)(1))	_____	|8660|
H. Add lines F. and G.	_____	|8670|
I. 30% of line E.	_____	|8680|
J. Excess equity capital (deficiency) (subtract line I. from line H.)	$_____	|8690|
K. Debt/equity ratio (divide line H. by line E.)	_____%	|8695|

14. Correspondent Brokers

A. List all futures commission merchants and foreign brokers through which the FCM clears commodity transactions

_____ |8700| _____ |8705| _____ |8710|
_____ |8715| _____ |8720| _____ |8725|

B. List all futures commission merchants for which the FCM clears commodity transactions

_____ |8750| _____ |8755| _____ |8760|
_____ |8765| _____ |8770| _____ |8775|

15. Contingent Liabilities and Material Subsequent Events

Describe contingent liabilities as of the report date and all transactions, commitments or activities subsequent to the date of the report which materially impact on the net capital or segregated funds reported by the registrant. |8790|

_____
_____
_____

Exhibit B

FORM 1-FR-IB (Part A) |0005|

OMB No. ####-####

Name of Company:	Employer ID No:	NFA ID No:
_____ |0010|	_____ |0020|	_____ |0030|
Address of Principal Place of Business:	Person to Contact Concerning This Report:	
_____	_____	|0040|
_____	Telephone No:	
_____ |0050|	_____	|0060|

1. Report for the period beginning _____ |0070| and ending _____ |0080|

2. Type of report: |0090| |__| Certified |__| Regular quarterly/semiannual

   |__| Special call by: _____ |__| Other -- Identify: _____

3. Check whether |0095| |__| Initial filing |__| Amended filing

4. Name of IB's Designated Self-Regulatory Organization: _____ |0100|

5. Name(s) of consolidated subsidiaries and affiliated companies:

Name	Percentage Ownership	Line of Business
_____ |0110|	_____ |0120|	_____ |0130|
_____ |0140|	_____ |0150|	_____ |0160|
_____ |0170|	_____ |0180|	_____ |0190|
_____ |0200|	_____ |0210|	_____ |0220|
_____ |0230|	_____ |0240|	_____ |0250|

The introducing broker, or applicant for registration therefor, submitting this Form and its attachments and the person whose signature appears below represent that, to the best of their knowledge, all information contained therein is true, correct and complete. It is understood that all required items, statements and schedules are integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted. It is further understood that any intentional misstatements or omissions of facts constitute Federal Criminal Violations (see 18 U.S.C. 1001).

Signed this _____ day of _____, 19___

Manual signature_____

Type or print Name_____

|__| Chief Executive Officer |__| Chief Financial Officer Corporate Title _____

|__| General Partner |__| Sole Proprietor

AUTHORITY: Sections 4c, 4d, 4f, 4g, 5a, 8a, and 17 of the Commodity Exchange Act (7 U.S.C. §§ 6c, 6d, 6f, 6g, 7a, 12a, and 21))

(10-27-87)

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-IB
STATEMENT OF FINANCIAL CONDITION
AS OF _____

Assets

	Current		Non-Current		Total	
1. Cash	$	1030	$	1047	$	1052
2. Securities, at market value		1055		1060		1065
3. Securities purchased under resale agreements		1115		1120		1125
4. Receivables from FCMs and foreign brokers						
A. Equity in trading accounts		1195		1200		1205
B. Commissions and other fees receivable		1206		1207		1208
C. Security deposits (50% allowed as current)		1209		1210		1215
D. Amounts due from foreign brokers		1260		1265		1270
5. Inventories		1400		1405		1410
6. Secured demand notes (Value of collateral $ 1415 Safety factor $ 1420)		1425		1430		1435
7. Other receivables and advances						
A. Notes receivable		1455		1460		1465
B. Commissions receivable		1470		1475		1480
C. Receivables from employees and associated persons		1485		1490		1495
D. Dividends and interest		1515		1520		1525
E. Taxes receivable		1530		1535		1540
F. Receivables from subsidiaries & affiliates		1545		1550		1555
G. Other (itemize on a separate page)		1560		1565		1570
H. Allowance for doubtful accounts			(	1575)	(	1580)
8. Exchange memberships, at cost (Market value $ 1600)				1605		1610
9. Investments in subsidiaries				1615		1620
10. Plant, property, equipment and capitalized leases (cost, net of accumulated depreciation and amortization of $ 1625)		1630		1635		1640
11. Prepaid expenses and deferred charges				1645		1650
12. Other assets (itemize on a separate page)		1655		1660		1665
13. Total Assets	$	1670	$	1675	$	1680

(10-27-87)

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-IB
STATEMENT OF FINANCIAL CONDITION
AS OF _____

Liabilities & Ownership Equity

Liabilities

14. Loans payable	$	2025
15 Amounts owed futures commission merchants and other brokers		2100
16 Accounts payable, accrued expenses and other payables		
A. Accounts payable and accrued expenses		2120
B. Salaries, wages, commissions and bonuses payable		2130
C. Taxes payable		2140
D. Deferred income taxes		2150
E. Security deposits held		2160
F. Other (itemize on a separate page)		2210
17 Collateralized notes and mortgages		2230
18 Securities sold under agreements to repurchase		2240
19. Liabilities subordinated to claims of general creditors		
A. Subject to a satisfactory subordination agreement		2260
B. Not subject to a satisfactory subordination agreement		2270
20. Total liabilities	$	2280

Ownership Equity

21. Sole proprietorship	$	2500		
22. Partnership				
A. Partnership contributed and retained capital	$	2510		
B. Additional capital per partnership agreement (equities in partners' trading accounts, etc.)		2515		
C. Total	$	2520		
23. Corporation				
A. Preferred stock	$	2530		
B. Common stock		2535		
C. Additional paid in capital		2540		
D. Retained earnings		2545		
E. Subtotal	$	2550		
F. Less: capital stock in treasury		2555		
G. Total	$	2560		
24. Total ownership equity (line 21, 22.C. or 23.G)			$	2570
25. Total liabilities and ownership equity (add lines 20 and 24)			$	2580

(10-27-87)

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-IB

STATEMENT OF THE COMPUTATION OF THE MINIMUM CAPITAL REQUIREMENTS

AS OF _____

Net Capital

1. Current assets (page 2, line 13)			$	3000
2. Total liabilities (page 3, line 20)		$ 3030		
3. Deductions from total liabilities				
A. Liabilities subject to satisfactory subordination agreements (page 3, line 19.A)	$ 3040			
B. Certain deferred income tax liability (see regulation 1.17(c)(4)(iv))	3050			
C. Certain current income tax liability (see regulation 1.17(c)(4)(v))	3060			
D. Long term debt pursuant to regulation 1.17(c)(4)(vi)	3070			
E. Total deductions		(3080)		
F. Adjusted liabilities				3090
4. Net capital (subtract line 3.F. from line 1)			$	3100

Charges Against Net Capital

5. Charge against inventories held, fixed price commitments, and advances against cash commodity contracts (see Regulation 1.17(c)(5)(i) and (ii) for specific charge. If charge is applicable, attach statement showing calculation of charge)				3155
6. Charges as specified in section 240.15c3-1(c)(2)(vi) and (vii) against securities owned by firm:	Market Value	Charge		
A. U.S. and Canadian government obligations	$ 3160	$ 3170		
B. State and Municipal government obligations	3180	3190		
C. Certificates of deposit, commercial paper and bankers' acceptances	3200	3210		
D. Corporate obligations	3220	3230		
E. Stocks and warrants	3240	3250		
F. Other securities charges	3260	3270		
G. Total charges (add lines 6.A. - 6.F.)				3280
7. Charges as specified in section 240.15c3-1(c)(2)(iv)(F)				
A. Against securities purchased under agreements to resell				3290
B. Against securities sold under agreements to repurchase				3300
8. Charges on securities options as specified in section 240.15c3-1, Appendix A				3310

9. Charges against open commodity positions in the IB's account
   A. Uncovered exchange-traded futures and granted options contracts -- percentage of margin requirements applicable to such contracts _____ |3350|

   B. Ten percent (10%) of the market value of commodities which are the subject of commodity options not traded on a contract market carried long by the applicant or registrant which has value and such value increased adjusted net capital (this charge is limited to the value attributed to such options) _____ |3380|

   C. Commodity options which are traded on contract markets and carried long in proprietary accounts. Charge is the same as would be applied if applicant or registrant was the grantor of the options (this charge is limited to the value attributed to such options) _____ |3390|

10. Five percent (5%) of all unsecured receivables from unregistered futures commission merchants or securities brokers or dealers _____ |3410|

11. Secured demand note deficiency _____ |3420|

12. Adjustment to eliminate benefits of consolidation (explain on separate page) _____ |3430|

13. Total charges (add lines 5 through 12) $_____ |3440|

Net Capital Computation

14. Adjusted net capital (subtract line 13 from line 4) $_____ |3500|

15. Net capital required (show $40,000 if IB is not a member of a designated self-regulatory organization) 20,000 |3600|

16. Excess net capital (subtract line 15 from line 14) $_____ |3610|

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-IB
STATEMENT OF INCOME (LOSS)
FOR THE PERIOD FROM _____ THROUGH _____

Revenues		
1. Commissions and brokerage		
A. Commodity transactions on U.S. commodity exchanges	$	4000
B. Commodity transactions on foreign commodity exchanges		4010
C. Other activities (describe on a separate page)		4030
2. Firm trading accounts		
A. Commodity transactions		4040
B. Securities transactions		4050
C. Other firm trading (describe on a separate page)		4060
3. Income from advisory services		4070
4. Interest and dividends		4105
5. Other income (itemize on a separate page)		4110
6. Total revenue	$	4120
Expenses		
7. Sales personnel commissions	$	4200
8. Clerical and administrative employees' expenses		4220
9. Commissions to FCMs		4230
10. Occupancy and equipment costs		4250
11. Promotional costs		4260
12. Communications		4270
13. Data processing		4280
14. Bad debt expense		4290
15. Trade errors		
A. Customers' accounts		4300
B. Other		4310
16. Interest		4320
17. Other expenses (itemize on a separate page)		4330
18. Total expenses	$	4340
19. Income (loss) before income taxes and items below	$	4400
20. Provision for income taxes		4410
21. Equity in earnings (losses) of unconsolidated subsidiaries, less applicable tax		4420
22. Extraordinary gains (losses), less applicable tax		4430
23. Cumulative effect of changes in accounting principles, less applicable tax		4440
24. Net income (loss)	$	4450

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-IB
STATEMENT OF CHANGES IN OWNERSHIP EQUITY
FOR THE PERIOD FROM _____ THROUGH _____

1. Total ownership equity as previously reported	$	4500
2. Net income (loss) for period		4510
3. Other additions to capital (explain below)		4520
4. Dividends		4530
5. Other deductions from capital (including partner and proprietary withdrawals) (explain below)		4540
6. Balance (page 3, line 24)	$	4550

Date	Explanation	Amount

+ + + +

Name of Company:	Employer ID No:	NFA ID No:

FORM 1-FR-IB
FINANCIAL AND OPERATIONAL DATA
AS OF _____

1. Are IB's obligations guaranteed by an FCM pursuant to regulation 1.10(j)? |__| Yes |__| No |8150|
   If Yes, show name of FCM _____ |8155|

2. Does the IB trade for its own account? |__| Yes |__| No |8160|
   If Yes, name(s) of FCM through which it clears its trades:
   _____ |8165|

3. Trade errors written off to error account

	Number of Contracts	Gain (Loss)
Current month	_____ |8340|	$_____ |8345|
Current quarter	_____ |8350|	$_____ |8355|

4. Bank account reconciling amounts unresolved for more than 30 days

   No. of debits ____ |8360| Amount $_____ |8365| No. of credits ____ |8370| Amount $_____ |8375|

5. Clearing broker reconciling amounts unresolved for more than 30 days

   No. of debits ____ |8380| Amount $_____ |8385| No. of credits ____ |8390| Amount $_____ |8395|

6. Net income: Current month $_____ |8500| Fiscal year-to-date $_____ |8510|

7. Are their any reductions in permanent capital or subordinated debt contemplated within the next six months?

   |__| Yes |__| No |8520| If yes, attach a complete explanation.

8. Will any subordinated debt be maturing within the next six months?

   |__| Yes |__| No |8530| If yes, attach a schedule of such amounts and a statement as to whether additional subordinated debt or permanent capital will be substituted.

9. Contingent Liabilities and Material Subsequent Events
   Describe contingent liabilities as of the report date and all transactions, commitments or activities subsequent to the date of the report which materially impact on the net capital reported by the registrant. |8790|

_____
_____
_____

FORM 1-FR-IB (Part B)

Guarantee Agreement

In consideration for the introduction of customer and option customer accounts by _____, an introducing broker, to _____, a futures commission merchant registered with the Commission as such, and in satisfaction of the adjusted net capital requirements with which the introducing broker otherwise would have to comply pursuant to Commission Regulation §1.17, 17 C.F.R. §1.17, the futures commission merchant guarantees performance by the introducing broker of, and shall be jointly and severally liable for, all obligations of the introducing broker under the Commodity Exchange Act, as it may be amended from time to time, and the rules, regulations and orders which have been or may be promulgated thereunder with respect to the solicitation of and transactions involving all customer and option customer accounts of the introducing broker entered into on or after the effective date of this agreement.

This guarantee agreement shall be enforceable regardless of the subsequent incorporation, merger or consolidation of either the futures commission merchant or the introducing broker, or any change in the composition, nature, personnel or location of the futures commission merchant or the introducing broker.

For purposes of this agreement only, the futures commission merchant shall be deemed to be the agent of the introducing broker upon whom process may be served in any action or proceeding against the introducing broker under the Commodity Exchange Act and the rules, regulations and orders promulgated thereunder.

The futures commission merchant acknowledges that at the time of execution of this guarantee agreement there are not any conditions precedent, concurrent or subsequent affecting, impairing or modifying in any manner the obligations of the futures commission merchant hereunder, or the immediate taking effect of this agreement as the entire agreement of the futures commission merchant with respect to guaranteeing the introducing broker's

obligations as set forth herein to the Commission and to the introducing broker's customers and option customers under the Commodity Exchange Act.

If this guarantee agreement is filed in connection with an application for initial registration as an introducing broker, this agreement shall be effective as of the date registration is granted to the introducing broker. If this guarantee agreement is filed other than in connection with an application for initial registration as an introducing broker, it shall be effective as of the date agreed to by the futures commission merchant and the introducing broker as set forth below.

This guarantee agreement is binding and is and shall remain in full force and effect unless terminated in accordance with the rules, regulations or orders promulgated by the Commission with respect to such terminations. Termination of this agreement will not affect the liability of the futures commission merchant with respect to obligations of the introducing broker incurred on or before the date this agreement is terminated.

Dated:	Dated:
_____	_____
Futures Commission Merchant	Introducing Broker
Address:	Address:
_____	_____
_____	_____
By: _____	By: _____
_____ Sole Proprietor	_____ Sole Proprietor
_____ General Partner	_____ General Partner
_____ Chief Financial Officer	_____ Chief Financial Officer
_____ Chief Executive Officer	_____ Chief Executive Officer

Effective Date: _____

(10-16-87)

[FR Doc. 87-26689 Filed 11-18-87; 8:45am]
BILLING CODE 6351-01-C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-25118; File No. S7-25-87]

Multiple Trading of Options

AGENCY: Securities and Exchange Commission.

ACTION: Postponement of date of public hearing and dates for submission of comments and requests to appear at the hearing.

SUMMARY: On June 18, 1987, the Securities and Exchange Commission ("Commission") issued a release commencing a proceeding on the multiple trading of options to consider whether to (1) adopt a policy permitting the multiple trading of options on exchange-listed stocks; and/or (2) amend the rules of the options exchanges to remove restrictions on the multiple trading of options.[1] A public hearing in connection with the proceeding was scheduled to take place on November 23, 1987.[2] The Commission announced today that it has postponed the public hearing until February 1988. In view of the market events of the past several weeks, the Commission believes a postponement is desirable in order that interested parties may have additional time to develop their testimony and prepare written comments. The Commission will make an announcement at a later time regarding the date of the hearing and deadlines for submission of written statements, requests to appear at the public hearing, and all other written comments.

FOR FURTHER INFORMATION CONTACT: Holly H. Smith, Esq., (202) 272-2406, Division of Market Regulation, Securities and Exchange Commission, Mail Stop 5-1, 450 Fifth Street NW., Washington, DC 20549.

By the Commission.

Jonathan G. Katz,

Secretary.

Dated: November 13, 1987.

[FR Doc. 87-26687 Filed 11-18-87; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849.

[2] *See* Securities Exchange Act Release No. 24931 (September 21, 1987), 52 FR 36045.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-87-11]

Drawbridge Operation Regulations; Bayou La Batre, AL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Bayou La Batre and the Alabama Highway Department (AHD), the Coast Guard is considering a change to the regulation governing the operation of the lift span bridge on State Highway 188 over Bayou La Batre, mile 2.3 at Bayou La Batre, Mobile County, Alabama, by permitting the draw to remain closed to navigation from 6:30 to 8:30 a.m. and 2 to 5 p.m. Monday through Saturday, and from 8 p.m. to 4 a.m. daily. Presently the draw opens on signal; except that, the draw need not be opened from 8 p.m. to 4 a.m., and from September 15 through June 15 from 7 to 8 a.m. and 2:15 to 3:30 p.m. Monday through Friday except holidays. This proposal is being made because there is a need to relieve major vehicular traffic problems in the area during the rush hour periods. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before January 4, 1988.

ADDRESS: Comments should be mailed to Commander (ob), Eight Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, at the address given above; telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eight Coast Guard District, will evaluate all communications received and determine a course of final action of this proposal. This proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Mr. John Wachter, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the bridge in the closed position is 6.7 feet above mean high water. Navigation through the bridge consists primarily of commercial fishers and pleasure boats. An inspection of the bridge site and side street approaches has verified that vehicular traffic has increased significantly during the peak vehicular traffic hours of 6:30 to 8:30 a.m. and 2 to 5 p.m. Therefore, a need exists to increase the bridge clousure time to navigation in order to relieve congested vehicular traffic created by the bridge, which is located on the main roadway in the downtown area of the City of Bayou La Batre.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that there have been no requests to open the bridge between 8 p.m. and 4 a.m. since 1955, and the bridge opens an average of only 7.6 times per day, otherwise, for the passage of vessels. These vessels can easily schedule passages to avoid the proposed closure periods. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.103 is revised to read as follows:

§ 117.103 Bayou La Batre.

The draw of the S188 bridge, mile 2.3 at Bayou La Batre, shall open on signal; except that, the draw need not be opened from 8 p.m. to 4 a.m. daily, and from 6:30 to 8:30 a.m. and from 2 to 5 p.m. Monday through Saturday except holidays.

Dated: November 6, 1987.

Peter J. Rots,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 87-26729 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-87-59]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the City of Jacksonville Beach, the Coast Guard is considering a change to the regulations governing the McCormick Bridge, mile 747.5 at Jacksonville, Florida by permitting the number of openings to be limited during certain periods. This proposal is being made because periods of peak vehicular traffic have increased. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before January 4, 1988.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying on the flourth floor of the Brickell Plaza Federal Building 909 SE 1st Avenue, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536-45103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The bridge presently opens on signal except that during April, May, October, and November from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw opens only on the hour and half-hour. On weekends and federal holidays during these months, from 12 noon until 6 p.m., the draw opens only on the hour and half-hour. The proposed rule would add 30 minutes to the existing morning and evening weekdays closed periods.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulation exempts tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for-part 117 continues to read as follows:

Authority 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.261(b) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(b) *McCormick Bridge, mile 747.5 at Jacksonville Beach.* The draw shall open on signal; except that, during April, May, October, and November, from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. During April, May, October, and November, from 12 noon to 6 p.m. Saturdays, Sundays, and federal holidays, the draw need open only on the hour and half-hour.

* * * * *

Dated: November 5, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District, Acting.

[FR Doc. 87-26730 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3292-9; KY-043]

Approval and Promulgation of Implementation Plans; Kentucky; Jefferson County Regulation 2.08, Permit Fees and Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve changes in Jefferson County Regulation 2.08, Permit Fees and Renewal, submitted to EPA on March 20, 1987. These amendments entail a complete realignment of permit fees and renewal frequencies. After conducting a study of the average costs involved in establishing a permit, the Jefferson County Air Pollution Control District determined that these revisions to Regulation 2.08 are necessary to cover the costs of reviewing and processing permit applications, as well as the costs of implementing and enforcing such permit conditions. Section 110(a)(2)(K) of the Clean Air Act provides the authority for the establishment of permit fees.

DATE: Comments must be received on or before December 21, 1987.

ADDRESSES: Comments may be mailed to Pamela E. Adams, Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Kentucky Natural Resources and Environmental Protection Cabinet, Department of Environmental Protection, 18 Reilly Road, Frankfort, Kentucky 40601

Jefferson County, Kentucky Physical and Environmental Services, Air Pollution Control District, 914 East Broadway, Louisville, Kentucky 40204

FOR FURTHER INFORMATION CONTACT: Pamela E. Adams, Environmental Protection Agency, Region IV, Air Programs Branch at the above listed address or at (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On March 20, 1987, the Kentucky Division of Air Pollution Control submitted to EPA revisions to Jefferson County Regulation 2.08, Permit Fees and Renewal. Regulation 2.08 is part of the Kentucky State Implementation Plan approved under section 110 of the Clear Air Act. These amendments were submitted to Kentucky by the Jefferson County Air Pollution Control District on March 2, 1987. Opportunity for public participation and input relevant to these amendments was provided through a public hearing conducted on December 17, 1986, at the Air Pollution Control District of Jefferson County. The revisions to Regulation 2.08, Permit Fees and Renewal, incorporate a complete realignment of permit fees and renewal frequencies. Section 110(a)(2)(K) of the Clean Air Act provides the authority for the establishment of permit fees.

Section 110 (a)(2)(K) of the Clean Air Act provides that a state implementation plan can be approved by EPA if it "requires the owner or operator of each major stationary source to pay to the permitting authority as a condition of any permit required under this Act a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, whether before or after the date of enactment of this subparagraph, the reasonable costs (incurred after such date of enactment) of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action)." The Jefferson County Air Pollution Control District conducted a study of the average permitting costs associated with meeting the requirements of section 110(a)(2)(K) of the Clean Air Act. As a result of this study, the Jefferson County Air Pollution Control District revised Regulation 2.08, Permit Fees and Renewal, to compensate for increased permitting costs.

Section 1 of Regulation 2.08 was revised to increase and redistribute permit fees. A fee was also established for demolition/renovation of asbestos containing structures. Section 1(a) was revised to increase the operating permit fee from $15 to $50 per process. The stipulation was added to section 1(a) that these permits are for major and minor sources. An amendment to section 1(b) of Regulation 2.08 increased the fee for construction permits from $15 to $450. Furthermore, section 1(b) was amended to state that the $450 fee is "for all affected facilities which singly or collectively have the potential to be emitters of 100 tons per year or more of any pollutant." A new subsection, section 1(c), was added to Regulation 2.08 to state that the construction permit fee for sources not covered by section 1(b) will be $200. Section 1(d) of Regulation 2.08, labelled as section 1(c) prior to the amendments discussed in this notice, was amended to increase the fee for banking permits from $15 to $50. The section labelled 1(d) prior to the amendments discussed in this notice was deleted. Prior to this deletion, this section stated that there would be a "$2000/year maximum operating permit fee per source." A new subsection, section 1(e), was added to Regulation 2.08 to establish a $100 fee for the "demolition/renovation of asbestos containing structures." As a result of this new subsection, sections previously labelled section 1(e) and section 1(f) were labelled as section 1(f) and section 1(g), respectively.

At the December 17, 1986, public hearing held in Jefferson County, Kentucky to consider the amendments in this notice, two comments on Regulation 2.08 section 1 were made. One person suggested that the asbestos permit fee "should be removed pending review of the approach to regulation of asbestos projects." This comment was rejected "since asbestos-removal permits will be retained and permit fees offset inspection fees." Another suggestion was made to retain the $2000/year maximum operating permit fee to provide an upper limit "since there is some variation in how the permits are issued on a given process." District engineers rejected this fee limit. Their cost "study used the total hours needed to issue all permits in a class, as well as their number, and derived the fee for each permit." The upper fee limit was deleted from Regulation 2.08 section 1 to avoid shifting the fee burden to others.

Section 2 of Regulation 2.08 was revised to change renewal conditions for permits. Section 2(a) was amended to state that "major sources shall renew operating permits every two years." Prior to this revision, major sources were required to renew operating permits every year. A similar amendment to section 2(b) requires minor sources to renew operating permits every four years rather than every three years. A new subsection, section 2(c), states that "the District, at its discretion, may adjust individual permit time periods to conform with its inspection schedules of sources." Section 2(d) of Regulation 2.08, previously labelled as section 2(c), was amended to state that "permits issued under this regulation are not transferrable." This revision was adopted for clarification purposes as the previous version read "this section" rather than "this regulation." Section 2(e) was added to state that "banking permits are not subject to periodic renewal."

Only one comment on Regulation 2.08 section 2 was offered at the December 17, 1986, public hearing. It was suggested that section 2(d) be transferred to Regulation 2.03, Permit Requirements-General or alternately, revised to read "Permits issued under Regulation 2.03 are not transferrable." This comment was rejected since the amended wording of section 2(d) is almost identical to the previous wording. These amendments to Regulation 2.08 section 2 were made to reduce expenditures in the areas of paperwork and human resources. Inspection frequencies have not been amended and will remain every year for major sources and every other year for minor sources.

Proposed Action: EPA is today proposing to approve regulatory changes to Jefferson County Regulation 2.08, Permit fees and Renewal. These changes increase several permit fees and decrease renewal frequencies. The Jefferson County Air Pollution Control District determined that these revisions are necessary to cover the costs of reviewing and processing permit applications, as well as the costs of implementing and enforcing such permit conditions.

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. (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, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Date: September 24, 1987.

Lee A DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87–26726 Filed 11–18–87 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Agalinis acuta (Sandplain Gerardia) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Agalinis acuta* (sandplain gerardia), to be an endangered species, and thereby provide the species protection under the authority contained in the Endangered Species Act of 1973, as amended. This species is known to occur at two sites on Cape Cod, Massachusetts, two sites on Long Island, New York, and one site in Baltimore County, Maryland. Historically, it also occurred in Connecticut and Rhode Island, but is now believed to be extirpated in these states. The species is endangered by changing land use patterns, residential and commercial development, and encroachment of woody vegetation. Historically, grazing by sheep and cattle and periodic burning of the coastal grasslands and pitch pine-scrub oak forests maintained large areas in early stages of succession. Sandy open areas free of dense competing vegetation are required for successful growth and establishment of *Agalinis acuta*. Changing land use patterns and residential development, which now necessitate the suppression of fires, have significantly altered and reduced the species' required habitat. Areas subjected to periodic disturbance, such as roadside rights-of-way, airport perimeters, power lines, etc., now offer the best hope of finding as yet undiscovered populations. Due to the sensitivity and vulnerability of the few known populations, critical habitat is not being determined. Comments are solicited.

DATES: Comments from all interested parties must be received by January 19, 1988. Public hearing requests must be received by January 4, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard W. Dyer at the above address (617/965–5100 or FTS/829–9316).

SUPPLEMENTARY INFORMATION:

Background

The sandplain gerardia is a plant of the snapdragon family (Scrophulariaceae) found at only five locations in Massachusetts, New York, and Maryland. The plant is an annual light-green herb from 4 to 8 inches (1 to 2 decimeters) and occasionally up to 16 inches (four decimeters) tall. The stem is weakly angular and with few branches. The leaves are opposite, linear, and up to 1 inch (2.5 centimeters) long. The pink-purple flowers appear from late August through September, are bell-shaped, 0.4–0.5 inches (1 to 1.3 centimeters) long, and have two yellow lines and red or purple spots in the corolla throat. The corolla lobes are slightly notched at the tip. The species grows in dry, sandy, open areas.

The plant has a very restricted distribution due to its dependency on the periodic disturbance of its specialized and limited habitat. Most collection records for *Agalinis acuta* date back to the late 1800's and early 1900's. Historically, the plant was known from Cape Cod and Nantucket Island to western Long Island, inland to western Middlesex and Worcester Counties, Massachusetts, Providence County, Rhode Island, and Hartford County, Connecticut. Recent collections of the species in Baltimore County, Maryland represent the southern limit of its distribution.

Eight southern New England counties, Long Island, New York, and one northern Maryland County comprise the total known range of the species. The most significant threat to the species has been the continuing loss of grassland habitat along the coastal plain of southern New England, western Long Island, and the offshore islands of Nantucket and Martha's Vineyard. Residential, commercial and recreational development with associated ancillary developments such as shopping facilities, expanding roadways, etc., have rapidly increased in this region in the last 25–30 years.

From the turn of the century to the early 1940's the species was known to have occurred in at least 16 towns and occasionally at several sites within a given town. In spite of intensive field searches for the species in the last few years, only five populations are now known to exist. Year-round residential developments, summer cottages, and marinas now mark historical locations for the plant. The secondary impacts of this increased urbanization, however, have also had a severe impact on the species' remaining habitat. *Agalinis acuta* appears to require periodic disturbance of its habitat to maintain the required sandy open areas free of dense competing vegetation. Historically, the grazing of sheep and cattle throughout the region helped maintain the grasslands or "moors". Extensive fires, often set intentionally, would also help perpetuate the grassland and suppress dense scrub oak and pitch pine forests. Agricultural use of the area has changed, however, and urbanization now requires that fires be quickly put out. Dense woody vegetation has now encroached on many historical sites for the plant. It is probably not by coincidence that the two extant populations on Cape Cod occur on the periphery of old cemeteries, where caretaking activities have helped maintain the sites.

The two known populations on Long Island are also seriously threatened by expanding urbanization and industrial development. The plant was once known from three sites in Rhode Island but has not been reported there since 1941 and is believed to be extirpated from the state (Church and Champlin 1978). The last Connecticut record for the species was in the 1930's, and it is also believed extirpated there (Mehrhoff 1978).

Agalinis acuta was first recommended for Federal listing as a threatened species by the Smithsonian Institution in its December 15, 1974, report to Congress, "Report on Endangered and Threatened Plant Species of the United States." On July 1, 1975, the Service published a Notice of Review in the **Federal Register** (40 FR 27823–27924) of its acceptance of the Smithsonian report as a petition within the context of

former section 4(c)(2) of the Act (petition acceptance is now covered by section 4(b)(3) of the Act, as amended). The sandplain gerardia was recognized as a Category 2 candidate in the Service's **Federal Register** notice of December 15, 1980 (45 FR 82480). Category 2 candidates are defined as taxa for which existing information indicates the possible appropriateness of proposing to list as endangered or threatened, but for which sufficient information is not presently available to biologically support a proposed rule.

In the past five years intensive field investigations to more thoroughly assess the species' status in southern New England and New York have been undertaken by State natural resource agencies, The Nature Conservancy, private conservation groups and professional and amateur botanists. As a result of this work, *Agalinis acuta* was included in Category 1 of the Service's November 28, 1983, supplement (48 FR 53639) to the 1980 notice and a revised notice of September 27, 1985 (50 FR 39526). Category 1 taxa are defined as species for which sufficient information is on land to support the biological appropriateness for proposing to list. The presence of a small population of this species in Baltimore County, Maryland, has only come to the Service's attention recently. Preliminary information regarding this southernmost population has been provided by the Maryland Natural Heritage Program.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on those petitions, including the one for *A. acuta*, was October 13, 1983. On October 13, 1983, October 12, 1984, October 11, 1985, October 10, 1986, and again on October 13, 1987, the petition finding was made that listing *Agalinis acuta* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1988; this proposed rule constitutes the finding that the petitioned action is warranted, and the Service proposes to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Agalinis acuta* Pennell (sandplain gerardia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most significant threat to *Agalinis acuta* is the direct loss or alteration of its coastal grassland habitats. The plant is found in open sandy grasslands of southern New England and Long Island and is one of several rare species associated with the "coastal prairie" habitat type (Crow 1982). Six other plants considered by the State of Massachusetts Natural Heritage Program as being rare and threatened occur on sandplain grasslands (Coddington and Field 1978). In addition another candidate for Federal listing, the regal fritillary butterfly (*Speyeria idalia*), is also associated with the coastal grasslands habitat.

Land use practices have changed significantly throughout much of the coastal plain region since the turn of the century. During the early 1800's extensive areas of the coastal grasslands were used as "commonlands" for pasturing of sheep and cattle. Individual farms and private landholdings became established during the mid 1800's but grazing and tilling for agricultural crops were still predominant. The late 1800's saw a decline in agriculture; however, the hunting of shorebirds became an important activity on the abandoned fields. Through the early 1920's extensive areas of the "moorlands" were burned intentionally in late summer to attract feeding birds to the cooked fruits of heathland plants.

The grazing and burning of the grasslands through the mid 1900's was an important factor in maintaining the coastal plain ecosystem. These periodic disturbances were also essential to maintaining sandy areas critical to the existence of *Agalinis acuta*. Intensive agricultural use of the grasslands today has greatly diminished and fires are accidental, infrequent, and quickly suppressed. Residential homes, summer cottages, and commercial developments have claimed many areas where *Agalinis acuta* formerly occurred. The suppression of fires has also allowed woody vegetation to encroach upon the open grasslands, further reducing available suitable habitat for the growth and reproduction of *Agalinis acuta*.

The one population of this species in Maryland occurs at Soldier's Delight, an area of unusual vegetation on serpentine-derived soil. It is a State Natural Environmental Area.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Although historical collections were made at many sites on Cape Cod and the islands of Nantucket and Martha's Vineyard, scientific collecting does not appear to have been a major cause of the species' decline. Because only five small populations are now known to occur, however, all of which are located in easily accessible sites, the existing populations could be threatened by exploitation for educational or scientific purposes.

C. *Disease or predation.* One of the populations on Long Island, New York, which is also at the largest of the five known sites, appears to be heavily browsed by rabbits and/or deer. It is not yet known, however, if the effect is beneficial or deleterious since wildlife may act as seed dispersal agents or browse competing vegetation (Zaremba 1984).

D. *The inadequacy of existing regulatory mechanisms.* None of the States in which the five populations currently exist, or from which the plant is believed to be extirpated, officially list *Agalinis acuta* as endangered or threatened. Unofficial lists for four of the States involved recognize the plant as endangered. Because of its recent discovery in Maryland, there has been no recognition of its status there. Local efforts by the Massachusetts Natural Heritage Program, under the Division of Fisheries and Wildlife, and by the Long Island Chapter of The Nature Conservancy have contributed significantly to protecting the few known populations by contacting local landowners and seeking support for conserving the plants. The Massachusetts Division of Fisheries and Wildlife has authority to inventory, manage, protect, and administer programs for native plants, and it is anticipated that *Agalinis acuta* will soon be added to the official State list.

Connecticut, Rhode Island, New York, and Maryland have all been determined eligible for cooperative plant agreements as specified under section 6(c)(2) of the Endangered Species Act. A similar plant cooperative agreement with Massachusetts is pending final determination of eligibility. Section 6 cooperative agreements between the appropriate State agencies and the Service will provide opportunities to carry out further conservation programs on behalf of listed species. Listing under

the Endangered Species Act would therefore provide further protection for this species and its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Although it is known that the sandplain gerardia is an annual plant and requires open sandy areas for successful germination and growth, other aspects of the species' biology are not well understood. The small number and size of the existing populations are cause for concern, as natural factors or chance adverse events could have serious impacts on the species' continued existence. Natural successional changes, random destructive events that might severely alter the species' habitats, or any failure in reproduction resulting in genetic depletion could be catastrophic.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation the preferred action is to list *Agalinis acuta* as endangered. Due to the encroachment of woody vegetation on coastal grasslands and rapid residential and commercial development, the few remaining populations are particularly vulnerable and in need of protection. Critical habitat is not proposed to be designated for the reasons outlined below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The Service believes that publication of specific areas in which *Agalinis acuta* occurs would likely subject the species to increased disturbance by curiosity seekers and vandals. These potential threats are of particular significance since the sites are easily accessible, and increased public access would be difficult to control under existing authorities. Consequently, no critical habitat is proposed for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal and State agencies, private conservation organizations and individuals. The Nature Conservancy has already made significant contributions to conserving the species by contacting the owners of land containing known populations in Massachusetts and New York and encouraging them to assist in protecting the sites. Additional recovery measures might include maintaining coastal plain grassland vegetation by controlling the encroachment of woody species and reintroducing the species into areas of historical habitat from which it is now extirpated. Other conservation measures, including required protection efforts by Federal agencies and prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible agency must enter into formal consultation with the Service. There is no known current Federal action that is likely to affect the sites where *Agalinis acuta* exists.

The Act and its implementing regulations found at 50 CFR 17.61 and 17.62 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With certain exceptions, these prohibitions make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered species of plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from an area under Federal jurisdiction and reduce it to possession. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. There is no known commercial trade in *Agalinis acuta* and the Service therefore anticipates few, if any, requests for such permits. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments are particularly sought concerning the following:

(1) Bological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Agalinis acuta*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities that may impact existing populations.

Final promulgation of a regulation on *Agalinis acuta* will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if one is requested within 45 days of the date of publication of this proposed rule. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Church, G.L. and R.L. Champlin. 1978. Rare and endangered vascular plant species in Rhode Island. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Coddington, J. and K.G. Field. 1978. Status Report: *Agalinis acuta* in Massachusetts. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts, 5 pp. Unpublished report.

Crow, G.E. 1982. New England's rare, threatened, and endangered plants. U.S. Government Printing Office, Washington, DC. 129 pp.

Mehrhoff, L.F. 1978. Rare and endangered vascular plant species in Connecticut. U.S. Fish and Wildlife Service, Region 5, Newton Corner, Massachusetts.

Zaremba, R.E. 1984. Site survey summary. New York Heritage Program. Unpublished report.

Author

The author of this proposed rule is Richard W. Dyer, Endangered Species Staff, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 or FTS: 829-9316).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 [Amended]

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Snapdragon family:						
Agalinis acuta	Sandplain gerardia	U.S.A. (CT, MA, MD, NY, RI)	E		NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-26711 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Stephens' Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for Stephens' kangaroo rat (*Dipodomys stephensi*), a small mammal found in southern California. The species has suffered widespread habitat loss and degradation, resulting in small isolated populations. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for Stephens' kangaroo rat. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by January 19, 1988. Public hearing requests must be received by January 4, 1988.

ADDRESS: Comments and materials concerning this proposal should be sent to the U. S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Stephens' kangaroo rat (*Dipodomys stephensi*) is a small mammal of the rodent family Heteromyidae. Like other kangaroo rats, it has a large head, external cheek pouches, elongated rear legs used for jumping, and relatively small front legs. The front feet are frequently used to hold seeds that the animal eats. There are five toes on the hind foot and the tail is 1.45 times the length of the head and body. Stephens' kangaroo rat is distinguished from the sympatric agile kangaroo rat (*Dipodomys agilis*) by a lateral white tail band that is one half or less (rather than one half or more) times the width of the dorsal tail stripe, dusky (rather than dark) soles on the hind feet, a comparatively grizzled appearance to the dorsal tail stripe due to many white hairs, a darker tail tuft due to few white hairs, a smaller ear (averaging 0.5 inch (15 millimeters) in length), and a relatively broad head. The average adult Stephens' kangaroo rat is 11 to 12 inches (277 to 300 millimeters) in length and weighs 2.3 ounces (67 grams) (Bleich 1977).

Stephens' kangaroo rat was first described by Merriam (1907) as *Perodipus stephensi*. The type locality is the San Jacinto Valley, a little west of the town of Winchester. Grinnell (1921) placed the species in the genus *Dipodomys*. Huey (1962) described a kangaroo rat from the San Luis Rey River valley as *Dipodomys cascus*. Lackey (1967a) determined *D. cascus* to be a synonym of *D. stephensi*.

Stephens' kangaroo rat is endemic to an inverted-pear-shaped range encompassing the Perris and San Jacinto Valleys in western Riverside County, and extending into the San Luis Rey and Temecula Valleys in northern San Diego County (Grinnell 1922, Lackey 1967a, O'Farrell 1986, Thomas 1973). Occupied habitats are usually described as sparse slightly disturbed coastal sage scrub or annual grassland. The populations with the highest densities have been found in areas where the herbaceous layer still contains California native annuals, and where perennial cover is less than 30 percent (Hogan 1981). Stephens' kangaroo rat is most commonly associated with *Artemisia californica* and *Eriogonum fasciculatum*. Stephens' kangaroo rat occurs on level or low rolling terrain; it is not found on extremely hard or sandy soils (Lackey 1967a). Bleich (1977) noted that gravel is a common component of soils where the animal is found.

All of the occupied sites found by Thomas (1973) had been previously disturbed, usually by plowing. Remnant populations that survived at the natural edges had reinvaded after the fields had been left fallow. At that time most populations were considered isolated from one another and were found predominantly in the western portions of the range. Rapid urbanization has reinforced this pattern.

Like all kangaroo rats, *D. stephensi* is nocturnal, spending the day in underground burrows and foraging on the surface at night. Pregnant and lactating females have been caught in the spring and summer months (Lackey 1967b). To date, few population density studies have been completed, and none have covered an entire year. Relatively high densities (over 20 per acre or 50 per hectare) have been found during the summer months when the young are out of the nest (Thomas 1975). Hogan (1981) reported fall-winter densities of about 2.5 to 6 per acre (6 to 15 per hectare). According to Dr. Michael J. O'Farrell (WESTEC Services, Las Vegas, pers. comm., 1986), high density areas contain about 4 animals per acre (10 per hectare), and low density areas contain less than 2 per acre (5 per hectare). Most of the occupied range probably has low to moderate density populations.

In its original Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454–58460), the Service included *D. stephensi* in category 2, meaning that information then available indicated that a proposal to determine endangered or threatened status was possibly appropriate, but was not yet sufficiently substantial to support such a proposal. Subsequently, many new data on the species became available, and in its revised Vertebrate Review of September 18, 1985 (50 FR 37958–37967), the Service included *D. stephensi* in category 1, meaning that substantial information is on hand to support the biological appropriateness of proposing to list as endangered or threatened.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to Stephens' kangaroo rat (*Dipodomys stephensi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat and range of Stephens' kangaroo rat have been greatly reduced. The species probably once occurred throughout the coastal sage scrub community of the Perris and San Jacinto Valleys, and up adjoining sandy washes of Southern California. As the flatter plains were developed by people, however, the kangaroo rat became confined to isolated bases of low rolling hills and level ridge tops. Its range may once have encompassed around 717,000 acres (287,000 hectares). This is an approximate figure, based on planimetry of total range, excluding mountain tops. Visual inspection of this former range indicates that about 95 percent of the original habitat is gone.

A considerable portion of the original habitat of *D. stephensi* already had been developed by the time systematic studies began earlier in the century. There are, however, eight general areas where sites, from which the species has been recorded, are concentrated. From north to south, these areas are: (1) March Air Force Base to the Moreno Valley, (2) Lake Perris to the eastern side of the San Jacinto Valley, (3) Lake Mathews to Estelle Mountain, (4) the Lakeview Mountains, (5) the vicinity of Lake Elsinore, (6) Lake Skinner to Temecula, (7) Fallbrook Naval Weapons Annex to the San Luis Rey River, and (8) the vicinity of Lake Henshaw. The first six areas are in Riverside County and the last two in San Diego County.

Only three of these areas still contain substantial habitat for *D. stephensi*. O'Farrell (1986) indicated that approximately 12,600 acres (5,100 hectares) of suitable habitat remain at Lake Henshaw, and that another 4,940 acres (2,000 hectares) appear suitable on the Fallbrook Naval Weapons Annex. The species, however, has probably been extirpated between the latter facility and the San Luis Rey River. Another area of about 17,000 acres (6,800 hectares), between Lake Mathews and Estelle Mountain, still contains some suitable habitat, though much of this acreage has been lost to agriculture and urban development, and some of it has too great a vegetation cover to support the kangaroo rat. The species is likely to be extirpated from this entire area because of several planned housing and agricultural developments, except for 2,500 acres of habitat within a State ecological reserve.

Of the remaining five areas, two, March Air Force Base to Moreno Valley and Lake Skinner to Temecula, evidently no longer support viable populations of *D. stephensi*. The species also has not been recorded at Lake Perris since 1973, and, on the east side of the San Jacinto Valley, it is now restricted mainly to insular patches at the edges of plowed fields. It is similarly restricted in the Lakeview Mountains, where only a few thousand acres are now thought to contain adequate habitat. The last area, in the vicinity of Lake Elsinore, contains some U.S. Bureau of Land Management parcels, but survival of the kangaroo rat there is tenuous because of rapid surrounding urbanization and an expected increase in casual human use (off-road-vehicles already have been noted). Outside of these parcels, the species will be unlikely to survive extensive housing developments. The Devers-Serrano Power line right-of-way passes through this area, but is probably not wide enough to accommodate a viable kangaroo rat population.

Further compounding the fragmented nature of the current distribution is the fact that Stephens' kangaroo rat does not occupy all apparently suitable habitat (Friesen 1985a). Grazing, off-road-vehicle activity (common in southern California), and rodent control programs all reduce habitat suitability.

These habitat losses are likely to continue. An examination of Riverside County's general plan guidelines revealed that 78 percent of the sites where the kangaroo rat has been trapped are zoned for use incompatible with preservation of the species. Only 3 percent of the sites were zoned for vegetation or wildlife protection, and much of this land is not suitable for the kangaroo rat. Within the overall range of Stephens' kangaroo rat, only 6 percent of the land is zoned for uses compatible with the preservation of the species. Because not all of the habitat in the 6 percent is suitable, much less is really protected for the kangaroo rat. Although biological consultants have sometimes located the species and informed appropriate land owners or project proponents, the sites have nonetheless been disked or plowed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be a threat to the species.

C. *Disease or Predation.* Not now known to be applicable. However, many areas of occurrence are adjacent to urban neighborhoods and increased predation from domestic and feral cats can be expected (Friesen 1985b).

D. *The inadequacy of existing regulatory mechanisms.* The California State Fish and Game Commission has listed Stephens' kangaroo rat as

endangered. The California Endangered Species Act of 1985 provides protection from take. This Act also contains provisions which call for a consultation process, similar to Section 7 of the Federal Act, when a State lead agency's project may affect a State-listed species. The regulations implementing the consultation process under the California Endangered Species Act were not completed until June of 1986 and it is unclear as to how effective the Act will be. Few State agencies are expected to propose projects as defined under the State Act. The suggested "mitigation" measures presented in most specific plans consist of preserving habitat in another location. There is thus a constant, ongoing habitat loss.

County zoning restrictions do not now provide adequate protection for the kangaroo rat and its habitat. Although "open space" designations are sometimes made, these can be altered to allow subdivision and development. Only a small fraction of the involved land is currently zoned for uses compatible with the preservation of the kangaroo rat (see "A" above).

Federal lands form only a small part of the range of the species. Although a significant population of *D. stephensi* does occur on the Fallbrook Naval Weapons Annex, the Navy has no established policy regarding the protection of sensitive species. The involved BLM-administered lands are very small and also lack specific protective policies. Restrictions and consultation requirements, such as would be established through coverage of the kangaroo rat by the Endangered Species Act, do not now exist.

E. *Other natural or manmade factors affecting its continued existence.* Coastal sage scrub plant communities may become less sparse through time. As plant density and ground cover increases, patches of habitat would become unsuitable for Stephens' kangaroo rat. The State recreation areas have rodent control programs that probably adversely affect Stephens' kangaroo rat populations. Consultants also have noted the disappearance of kangaroo rat sign due to unknown causes. A hypothesis concerning such unexplained disappearances is that rodenticides have been used.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based upon this evaluation, the preferred action is to list Stephens' kangaroo rat as endangered. Threatened, as opposed to endangered, status would not adequately reflect the drastic decline that already has occurred and the continued rapid habitat loss that is likely to occur in association with human activity. Although certain sites supporting the species receive some protection, these areas have management problems that could adversely affect the kangaroo rat. For the reasons given below, a critical habitat designation is not included in the proposal.

Critical Habitat

Section (4)(a)(3) of the Endangered Species Act, as amended, requires that "critical habitat" be designated "to the maximum extent prudent and determinable," at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent or determinable for *D. stephensi* at this time. For example, as discussed under factor "A" in the "Summary of Factors Affecting the Species," some landowners or project developers have disked or plowed their lands upon the discovery of this species. Populations in other areas have mysteriously disappeared following discovery, possibly due to rodenticide use. Prevention of take, as described in Section 9 of the Endangered Species Act, would be difficult to enforce under these circumstances. Publication of critical habitat descriptions and maps would likely make the species more vulnerable and increase enforcement problems. Affected parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of the species' habitat will be addressed through the recovery process and through the Section 7 jeopardy clause as described below.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

There are several possible Federal involvements with respect to *D. stephensi*. Within the U.S. Bureau of Land Management Metropolitan Project area there are isolated parcels supporting the species (Hicks and Coperrider 1975). Eventually the Bureau may wish to dispose of its holdings within this area. The status of the kangaroo rat could be affected by these land transfers. The Veterans Administration or Federal Housing Administration may finance housing loans in areas where the species now occurs. The U.S. Army Corps of Engineers may permit or carry out flood control projects in sandy washes where the species has been found. In order to facilitate survival of the kangaroo rat on public lands, it would be necessary to carry out conducive management activities, such as preserving natural habitat where it now exists, conducting controlled burns to keep vegetation at the low densities favored by the species, and restoring native bunch grasses.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver,

carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Karla Kramer, U.S. Fish and Wildlife Service, 24000 Avila Road, Laguna Niguel, California 92656 (714/643–4270 or FTS 796–4270).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "Mammals," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
MAMMALS							
Rat, Stephens' kangaroo	*Dipodomys stephensi*	U.S.A. (CA)	Entire	E		NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–26712 Filed 11–18–87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 223
Thursday, November 19, 1987

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

Office of the Secretary

[Docket No. 87-405]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is revising one of its Privacy Act Systems of Records maintained by the Animal and Plant Health Inspection Service (APHIS).

DATE: This action is effective as of January 19, 1988. Comments must be received by the contact person listed below on or before January 19, 1988.

ADDRESSES: Interested persons may submit written comments to Stasia Hutchison, Public Affairs Specialist, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 732-Federal Building, Hyattsville, Maryland 20782; telephone (301) 436-7776, (FTS) 436-7776.

FOR FURTHER INFORMATION CONTACT: Stasia Hutchison, Public Affairs Specialist, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 6505 Belcrest Road, Room 732-Federal Building, Hyattsville, Maryland 20782; telephone (301) 436-7776, (FTS) 436-7776.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA hereby revises one system of records maintained by APHIS for the following reasons:

USDA/APHIS-6, "Veterinary Services—Brucellosis Information System." The purpose of this revision to the system of records is to identify changes in the system name, system location, storage, and safeguards.

A "Report on New System" for each system of records, required by 5 U.S.C. 552a(o), as implemented by the OMB Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on November 13, 1987.

Signed at Washington, DC on November 13, 1987.

Richard E. Lyng,
Secretary.

USDA/APHIS-

SYSTEM NAME:

Veterinary Services—Brucellosis Information System and Brucellosis Recording and Reporting System, USDA/APHIS.

SYSTEM LOCATION:

The Brucellosis Information System—U.S. Department of Agriculture, Fort Collins Computer Center, Colorado, and each of the various States. The Brucellosis Recording and Reporting System—Federal and State area offices; Federal Regional Offices; and Hyattsville, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Herd owners whose animals or herds are tested, studied, or restricted because of brucellosis; livestock markets; slaughter establishments; and livestock dealers (including agents and brokers) handling livestock covered by the program; milk processing plants receiving milk or cream from dairy farms; laboratories conducting brucellosis program tests or procedures; State, Federal, and contractual personnel engaged in program activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on herds and individual animals tested, studied, or restricted under the brucellosis program; epidemiologic studies; animals, specimens, or premises sampled, identified, inspected, tested, handled, or restricted under the brucellosis program by State, Federal or contractual personnel; animal identification, health and movement data of animals covered under program activities for traceback of disease from livestock markets, slaughter plants, and livestock dealers or livestock brokers or commission firms; milk and cream samples and related identification data for brucellosis testing from milk processing plants receiving fresh farm milk; and brucellosis test data from laboratories approved to do brucellosis program testing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

21 U.S.C. 111, 112, 114, 114a-1, 115, 120, 121, 125, 134a-134f and Title 9, Code of Federal Regulations, Part 51 and Part 78.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the computer system will be routinely used by the Federal and State government personnel for: (1) Detecting the foci of infection to reduce the rate of spread of infection to new herds; (2) evaluating brucellosis program activities of State, Federal, and contractual personnel; (3) preparing mailing labels and preaddressed forms to enhance field activities; (4) evaluating program effectiveness; (5) detecting factors of epidemiologic importance in containing or eliminating foci of infected herds; (6) assuring that brucellosis indemnities are promptly and properly paid; (7) notification of livestock owners with the animals at high risk of exposure to brucellosis because of livestock movements or an outbreak of disease or presence of quarantined premises in a community; (8) referral to the appropriate agency, whether Federal, State, local, or foreign, charged with responsibility of investigating or prosecuting a violation of law concerning animal disease control and eradication, or of enforcing or implementing a statute, rule, regulation, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law concerning animal disease control and eradication, whether civil, criminal, or regulatory in nature, and either arising by general statute or particular program statute, or by rule, regulation, or court order issued pursuant thereto; (9) litigation by the Department of Justice when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or the United

States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected; (10) use in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when the agency, or any component thereof, or any employee of the agency in his or her official capacity, or any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee, or the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation; provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected; (11) response to a request from a congressional office from the record of an individual made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Brucellosis Information System's records will be maintained on on-line disk storage and magnetic tapes. The Brucellosis Recording and Reporting System's records will be maintained on floppy disk storage and/or magnetic tapes.

RETRIEVABILITY:

Under this system, data may be retrieved and organized by any of the categories which have been recorded. This will greatly improve the ability to retrieve existing records and to serve the livestock industry in the eradication of brucellosis.

SAFEGUARDS:

The only individuals with access to this system are Federal and State government employees with a need to know. The data base is secured on a State-by-State basis. The brucellosis program planning staff has access to all information in the computerized system without restrictions. The computer files, tapes, and disks are kept in a safeguarded environment with access only by authorized personnel.

RETENTION AND DISPOSAL:

(1) Herd records are maintained in the data base as follows: (a) Infected herds not depopulated or sold out are always on-line. (b) Depopulated or sold out herds are archieved. (c) Herd tested but not infected are kept on-line for 6 months after testing and then archived on a fiscal year basis. Archived data are kept for 15 years. (2) Records pertaining to animals, specimens, or premises sampled, identified, inspected, tested, handled, or restricted by State, Federal, or contractual personnel are kept on-line as long as the individual is working in brucellosis programs. Once employment or accreditation is terminated, the information is archived by fiscal year for 15 years. (3) Livestock market, slaughter, establishment, livestock dealer, milk processing plant, and laboratory records pertaining to animal or herd information are retained as described under (1) above.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator, Veterinary Services, USDA/APHIS, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

All inquiries should be addressed to: APHIS Privacy Act Coordinator, Office of the Administrator, USDA/APHIS, Room 732 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

RECORD ACCESS PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

CONTESTING RECORD PROCEDURES:

All inquiries should be addressed to the APHIS Privacy Act Coordinator.

RECORD SOURCE CATEGORIES:

(1)Epidemiologic information for herds and animals is obtained from documents and reports completed by Federal and State employees or contractual personnel as a part of testing a herd or animal(s) or as a part of investigating the source and spread of brucellosis within the livestock population. (2) Information for work related activities is made available by the appropriate State or Federal office for personnel and contractual employees paid from its funds. (3) Livestock market, slaughter establishment, livestock dealer, milk processing plant, and laboratory information is acquired in the course of obtaining other program activity information such as where samples were collected, where animals identification was applied, where samples were tested, and how the samples or animals were handled or processed prior to or following collection of testing.

[FR Doc. 87-26693 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-34-M

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act Systems of Records.

SUMMARY: Notice is hereby given that USDA is revising two of its Privacy Act Systems of Records maintained by the Farmers Home Adminstration, USDA/FmHA-1 "Applicant/Borrower of Grantee File, USDA/FmHA" and USDA/FmHA-5 "Graduation File, USDA/FmHA." This action is necessary to permit financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources access to FmHA records for the purpose of contacting selected FmHA borrowers who may be able to qualify for credit from other sources to refinance their FmHA loans. The intended effect is to permit FmHA to provide names, addresses, and loan account information on selected FmHA borrowers from existing records to enable borrowers to refinance their FmHA housing loans through private or commercial financial institutions.

EFFECTIVE DATE: This notice will be adopted without further publication in the **Federal Register** on December 21, 1987, unless modified by a subsequent notice to incorporate comments received from the public.

FOR FURTHER INFORMATION CONTACT: Virgle L. Cunningham, Jr., Freedom of Information Officer, Administrative Services Division, Farmers Home Administration, USDA, Room 6865, South Building, Washington, DC 20250; telephone (202) 382-9638.

SUPPLEMENTARY INFORMATION: USDA hereby amends its Systems of Records, USDA/FmHA-1 and USDA/FmHA-5, by amending the "routine uses of records maintained in the system, including categories of users and the purposes of such uses" to permit referral of information to financial consultants, lending institutions, packagers, agents, and private or commercial credit sources for the purpose of contacting selected FmHA borrowers who may be able to qualify for credit from other

sources to refinance their FmHA housing loans.

Through this action FmHA will clarify its authority to provide names, addresses, and loan account information on selected borrowers to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources to facilitate the refinancing of loan accounts. Accordingly, USDA adds the following routine use of the FmHA Systems of Records "Applicant/Borrower or Grantee File, USDA/FmHA" published in 50 FR 25727, June 21, 1985 and "Graduation File, USDA/FmHA" published in 40 FR 38897, August 27, 1975:

USDA/FmHA-1

SYSTEM NAME:

Applicant/Borrower or Grantee File, USDA/FmHA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Referral to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FmHA determines such referral is appropriate to encourage contacting selected borrowers to facilitate the refinancing of their FmHA indebtedness as required by Title V of the Housing Act of 1949, as amended.

USDA/FmHA-5

SYSTEM NAME:

Graduation File, USDA/FmHA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Referral to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when FmHA determines such referral is appropriate to encourage contacting selected borrowers to facilitate the refinancing of their FmHA indebtedness as required by Title V of the Housing Act of 1949, as amended.

Signed at Washington, DC on November 13, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-26694 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-07-M

Forest Service

Intent To Prepare an Environmental Impact Statement; Noxious Weed Control; Lolo National Forest, MT

The Department of Agriculture, Forest Service will prepare an environmental impact statement to identify the planned method for controlling noxious weeds on the Lolo National Forest.

The Lolo National Forest has significant acres of land which contain noxious weeds that encroach on and in some cases threaten wildlife winter range, domestic livestock range, and adjoining private lands. Noxious weeds create special management problems for the Forest. Upon identification of public issues and management concerns, a full range of alternatives will be considered, including a no-action alternative.

Federal, State, and local agencies, local landowners, Indian Tribes, and other interested individuals and organizations who may be affected by the decisions will be encouraged to participate in the process.

Written comments should be mailed to Orville L. Daniels, Forest Supervisor, Lolo National Forest, Building 24, Fort Missoula, Missoula, Montana, 59801 by January 15, 1988.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by June 1, 1988. At that time, EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that reviewers participate at that time. To be the most helpful, comments on the DEIS should be specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality (CEQ) Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. vs. NRDC, 435 U.S. 519,533 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). Wisconsin Heritages, Inc. vs. Harris, 490 F. Supp. 1334, 1338 (E. D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by October 3, 1988. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official, Orville L. Daniels, Forest Supervisor, Lolo National Forest, will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR 211.18.

Questions about the proposed action and environmental impact statement should be directed to Orville L. Daniels, Forest Supervisor, Lolo National Forest, telephone number (406) 329-3750.

Orville L. Daniels,

Forest Supervisor.

Date: November 10, 1987.

[FR Doc. 87-26656 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Finding of No Significant Impact; Bertie County Schools, RC&D Measure, NC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bertie County Schools, RC&D Measure, Bertie County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Bobbye J. Jones, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27601; Phone (919) 856-4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that

the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Bobbye J. Jones, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing erosion and flooding while improving drainage on two school grounds. The planned works of improvement include installing catch basins, pipes and downspout connections. Grading and shaping will be done to improve surface drainage and to eliminate ponding. All disturbed areas will be seeded with adapted permanent vegetation.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Bobbye J. Jones.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Bobbye J. Jones,

State Conservationist.

Date: October 26, 1987.

[FR Doc. 87-26692 Filed 11-18-87; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Delaware 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 Delaware Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on December 3, 1987, in Conference Room A, Fourth Floor, of the Carvel State Office Building, 820 North French St., Wilmington, Delaware. The purpose of the meeting is to discuss the status of the agency; review a draft report on a forum which focussed on State nutrition services and the Hispanic elderly as well as civil rights compliance in the State Grant-in-Aid Program; and hold a forum on access to legal services accorded to incarcerated offenders.

Persons desiring additional information, or planning a presentation to the Committee, should contract Committee Member Henry H. Heiman (302/658-1800) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202./376-8117). Hearing impaired persons who will attend the meeting and require services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-26807 Filed 11-17-87; 12:32 pm]

BILLING CODE 6335-01-M

Louisiana 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 Administration of Justice Subcommittee of the Louisiana Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 3:30 p.m., on December 3, 1987, at the Howard Johnson Hotel, 303 Loyola Avenue, New Orleans, Louisiana. The purpose of the meeting is for staff to brief the Subcommittee concerning a proposed project on the administration of justice for homosexual persons. Further, the Subcommittee will discuss what, if any, steps are to be taken and recommended to the full Committee relative to the project noted above.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Michael R. Fontham, or Melvin Jenkins, Director of the Central Regional Division (816) 374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-26808 Filed 11-17-87; 12:32 pm]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council; Meeting of the Foreign Trade Practices and Negotiations Subcommittee and the Trade Expansion Subcommittee; Meeting Postponement

On November 6, 1987, a notice dated November 2, 1987, was published in the **Federal Register** (51 FR 42704), announcing a meeting of the President's Export Council Subcommittee on Foreign Trade Practices and Negotiations and Subcommittee on Trade Expansion on November 24, 1987, 9:30 a.m. to 3:30 p.m.

The purpose of this notice is to announce that the meeting will be postponed. A new date has not been selected yet. For further information, contact Sylvia Lino (202) 377-1125.

Date: November 16, 1987.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 87-26717 Filed 11-18-87; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

[Transmittal No. DRO-0001; Project I.D. No. DRO-0001]

Little Rock Minority Business Development Center (MBDC) Program; Solicitation of Competitive Applications

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of May 1, 1988 to April 30, 1989. The MBDC will operate in the Little Rock, Arkansas Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-federal	Total
Little Rock SMSA...	$165,000	$29,118*	$194,118

*Can be a combination of cash, in-kind contribution and fee for service.

The funding instruments for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for the receipt of application is December 31, 1987.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23 Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on December 4, 1987 at 10:00 AM. at the following location: Earl Cabel Building, Federal Building, 1100 Commerce St., Room 5044, Dallas, Texas 75242.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency.

Section B. Project Specifications

Program Number and Title: 11.800 Minority Business Development

Project Name: Little Rock (Geographic Area or SMSA) MBDC

Project Identification Number: DRO-0001

Project Start and End Dates: 05/01/88 to 04/30/89

Project Duration: 12 Months

Total *Federal Funding* (85%) $165,000

Minimum *Non-Federal Funding* Sharing (15%) $29,118

Total Project Cost (100%) $194,118

Closing Date for Receipt of this Application: *December 31, 1987.*

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Little Rock, Arkansas.*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum levels of efforts:

Financial Packages, $2,747,000

Billable *M&TA*, $84,000

Number of Proessional Staff 3 (Minimum)

Procurements $5,493,000

Number of Clients 76.

[FR Doc. 87-26702 Filed 11-18-87; 8:45 am]

BILLING CODE 3510-21-M

[Transmittal No. DRO-0002; Project I.D. No. DRO-0002]

Minority Business Development Center (MBDC) Program; Solicitation of Competitive Applications; Salt Lake City, Utah

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project's performance period of May 1, 1988 to April 30, 1989. The MBDC will operate in the Salt Lake City, Utah Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

Name	Federal	Non-federal	Total
Salt Lake City SMSA..	$165,000	[1] $29,118	$194,118

[1] Can be a combination of cash, in-kind contribution and fee for service.

The funding instruments for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is

advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for the receipt of application is December 31, 1987.

ADDRESS: MBDA—Dallas Regional Ofice, 1100 Commerce street, Suite 7B23 Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

A pre-bid conference will be held in Dallas on December 4, 1987 at 10:00 AM. at the following location: Earl Cabel Building, Federal Building, 1100 Commerce St., Room 5044, Dallas, Texas 75242.

Additional RFAs will be available at the conference site.

Melda Cabrera,

Regional Director, Minority Business Development Agency.

Section B. Project Specifications

Program Number and Title: 11.800 Minority Business Development
Project Name: Salt Lake City (Georgraphic Area or SMSA) MBDC
Project Identification Number: DRO-0002
Project Start and End Dates: 05/01/88 to 04/30/89
Project Duration: 12 Months
Total *Federal Funding* (85%) $165,000
Minimum *Non-Federal Funding* Sharing (15%) $29,118
Total Project Cost (100%) $194,118
Closing Date for Receipt of this Application: *December 31, 1987*

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of: *Salt Lake City, Utah*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be for approximately three years consisting for three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, afte the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum levels of efforts:

Financial Packages, $2,747,000
Billable *M&TA*, $84,000
Number of Professional Staff 3 (Minimum)
Procurements $5,493,000
Number of Clients 76

[FR Doc. 87-26703 Filed 11-8-87; 8:45 am]

BILLING CODE 3510-21-M

National Bureau of Standards

[Docket No. 70877-7177]

Solicitation of Comments on Proposed Extension and Revision of Federal Information Processing Standard 60 Family of Input/Output Interface Standards

AGENCY: Department of Standards, Commerce.

ACTION: Notice; request for comments.

SUMMARY: Notice of proposal to revise Federal Information Processing Standards (FIPS) 60-2, 61-1, 62, 63-1, 97, 111, 130 and 131, and to adopt new voluntary standards for Input/Output (I/O) interfaces; notice of intent to issue guidance on implementation of existing and future interface standards.

Prior to the submission of these proposed changes to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

DATE: To be considered, comments on these standards must be received on or before February 17, 1988.

ADDRESS: Written comments concerning these proposed changes should be sent to: Director, Institute for Computer Sciences and Technology, ATTN: Family of I/O Interface Standards, Technology Building, Room B-154, National Bureau of Standards, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. William E. Burr, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaitherburg, MD 20899, (301) 975-2914.

SUPPLEMENTARY INFORMATION: Under the provisions of Public Law 89-306 (79 Stat. 1127); 40 U.S.C. 759(f) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform Federal automatic data processing (ADP) standards. Under these authorities, the Secretary has approved a family of input/output (I/O) interface standards. The National Bureau of Standards (NBS) proposes to revise, extend and restructure the family of input/output (I/O) interface standards which currently includes the following members:

a. FIPS 60-2, I/O Channel Interface, revised July 29, 1983.

b. FIPS 61-1, Channel Level Power Control Interface, revised July 13, 1982.

c. FIPS 62, Operational Specifications for Magnetic Tape Subsystems, approved February 16, 1979.

d. FIPS 63-1, Operational Specifications for Variable Block Rotating Mass Storage Subsystems, revised April 14, 1983.

e. FIPS 97, Operational Specifications for Fixed Block Rotating Mass Storage Subsystems, approved February 4, 1983.

f. FIPS 111, Storage Module Interface (with extentions for enhanced storage module interfaces) for Storage Module Drives (SMD), approved April 18, 1985. Adopts ANSI X3.91-1982.

g. FIPS 130, Intelligent Peripheral Interface (IPI), approved June 16, 1987. Adopts ANSI X3.129-1986, X3.147-1987, X3.132-1987 and X3.130-1986.

h. FIPS 131, Small Computer Systems Interface (SCSI), approved June 16, 1987. Adopts X3.131-1986.

NBS plans to add two new I/O interface standards to this family of standards that have already been approved as ANSI X3.1981, Interfaces between Flexible Disk Cartridge Drives and Their Host Controllers, and as ANSI X3.146-1987, Device Level Interface for Streaming Cartridge and Cassette Tape Drives; others will be added as they are developed by the voluntary standards community and as they meet government requirements for additional standards. Similarly, it may be necessary to remove standards from the family as technology and Federal requirements change. All future changes will be announced in the **Federal**

Register and comments solicited before action is taken.

There are a number of I/O interface standards that have recently been, or are about to be, approved by the American National Standards Institute (ANSI) and that appear to be candidates for adoption as FIPS. These include three layered Fiber Distributed Data Interface (FDDI) standards, X3.139–1987 for Medium Access Control, X3.148–198x for the Physical Layer Protocol, and X3.166–198X for the Physical Medium. In addition, several as yet unnumbered draft standards for Extended System Device Interface (ESDI), for Local Distributed Data Interface (LDDI), and for FDDI Station Management appear to be candidates.

FIPS 60–2, 61–1, 62, 63–1, 97, and 111, are focused on the large scale mainframe segment of the market but do not address the large volume of acquisitions in the fastest growing part of the ADP marketplace; i.e., peripherals for personal and minicomputers. While the individual cost of these systems is comparatively low, they are often procured in large quantities. In order to achieve a broader scope of applicability of interface standards to include systems of all sizes, NBS proposes that over the next several years these current I/O interfaces FIPS will be revised and extended.

Use of these revised and extended standards will help the Federal government to expand its sources of supply for computer equipment, reduce costs due to increased competition, and facilitate the interconnection of components made by different manufacturers.

Proposed Revision of Current Standards

NBS proposes to revise the applicability and implementation provisions of FIPS 60–2, 61–1, 62, 63–1, 97, 111, 130 and 131, and to incorporate the revised applicability and implementation provisions in all new I/O interface standards added to the family. The technical specifications of the existing standards will not be changed except for FIPS 62, which may be modified to accommodate tape cartridge devices. The proposed changes to the applicability and implementation provisions that would become effective on January 1, 1989, are as follows:

Proposed Changes to Applicability Sections of FIPS 60–2, 61–1, 62, 63–1, 97, 111, 130 and 131

NBS proposes that after January 1, 1989, FIPS 60–2, 61–1, 62, 63–1, 97, 111, 130, 131 and such I/O Interface FIPS as may later be issued will be applicable for the acquisition of all ADP systems and secondary storage equipment if *either* of two conditions exist in a single procurement:

1. The total purchase cost to the Federal Government of a computer system(s) (as defined below) exceeds $1,000,000, or the monthly rental exceeds $50,000, or

2. The total unformatted on line capacity of mass storage (as listed below) acquired either separately or as a part of a system(s) exceeds ten (10) gigabytes.

Since 1979 systems costing less than $400,000 in their maximum normally employed configuration were excluded from the provisions of the I/O Interface Standards. The dollar threshold proposed above is based on changing systems architectures and inflation since 1979.

Definition of a Computer System—For the purpose of determining thresholds for applicability, a computer system is defined to be: All directly attached secondary storage (magnetic disk, magnetic tape, optical disk, or electronic block-oriented random access memory and any of their controllers), all directly attached arithmetic processor devices including vector processors, signal processors, floating point processors, etc. and all required switches, channels or storage I/O processors, cabinets and power supplies used in conjunction with:

1. A single central processing unit (CPU) and its main store, or

2. A tightly coupled multiprocessor and its main store, or

3. Two or more loosely coupled processors of similar (e.g., one vendor) CPUs connected by a link with a rate of 50 million bits per second or more, and distributed within a radius of 100 meters or less.

There, the cost of the computer system includes the computer(s) with their main store(s), secondary storage, attached arithmetic processors, I/O processors, cabinets and power supplies. Not included within this definition of a computer system are remote terminals, printers, communication controllers, card readers, network adaptors and software. Hence, the cost of these devices should not be included in determining the threshold for applicability of the FIPS family of interface standards. Storage servers or devices which are attached to computer systems through local networks, which are capable of operation over distances greater than 200 meters, are not considered to be directly attached and are not included within the definition of the computer system.

Although attached arithmetic processors are included in the system cost, when purchased with a computer, they need not utilize any of the family of I/O interface standards. No waiver of I/O interface FIPS is required to add an attached arithmetic processor to an existing computer system, whatever storage interfaces are employed by that system. Database processors are considered to be storage controllers and are subject to I/O interface FIPS.

Definition of Mass Storage—Mass storage is defined to include the following:

1. All flexible disk products

2. All magnetic tape products with an unformatted capacity greater than 100 million 8-bit bytes per reel or cartridge

3. All optical storage disk drives

4. All rigid magnetic disks except:

a. Those with formatted capacities less than 125 million 8-bit bytes per spindle

b. Those with recording rates greater than 11 million 8-bit bytes per second per spindle.

Because this statement of applicability will cover all requirements for ADP equipment with few exceptions, there will no longer be a need for the Exclusion List, which is currently maintained for FIPS 60–2, 61–1, 62, 63–1, 97 and 111.

Proposed Changes to Implementation Sections of FIPS 60–2, 61–1, 62, 63–1, 97, 111, 130 and 131

NBS proposes that the above applicability provisions be effective on January 1, 1989. Guidance on what combinations of standards will apply to the acquisition of specific components and subsystems will be issued.

Intent To Issue Guidance

NBS proposes to issue guidance that will reiterate the scope of applicability of the standards as given above, advise about potential incompatibilities, and provide instructions for the uniform implementation of the family of standards.

The Exclusion List

The current family of interface standards is applicable to the acquisition of all ADP systems and peripheral equipment for those systems except those specifically excluded by NBS. NBS maintains a list of those systems that are excluded. ADP systems having a Government purchase price less than $400,000 for their maximum normally employed configuration are currently eligible for exclusion. Since this list will no longer be needed when the applicability of interface standards is extended to most ADP systems, it is

proposed that use of the Exclusion List be terminated on January 1, 1989.

The Verification List

Verification of all specified interfaces for the current family of standards must be determined prior to the acceptance of equipment. All equipment which has been verified is identified on the FIPS Verification List established and maintained by NBS. With the planned expansion of the family of FIPS I/O interface standards, NBS will no longer maintain the Verification List and proposes that use of the Verification List also be terminated on January 1, 1989.

Copies of Documents

Copies of the various documents are available from the following sources:

The current I/O interface FIPS—National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4650.

ANSI X3.80-1981, X3.91-1982, X3.129-1986, X3.130-1986, X3.131-1986, X3.132-1987, X3.139-1987, X3.146-1987, and X3.147-1987—American National Standards Institute, 1430 Broadway, New York, NY 10018, (212) 642-4900.

dpANS X3.148-198X, X3.166-198X—Global Engineering Documents, 2625 Hickory Street, Santa Ana, CA 92707, (800) 854-7179, (714) 540-9870.

Date: November 13, 1987.

Ernest Ambler,

Director.

[FR Doc. 87-26718 Filed 11-18-87; 8:45 am]

BILLING CODE 3510-N-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 XOMA Corporation of Berkeley, CA 94710, an exclusive right in the United States and certain foreign countries to practice the invention embodied in U.S. Patent Application S.N. 7-071,356, "Preparation of Human Monoclonal Antibodies of Selected Specificity and Isotypes." The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-26690 Filed 11-18-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

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 November 20, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the limits for Categories 334, 347/348, 635 and 647/648 for goods produced or manufactured in Bangladesh and exported during the periods which began, in the case of Categories 334 and 347/348, on February 1, 1986; in the case of Category 635, on August 1, 1986; and, in the case of Category 647/648, on October 1, 1986; and extended through January 31, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements further directs the Commissioner of Customs to adjust the current limits for Categories 340/640, 635 and 647/648 for goods produced or manufactured in Bangladesh and exported during the period which began on February 1, 1987 and extends through January 31, 1988.

Background

CITA directives dated February 26, 1986 and October 20, 1986 were published in the **Federal Register** (51 FR 7312 and 51 FR 37625) which established import restraint limits for cotton and man-made fiber textile products in Categories 334, 347/348 and 635, among others, produced or manufactured in Bangladesh and exported during the periods which began, in the case of Categories 334 and 347/348, on February 1, 1986; and, in the case of Category 635, on August 1, 1986; and extended through January 1, 1987. A further CITA directive dated April 21, 1987 established an import restraint limit for Category 647/648 for the period which began on October 1, 1986 and extended through January 31, 1987.

CITA directives dated January 28, 1987 and April 16, 1987 were published in the **Federal Register** (52 FR 3327 and 52 FR 13114) which established import restraint limit for cotton and man-made fiber textile products, including Category 340/640, 635 and 647/648, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1987 and extends through January 31, 1988.

Under the terms of the Bilateral Textile Agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh and at the request of the People's Republic of Bangladesh, the limits for Categories 347/348, for the period February 1, 1986 through January 31, 1987, and 647/648, for the period October 1, 1986 through January 31, 1987, are being increased by application of swing. The limit of Category 647/648 is also being increased by special shift. The limit of Category 334 is being reduced to account for the swing and special shift applied to Category 647/648, and the limit for Category 635 is being reduced to account for the swing applied to Category 347/348.

In addition, the current limit for Category 647/648 is being increased by application of special shift, swing and carryforward. The limit for Category 340/640 is being reduced to account for the swing applied to Category 647/648, and the limit for Category 635 is being reduced to account for the special shift applied to Category 647/648.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on

December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

William J. Dukla,

Acting Chairman, Committee for the Implementation of Textile Agreements.

November 16, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives issued to you on February 26, 1986, October 20, 1986 and April 21, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in the People's Republic of Bangladesh and exported during the periods which began, in the case of Categories 334 and 347/348, on February 1, 1986; in the case of Category 635, on August 1, 1986; in the case of Category 647/648, on October 1, 1986; and extended through January 31, 1987. This directive also amends, but does not cancel, the directives of January 28, 1987 and April 16, 1987 concerning imports of cotton and man-made fiber textile products in Categories 340/640, and 635 and 647/648 which are exported during the period February 1, 1987 and extends through January 31, 1988.

Effective on November 20, 1987, the directives of February 28, 1987 and April 16, 1987 are hereby amended to adjust the previously established limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement, effected by exchange of notes dated February 19 and 24, 1986, as amended: [1]

Category	Adjusted limit
334	24,828 dozen.
347/348	1,049,400 dozen.
635	46,899 dozen.
647/648	242,000 dozen.

Also effective on November 20, 1987, the directives of January 28, 1987 and April 16, 1987 are hereby amended to adjust the previously established limits for cotton and man-made fiber textile products in the following categories:

Category	Adjusted limit
340/640	1,282,600 dozen.
635	137,253 dozen.
647/648	807,720 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-26789 Filed 11-18-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Amendment to the Export Visa and Exempt Requirements Concerning Textile and Apparel Products From Taiwan

November 13, 1987.

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 November 19, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated October 6, 1987 was published in the **Federal Register** (52 FR 38000) further amending the bilateral textile agreement of November 18, 1982, as amended and extended, and the export visa arrangement and exempt certification of August 16, 1972, as amended and extended. The U.S. Government has agreed to amend the October 6, 1987 directive.

Effective on November 19, 1987, only shipments of textiles and apparel products exported from Taiwan on and after October 20, 1987, which are imported for the personal use of the importer and not for resale, regardless of value, the properly marked commerical sample shipments valued at U.S. $250, or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels. Effective for shipments exported on and after October 20, 1987 all other commercial shipments, regardless of value, will require a visa or exempt certification for entry of traditional Chinese items.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends but does not cancel, the directive of October 6, 1987, issued to you by the Chairman of the Committee for the Implementation of Textile Agreements, concerning export visa and exempt certification requirements for certain texile and apparel products, produced or manufactured in Taiwan.

Effective on November 19, 1987, the directive of October 6, 1987 is hereby amended to permit entry, without an export visa or exempt certifcation, of all textile, and apparel products exported into the United States from Taiwan on or after October 20, 1987, which are imported for the personal use of the importer and not for resale, regardless of value, and all properly marked commercial sample shipments valued at U.S. $250 or less. These shipments shall not be charged to the agreement levels. Effective for shipments exported on and after October 20, 1987, all other commercial shipments, regardless of value, will require a visa or exempt certification for entry of traditional Chinese items.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exemption of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William J. Dulka,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-26674 Filed 11-18-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Commodity Futures Trading Commission ("Commission") previously published in the **Federal Register** a proposal of the Chicago Mercantile Exchange ("CME") for designation as a futures contract market in the Nikkei Stock Average. The Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that, in this instance, an additional period for public comment is warranted.

DATE: Comments must be received on or before December 21, 1987.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Nikkei Stock Average futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7227.

SUPPLEMENTARY INFORMATION: On May 19, 1987, the Commission published in the **Federal Register**, for a 60-day comment period, a notice of availability of the CME's proposed terms and conditions for the Nikkei Stock Average futures contract (52 FR 20136). On September 16, 1987, the Commission republished in the **Federal Register**, for a 15-day comment period, a notice of availability of the terms and conditions of this contract (52 FR 34978). In a November 12, 1987, letter to the Commission, the CME requested that the Commission republish the terms and conditions of the proposed contract "so that the public and other interested parties may have a further opportunity to comment on the application." As noted, the Director of the Division has determined that, for this proposed contract, an additional comment period is warranted.

Copies of the terms and conditions of the proposed futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the CME in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the CME in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581, by the specified date.

Issued in Washington, DC, on November 16, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-26760 Filed 11-18-87; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Collection of Information; Sound Levels of Toy Caps

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through December 31, 1990, of information collection requirements in a regulation exempting certain toy caps from banning rule.

A regulation codified at 16 CFR 1500.18(a)(5) bans toy caps producing peak sound levels at or above 138 decibles (dB). Another regulation codified at 16 CFR 1500.86(a)(6) exempts toy caps producing sound levels between 138 and 158 dB from the banning rule if they bear a specified warning label and if firms intending to distribute such caps: (1) Notify the Commission of their intent to distribute such caps; (2) participate in a program to develop toy caps producing sound levels below 138 dB; and (3) report quarterly to the Commission concerning the status of their programs to develop caps with reduced sound levels.

After the Paperwork Reduction Act becomes effective in 1981, the Commission did not seek approval for the information collection requirements contained in the exemption rule. For that reason, the Commission did not enforce the notification and reporting requirements in 16 CFR 1500.86(a)(6) from 1981 through 1986.

In 1986, the Commission reviewed the exemption rule to determine if it should be revoked, amended, or continued in effect without change. After considering information about the number of firms manufacturing and importing toy caps with sound levels between 138 and 158 dB, the absence of any reports of injury associated with such caps, and results of testing conducted by the Commission's engineering laboratory, the Commission decided not to revoke or amend the exemption. Thereafter, the Commission obtained approval of the information collection requirements in the exemption regulation through December 31, 1987.

The Commission requests extension of the information collection requirements in the rule codified at 16 CFR 1500.86(a)(6) through December 31, 1990, to obtain current and periodically updated information from all manufacturers and importers concerning the status of programs to reduce sound levels of toy caps. The Commission will use this information to evaluate efforts to (1) reduce sound levels of toy caps; and (2) overcome technical obstacles to production of toy caps with reduced sound levels and performance acceptable to consumers.

Additional details about the proposed collection of information:

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Distribution of toy caps producing peak sound pressure levels greater than 138 decibels but less than 158 decibels.

Type of request: Extension of approval.

Frequency of collection: One-time notification before beginning distribution; status report four times each year.

General description of respondents: Firms that manufacture or import toy caps.

Estimated number of respondents: 45.

Total estimated number of hours for all respondents: 180.

Comments: Comments on this request for approval of a collection of information should be addressed to Pamella Barr, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of the collection of information are available from Francine Shacter, Office of Program Management and Budget, Washington, DC 20207; telephone (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: November 13, 1987.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 87-26708 Filed 11-18-87; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Board of Visitors of the Defense Intelligence College

Under the provisions of Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given that the Board of Visitors of the Defense Intelligence College has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law.

The Board of Visitors of the Defense Intelligence College was originally established to provide advice to the Commandant of the School and the Director of the Defense Intelligence Agency on matters related to the mission, policy, curricula, faculty, student body, educational methods, research and administration. The Board functions in the capacity of an academic governing body and has been instrumental in assuring the continued accreditation of the Defense Intelligence College. Moreover, the Board provides valuable advices on maintaining the quality of the school's instructional programs.

Patricia H. Means,

OSD Federal Liaison Officer, Department of Defense.

November 16, 1987.

[FR Doc. 87-26697 Filed 11-18-87;8:45 am]

BILLING CODE 3810-01-M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 1, 1987; Tuesday, December 8, 1987; Tuesday, December 15, 1987; Tuesday, December 22, 1987; and Tuesday, December 29, 1987 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit materials in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 13, 1987.

[FR Doc. 87-26699 Filed 11-18-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: December 3, 1987 beginning at 1:30 p.m. and ending 6:00 p.m.; and December 4, 1987 beginning at 9:30 a.m. and ending at 5:00 p.m.

ADDRESS: L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert E. Jamroz, Special Assistant to the Assistant Secretary for Postsecondary Education, Office of Postsecondary Education, U.S. Department of Education, Room 4082, ROB3, 400 Maryland Avenue SW., Washington, DC 20202 (202) 732-3547.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Pub. L. 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise and with regard to systems of need analysis and application forms and making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students.

The meeting of the Advisory Committee will be closed to the public from 9:30 a.m. to 12:00 noon on December 4, 1987 to elect a Chairman, a Vice-Chairman and discussion of the committee's organizational structure. The meeting will be closed under the authority of section 10(d) of the Federal

Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552(c)(6). The elections and ensuing discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

The proposed agenda includes:

—Briefing and swearing in of Advisory Committee members;
—Election of Committee Chairman and Vice-Chairman;
—Discussion of the committee's organizational structure; and
—Development and discussion of policies and priorities for the coming year.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, Room 4082, 7th and D Streets SW., Washington, DC from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal holidays.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87-26728 Filed 11-18-87; 8:45 am]

BILLING CODE 4000-01-M

National Council on Vocational Education; Public Meeting

AGENCY: National Council on Vocational Education, Education.

ACTION: Notice of public meeting of the Council.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Council on Vocational Education. It also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act, and is intended to notify the general public of its opportunity to attend.

DATE: December 5, 1987 1:30-4:00 p.m.

ADDRESS: Las Vegas Hilton Hotel, 3000 Paradise Road, Las Vegas, Nevada 89109, (702) 732-5111.

SUPPLEMENTARY INFORMATION: The National Council on Vocational Education is established under section 104 of the Vocational Education Amendments of 1968, Pub. L. 90-576.

The Council is established to:

(A) Advise the President, the Congress, and the Secretary of Educational concerning the administration of, preparation of general regulations for, and operation of, vocational education programs supported with assistance under this title;

(B) Review the administration and operation of vocational education programs under this title, including the effectiveness of such programs in meeting the purposes for which they are established and operated, make recommendations with respect thereto, and make annual reports of its findings and recommendations (including recommendations for changes in the provisions of this title) to the Secretary for transmittal to Congress; and

(C) Conduct independent evaluations of programs carried out under this title and publish and distribute the results thereof.

Agenda: The proposed agenda will include: Part I: General Council business. Part II: items to be included in this Council meeting will be: (1) report on results of Calif. Issue Form (2) Report on Occupational Competencies (3) Overview of GAO Study (4) progress report of Career Success Magazine (5) Comments from AVA, State Councils, State Directors and Update from the Department of Education (6) Project Plus II (7) Issue Forum Training Session. For additional information pertaining to these issues contact the following:

For Further Information Contact: Dr. Joyce Winterton, Executive Director, 330 C Street, SW., Suite 4080, Washington, DC 20202, (202) 732-1884.

Records are kept of all Council proceedings, and are available for public inspection at the above address from the hours of 9:00 a.m. to 4:30 p.m.

Signed at Washington, DC November 17, 1987.

Joyce Winterton,

Executive Director.

[FR Doc. 87-26849 Filed 11-18-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER88-84-000 et al.]

GPU Service Corp. et al.; Electric Rate and Corporate Regulation Filings

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

1. GPU Service Corporation

[Docket No. ER88-84-000]

November 12, 1987.

Take notice that on November 6, 1987, GPU Service Corporation (GPU) tendered for filing a letter agreement between GPU as agent for Pennsylvania Electric Company (Pennsylvania) and Pennsylvania Power & Light Company (PP&L). GPU states that under the agreement Pennsylvania will provide scheduled transmission service for PP&L on a weekly basis utilizing its transmission facilities.

GPU requests an effective date of November 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Comment date: November 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Indiana Michigan Power Company

[Docket No. ER87-663-000]

November 12, 1987.

Take notice that on October 15, 1987, Indiana Michigan Power Company tendered for filing pursuant to §§ 35.16 and 131.51 of the Commission's Regulations a notice of succession in ownership and a name change. Indiana Michigan Power Company was formerly known as Indiana & Michigan Electric Company.

Comment date: November 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Power and Light Company

[Docket No. ES88-10-000]

November 13, 1987.

Take notice that on November 2, 1987, Iowa Power and Light Company (Applicant filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue on or before December 31, 1989, bank notes maturing not more than one year after date of issue and commercial paper notes maturing not more than nine months after the date of issue in principal amounts not exceeding $135,000,000 of which up to an amount not exceeding twenty-five percent (25%) of the Company's gross revenues during the preceding twelve (12) months of operations in the aggregate at any one time may be issued as commercial paper, and that the Company may issue and sell commercial paper either directly to buyers, insofar as allowed by state law, or through established commercial paper dealers.

Comment date: November 30, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Southern Utilities Company

[Docket No. ES88-11-000]

November 13, 1987.

Take notice that on November 4, 1987, Iowa Southern Utilities Company (Iowa Southern), filed an application pursuant to section 204 of the Federal Power Act seeking authorization for the issuance of not more than $15,000,000 aggregate principal amount of unsecured short-term promissory notes and commercial paper notes to be issued from time to time prior to January 1, 1990.

Comment date: November 30, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER88-86-000]

November 13, 1987.

Take notice that on November 6, 1987, New England Power Company (NEP) tendered for filing revised tariff sheets constituting a new Rate W-9 for its Primary Service for Resale. NEP states that the W-9 rate will decrease revenues under the tariff by approximately $21.5 million from the currently effective Rate W-8(a) based on a 1988 test year. NEP states further that the proposed Rate W-9 is a $1.5 billion annual decrease from the Rate W-8(a) calculated at a 34% federal corporate income tax rate which NEP filed as part of its W-8 tax compliance filing. That rate, according to NEP, would have become effective January 1, 1988 in the event NEP did not file a superseding rate.

NEP requests an effective date of January 1, 1988 for the W-9 rate so that the W-8(a) rate calculated at the 34% tax rate is superseded in its entirety. NEP requests waiver of the Commission's notice requirements so that the W-9 rate decrease may become effective on that date. As good cause for waiver, NEP states that its filing was delayed pending the outcome of a referendum on the ballots in the State of Maine concerning the possible shutdown of the Maine Yankee nuclear power plant during 1988. The outcome of that vote, according to NEP, determined whether NEP's request would be a rate decrease or an increase.

NEP also requests that the Rate W-9 become effective without suspension and a refund obligation limited by the outcome of NEP's pending W-7 proceeding concerning the amortization of NEP's investment in the Seabrook Unit 2 nuclear power plant.

Comment date: November 30, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company

[Docket No. ER88-87-000]

November 13, 1987.

Take notice that on November 9, 1987, Northern States Power Company, a Wisconsin corporation (NSPW), tendered for filing a new wholesale electric service agreement, dated September 21, 1987 between NSPW and North Central Power Co., Inc. (NCP) of Grantsburg, Wisconsin. NSPW states that it currently serves NCP and Lake Superior District Power Company (LSDP), which agreement LSDP assigned to NSPW by an instrument which became effective, with Federal Energy Regulatory Commission approval, on September 25, 1985. NSPW states that this filing does not propose any changes in rates currently in effect for NSPW's wholesale service to NCP.

Finally, NSPW has requested that the new agreement be permitted to become effective 60 days from the date on which the filing was received by the Commission.

Comment date: November 30, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Company Services, Inc.

[Docket No. ER88-85-000]

November 13, 1987.

Take notice that on November 6, 1987, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company (Southern Companies) tendered for filing an Amendment No. 2 to the Amended and Restated Unit Power Sales Agreement dated February 18, 1982, as amended on May 18, 1982, between Southern Companies and Florida Power & Light Company. The amendment would reduce from 16.0% to 13.75% the return on common equity component of the formula rates governing transactions under that Agreement. It adds provisions for the payment of interest on the true up of capacity and energy payments, and would also expand the true up of transmission charges to include certain additional components. Finally, Amendment No. 2 contains a revised definition of fixed and variable expenses, which revision would become effective at a mutually agreeable future time.

Comment date: November 30, 1987, in accordance with Standard Paragraph E at the end of this document.

8. Commonwealth Electric Company v. Boston Edison Company

[Docket No. EL88-3-000]

November 13, 1987.

Take notice that on November 6, 1987, Commonwealth Electric Company (Commonwealth) tendered for filing a Complaint against Boston Edison Company (Edison).

Commonwealth states that Edison has billed and collected substantial dollar amounts from Commonwealth without contractual authorization and in violation of the formula rate contained in a unit power contract filed with the Federal Energy Regulatory Commission as Edison's Rate Schedule FPC No. 68.

Copies of this filing have been served upon all parties affected by this filing.

Comment date: December 14, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26743 Filed 11-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-59-000 et al.]

Sabine Pipe Line Co. et al.; Natural Gas Certificate Filings

November 16, 1987.

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

1. Sabine Pipe Line Company

[Docket No. CP88-59-000]

Take notice that on November 5, 1987, Sabine Pipe Line Company (Sabine), P.O. Box 60252, New Orleans, Louisiana 70160, filed in Docket No. CP88-59-000 a request pursuant to § 284.223 of the Regulations under the Natural Gas Act for authorization to provide a

transportation service for MidCon Marketing Corporation (MidCon), marketer, under the certificate issued in Docket No. CP86-522-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request with the Commission and open to public inspection.

Sabine states that it proposes to transport natural gas for MidCon from an existing receipt point located in West Cameron Block 536, Offshore Louisiana, to a delivery point located in West Cameron Block 529, Offshore Louisiana. Sabine further states that the maximum daily and annual quantities that it would transport for MidCon would be 5,000 Mcf and 1,460,000 Mcf, respectively.

Sabine indicates that in a filing made with the Commission on September 28, 1987, it reported that transportation service for MidCon commenced on September 1, 1987 under the 120-day automatic authorization provisions of § 284.233(a). Sabine herein requests authorization to extend transportation service for MidCon until December 31, 1988 and month to month thereafter until cancelled by either MidCon or Sabine.

Comment date: January 4, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-61-000]

Take notice that on November 2, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-61-000 a request pursuant to § 284.223 of the Commission's Regulations for authorization to provide a transportation service for CSX Oil and Gas Corporation (CSX), a producer, under Applicant's blanket certificate issued in Docket No. CP87-118-000 on June 8, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated October 1, 1987, it proposes to transport natural gas for CSX from points of receipt located in Vermilion Block 241 and Bastian Bay, both offshore Louisiana, to a delivery point located at Egan D, Acadia Parish, Louisiana, an interconnection with Texas Gas Transmission Corporation (Texas Gas), and a delivery point located at Eugene Island Block 250, offshore Louisiana, an interconnection with ANR Pipeline Company (ANR). It is stated that Texas Gas and ANR are the downstream transporters.

The applicant further states that the peak day quantities would be 82,000 dekatherms, the average daily quantities would be 1,915 dekatherms, and that the annual quantities would be 698,975 dekatherms. Service under § 284.223(a) commenced October 1, 1987, as reported in Docket No. ST88-329 (filed October 22, 1987), and is scheduled to expire January 29, 1988 (120 days from date of commencement).

Comment date: January 4, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. Transcontinental Gas Pipe Line Corporation

[Docket No. CP63-222-001 and Docket No. CP70-193-001]

Take notice that on November 2, 1987, Transcontinental Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket Nos. CP63-222-001 and CP70-193-001, and amendment to its currently pending petition to amend certificates of transportation.

Transco states that pursuant to the aforementioned certificates and as fully set forth in the pending Petition to Amend, it has been transporting for Texaco Inc. (Texaco) and its successor-in-interest, Texaco Refining and Marketing Inc. (TRMI), from the Gulf Coast supply area to the Eagle Point Refinery near Westfield, New Jersey, formerly owned by the Texaco companies, but now owned by Coastal Eagle Point Oil Company (CEPOC), up to 10,000 Mcf of gas per day on a firm basis and up to 16,000 Mcf of gas per day on an interruptible basis. Transco states that such transportation takes place pursuant to an agreement between Texaco, now TRMI, and Transco dated December 1, 1969, as amended, which is on file with the Commission as Transco's Rate Schedule X-42.

Transco further states that pursuant to orders issued March 24, 1971 and September 21, 1983 in Transco Docket No. CP71-30-000, also as fully set forth in the pending Petition to Amend, Transco has been transporting for TRMI, formerly Getty Refining and Marketing Company (Getty Refining), from the Gulf Coast supply area to Eastern Shore Natural Gas Company (Eastern Shore) at two delivery points in Chester County, Pennsylvania designed as Parkesburg and Hockessin, on a firm basis, up to the dekatherm (dt) equivalent of 9,300 Mcf of gas per day for use in TRMI's Delaware City Refinery following further transporation by Eastern Shore. Transco states that such transportation by Transco takes place pursuant to an agreement between TRMI, formerly Getty Refining, and Transco dated August 7, 1970, as amended, on file with the Commission as Transco's Rate Schedule X-52.

Transco states that the principal purpose of the pending Petition to Amend was to add, as delivery points from Transco to TRMI under the certificates in the captioned dockets and under Rate Schedule X-42, the Parkesburg and Hockessin delivery points to Eastern Shore under Rate Schedule X-52. According to Transco, this would permit TRMI to allocate between the Eagle Point Refinery and the Delaware City Refinery, all or any part of the 10,000 Mcf per day of firm gas, as well as the 16,000 Mcf per day of interruptible gas, transported for TRMI under Rate Schedule X-42. Transco further states that no change was or is presently proposed in the certificates in Docket No. CP71-30-000 or Rate Schedule X-52. Therefore, TRMI will continue to receive the dt equivalent of 9,300 Mcf per day transported on a firm basis thereunder for use at its Delaware City Refinery, it is indicated.

Transco states that the purpose of this newly filed amendment to the pending Petition to Amend is to withdraw that portion of such petition which seeks to add as delivery points from Transco to TRMI under the certificates in the captioned dockets and under Rate Schedule X-42, the Parkesburg and Hockessin delivery points to Eastern Shore under Rate Schedule X-52, insofar as firm transportation quantities are concerned. Thus, under such certificates and Rate Schedule X-42, the 10,000 Mcf per day of firm gas would continue to be transported and delivered for the account of TRMI to CEPOC at the Eagle Refinery, it is stated.

Transco states that this withdrawal does not affect the addition of Parkesburg and Hockessin as delivery points for the 16,000 Mcf per day of interruptible gas, as proposed in the pending petition to amend.

Comment date: December 7, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

4. Alabama-Tennessee Natural Gas Company

[Docket NO. CP87-46-003]

Take notice that on October 30, 1987, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), P.O. Box 918, Florence, Alabama 35631, filed in the captioned proceeding an application in accordance with section

7(c) of the Natural Gas Act, as amended, for issuance of an order amending the limited-term certificate of public convenience and necessity issued to Alabama-Tennessee on March 16, 1987, in Docket No. CP87-46-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Alabama-Tennessee indicates that by its order issuing certificate, issued on March 16, 1987, the Commission authorized Alabama-Tennessee to transport, for a term expiring March 16, 1988, up to 10,000 Mcf of natural gas per day on an interruptible basis for Tennessee Valley Authority (TVA) for use at its Muscle Shoals, Alabama, National Fertilizer Development Center. Alabama-Tennessee states that TVA has requested that the term of the transportation be extended for one year or until March 16, 1989. Alabama-Tennessee requests that the Commission amend the certificate authorization granted in Docket No. CP87-46-000 to authorize the interruptible transportation of natural gas for a term extending until March 16, 1989. Alabama-Tennessee proposes to charge a rate ranging from a maximum of 10.21 cents per Mcf and a minimum of 0.33 cents per Mcf, which rates Alabama-Tennessee indicates are contained in its FERC Gas Tariff, Revised Volume No. 1, Revised Sheet No. 4 for services rendered under its Transportation Rate Schedule.

Alabama-Tennessee indicates that all other information contained in Alabama-Tennessee's original application, as amended, would remain the same.

Comment date: December 7, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP88-63-000]

Take notice that on November 6, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88-63-000, a request pursuant to Northern's blanket authority granted in Docket No. CP82-401-000 and § 157-205 of the Commission's rules and regulations for permission and approval to abandon the Papillion, Nebraska TBS No. 1 and approximately one mile of 3-inch branchline. Northern also requests authority to construct one delivery point and appurtenant facilities to accommodate natural gas deliveries to Peoples Natural Gas Company (Peoples), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Northern requests authority to abandon the Papillion TBS No. 1 (TBS No. 1) and approximately one mile of 3-inch branchline serving TBS No. 1. Peoples has informed Northern that the area served by TBS No. 1 has experienced considerable expansion over the past several years with a subsequent increase due to additional residential, commercial, and industrial customers. Northern indicates that TBS No. 1 is located in an area of residential encroachment, making modifications difficult. Accordingly, Northern requests authority to abandon TBS No. 1. Northern indicates that the abandonment of TBS No. 1 would not result in abandonment of any service to any of Northern's existing customers.

Northern indicates that to replace the facilities to be abandoned, it proposes to construct a new delivery point (TBS No. 1B) to accommodate natural gas deliveries to Papillion, Nebraska to be served by Peoples. Northern states that the new facility would be located one mile west of the original location and outside of any residential area. It is also indicated that to assure continuity of service, Peoples has agreed to extend its distribution facilities to serve the City of Papillion and to purchase the facilities to be abandoned in order to aid their efforts in extending their distribution facilities.

Northern states that peak day and annual volumes to be delivered to Peoples at TBS No. 1B in the fifth year of operation are estimated to be 6,585 Mcf and 377,500 Mcf, respectively, which would be used for residential, commercial and industrial end-uses. Northern also indicates that the volumes to be delivered to Peoples at the proposed delivery point would be within its currently authorized firm entitlement and would therefore have no impact on Northern's peak day and annual deliveries.

Comment date: January 4, 1987, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements to the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shll be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26744 Filed 11-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF88-35-000 et al.]

Vicon Recovery Systems, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register** in accordance with Standard Paragraph E at the end of this notice.

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

1. Vicon Recovery Systems, Inc.

[Docket No. QF88-35-000]

November 9, 1987.

On October 19, 1987, Vicon Recovery Systems, Inc. (Applicant), of 10 Park Place, Butler Center, Butler, New Jersey 07405 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Manchester, New Hampshire. The facility will consist of a mass burn incinerator with associated heat recovery steam generation equipment, and a steam turbine-generator. The primary energy source for the facility will be biomass in the form of municipal solid waste. The net electric power production capacity of the facility will be 13 MW. Installation of the facility is expected to be complete by January 1990.

2. Ecolaire Power Systems Company

[Docket No. QF88-22-000]

November 10, 1987.

On October 15, 1987, Ecolaire Power Systems Company (Applicant), of 33 W. Higgins Road, Suite 4000, South Barrington, Illinois 60010, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Cook County, Illinois. The facility will consist of three (3) steam generation trains with each train consisting of two 75 tons per day modular incinerators and one high pressure water tube boiler, and one steam turbine generator. The net electric power production capacity will be 10 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for start-up and temperature control, however, such use will not exceed 25% of the total energy input to the facility during any calendar year period. Construction of the facility will begin in the first quarter of 1988.

3. James River Cogeneration Company and Cogentrix of Virginia, Inc.

[Docket No. QF85-736-003]

November 12, 1987.

On November 5, 1987, James River Cogeneration Company and Cogentrix of Virginia, Inc. (Applicant), of 4828 Parkway Plaza Blvd., Two Parkway Plaza, Suite 290, Charlotte, North Carolina 28217 submitted for filing an application for recertification of a facility known as the Allied Corporation Cogeneration Project, as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located at the Allied Signal, Inc. Fibers Division plan in Hopewell, Virginia. The facility will consist of six (6) stoker-fire boilers and two (2) extraction/condensing steam turbine-generators. The extracted steam will be used in the chemical production of caprolactam at the Allied Corporation's chemical manufacturing plant. The primary energy source will be coal. The net electric power production capacity of the facility will be 77,800 kW. The facility is scheduled to start commercial operation in December, 1987.

The original application was granted certification as a qualifying cogeneration facility on February 7, 1986 (34 FERC ¶ 62,311).

The first application for recertification (QF85-736-001) reflecting changes in ownership was filed on December 3, 1986 and was granted on February 11, 1987 (38 FERC ¶ 62,143), the instant recertification is requested due to change in ownership. The James River Cogeneration Company (JRCC) is a general partnership. Cogentrix of Virginia, Inc. and Capistrano Cogeneration Company each hold 50% ownership interest in JRCC. Capistrano Cogeneration Company is a wholly-owned subsidiary of Mission Energy Company, which is a wholly-owned subsidiary of The Mission Group, which is wholly-owned subsidiary of Southern California Edison Company, an electric utility. All other facility's characteristics remain unchanged.

Standard Paragraph

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

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26745 Filed 11-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-4-000]

Arkla Energy Resources; Tariff Filing

November 13, 1987.

Take notice that on November 2, 1987, Arkla Energy Resources, a Division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. TC88-4-000 pursuant to § 281.204(b)(2) of the Commission's Regulations the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective December 1, 1987:

Ninth Revised Sheet No. 3E
Ninth Revised Sheet No. 3F
Ninth Revised Sheet Nos. 3G through 3J

The instant filing reflects changes in Arkla's Index of Entitlements with respect to essential agricultural use (Step 10) requirements and in high priority (Step 11) requirements to be effective December 1, 1987, it is stated.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before November 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26746 Filed 11-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-669-002 and CP86-669-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 13, 1987.

Take notice that on October 15, 1987, as amended on November 5, 1987, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing certain tariff sheets to its FERC Gas Tariff, Original Volume No. 2. Panhandle states that such filing is made to provide Rate Schedule LT-13 for the transportation of natural gas on behalf of VHA-Illinois and Central Illinois Public Service Company (CIPSCO) as authorized in Docket No. CP86-232-000, *et al.* by the Commission's Opinion and Order No. 275-A issued September 10, 1987. Panhandle proposes that these sheets become effective September 10, 1987. Panhandle has served a copy of this filing on VHA-Illinois and CIPSCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26748 Filed 11-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-671-002 and CP86-671-003]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

November 13, 1987.

Take notice that on October 13, 1987, as amended on November 5, 1987, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing certain tariff sheets to its FERC Gas Tariff, Original Volume No. 2. Panhandle states that such filing is made to provide Rate Schedules LT-10, LT-11 and LT-12, respectively, for the transportation of natural gas on behalf of Carnation Company (Carnation) and (1) Illinois Power Company (Illinois Power), (2) UtiliCorp United Inc., d/b/a Missouri Public Service Company (Missouri Public Service), and (3) City of Morton (Morton), respectively, as authorized in Docket No. CP86-232-000, *et al.* by the Commission's Opinion and Order No. 275-A issued September 10, 1987. Panhandle proposes that these sheets become effective September 10, 1987. Panhandle has served a copy of this filing on Carnation, Illinois Power, Missouri Public Service and Morton.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before November 20, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26747 Filed 11-18-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI87-788-000 and CI87-797-000]

Transwestern Pipeline Co.; Applications for Blanket Lited-Term Abandonment of Purchases and on Behalf of Producer-Suppliers for Blanket Limited-Term Abandonment and for a Blanket Limited-Term Certificate of Public Convenience and Necessity With Pregranted Abandonment

November 13, 1987.

Take notice that on July 27, 1987, as supplemented on November 5, 1987, (Transwestern Pipeline Company Transwestern) filed pursuant to sections 7(b) and 7(c) of the Natural Gas Act, and § 2.77, [1] the Commission's Regulations, applications on behalf of its producer-suppliers (Producers) for limited-term abandonment of certain sales for a one-year period, for the limited-term abandonment by Transwestern of the purchase of such gas from Producers, and for a blanket certificate with pregranted abandonment authorizing sales for resale by Producers during such period.

Transwestern states that its applications are in conformity with the Commission's policies as stated in § 2.77 in that the sales to be abandoned by Producers are of gas supplies in excess of Transwestern's system requirements. Transwestern has been nominating only a small quantity of such gas due to it surplus supply situation and Producers cannot market a substantial portion of their gas deliverability.

Transwestern states that the proposed abandonment will be in the public interest inasmuch as most of the gas to be released by it is not market-responsive gas. Further, inasmuch as Transwestern proposes to retain the right to recall the gas for system supply requirements, the customers will not be adversely affected.

Transwestern proposes no abandonment of facilities and states that its facilities will be utilized to transport gas for Producers.

Transwestern states that due to a severe erosion in its sales for resale as a result of Order Nos. 380, *et seq.*, and Opinion Nos. 238 and 238-A, Transwestern has a large volume of gas available to it as system supply that is in excess of the current demand on its system. Although Transwestern states it has discontinued purchases of noncertificated Natural Gas Policy Act (NPGA) gas under expired contracts and has filed for permanent abandonment of sales and purchases of certificated NGA gas under expired contracts (with it is currently nominating at very low levels) in Docket No. CI87-314-000, there remains an oversupply of gas available to its system. Transwestern states it is therefore filing the instant request for limited-term abandonment of all certificated contracts with Procedures for a period of one year from the date authorization is received, a well as blanket certificate authorization for Producers to make sales of such NGA gas to others, during the same period. Transwestern states that the proposal herein serves to bridge the transitional

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

period to enable Transwestern to retain the dedicated NGA gas supplies and, at the same time, gives to Producers an opportunity to sell their gas which would otherwise be shut in at the discretion of the jurisdictional customers.

Transwestern submits that the proposed abandonment is consistent with the Commission's policies on abandonment in cases of a pipeline's substantially reduced takes from producers. Transwestern states that its applications are also consistent with Order No. 451 in which the Commission found that blanket abandonment would serve the public interest because increasing the flow of gas is in the interest of the national gas market. Transwestern also requests that the applications be considered on an expedited basis as provided for in said policies.

Transwestern states that the following in an estimate of the deliverability that could be subject to its applications:

NGA *Classification*	*Deliverability MMcf/d*
§ 104	95.0
§ 106	92.4
§ 108	16.7
Total:	204.1

Since Applicant alleges that its producer-suppliers are subject to substantially reduced takes without payment and has requested that its applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirement of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken put will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26749 Filed 11-8-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 14 Through August 21, 1987

During the Week of August 14 through August 21, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

November 10, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 14 through Aug. 21, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 14, 1987	National Helium/New York, Albany, New York.	RM3-81	Request for Modification/Rescission in the National Helium Refund Proceeding. If granted: The June 6, 1986 Decision and Order (Case No. RQ3-00281) issued to New York would be modified regarding the state's application for refund submitted in the National Helium Second State Refund Proceeding.
Aug. 14, 1987	National Helium, Amoco & Charter/Louisiana, Baton Rouge, Louisiana.	RM3-78 RM21-79 RM23-80	Request for Modification/Rescission in the National Helium Amoco, and Charter Second Stage Refund Proceedings. If granted: The June 26, 1987 Decision and Order (Case Nos. RQ3-262, RQ21-263 and RQ23-264) issued to Louisiana would be modified regarding the State's applications for refund submitted in the National Helium, Amoco & Charter Second Stage Refund Proceedings.
Aug. 14, 1987	Aero Trucking, Inc., Madisonville, Kentucky.	RR270-12	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The July 29, 1987 Decision and Order (Case No. RF270-1084) issued to Aero Trucking, Inc. would be modified regarding the firm's application for refund submitted as a Surface Transporter in the Stripper Well Litigation Proceeding.
Aug. 18, 1987	Langer Transport Corporation, Alexandria, Virginia.	RR270-13	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The July 29, 1987 Decision and Order (Case No. RF270-1084) issued to Langer Transport Corporation would be modified regarding the firm's application for refund submitted as a Surface Transporter in the Stripper Well Litigation Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 14 through Aug. 21, 1987]

Date	Name and Location of Applicant	Case No.	Type of Submission
Aug. 18, 1987	Seattle Oil Service, Seattle, Washington	KEE-0149	Exception to the Reporting Requirements. If granted: Seattle Oil Service would not be required to file Form EIA-782B "Resellers/Retailers' Monthly Petroleum Product Sales Report."

REFUND APPLICATIONS RECEIVED

[Week of Aug. 14 to Aug. 21, 1987]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
11/19/86	Arch Mineral Corp.	RF225-10898
11/19/86	Arch Mineral Corp.	RF225-10899
11/19/86	Arch Mineral Corp.	RF25-10900
11/20/86	Mrogan Drive Away	RF270-2483
08/14/87	National Helium/New York	RQ-391
08/14/87 thru 08/21/87	Crude Oil Refund	RF272-3922 thru RF272-4478
08/17/87	Rowell & Watson Company ¿4	RF265-2526
08/17/87	South Berwick Getty	RF265-2527
08/17/87	Sanford Getty	RF265-2528
08/17/87	Kittery Getty	RF265-2529
08/17/87	Berwick Getty	RF265-2530
08/17/87	Alfred Getty	RF265-2531
08/17/87	Springvale Getty	RF265-2532
08/17/87	Rowell & Watson Company, Inc.	RF265-2533
08/17/87	New Market Getty	RF265-2534
08/17/87	Portsmouth Getty	RF265-2535
08/17/87	Farmington Getty	RF265-2536
08/17/87	North Hampton Getty	RF265-2537
08/17/87	Hampton Falls Getty	RF265-2538
08/17/87	Rowell & Watson	RF265-2539
08/17/87	Fred Perkins	RF270-2540
08/17/87	Wilson Freight Company	RF270-2484
08/19/87	Remsen Tank Line	RF225-10901
08/19/87	Remsen Tank Line	RF225-10902
08/19/87	Ronnie Walton	RF265-2544
08/19/87	Bob's Skelly	RF265-2541
08/18/87	Charles Ancona Service Station	RF265-2542
08/18/87	Bill Wise	RF265-2543
08/18/87	Wilson A. Rice & Son	RF277-85

[FR Doc. 87-26762 Filed 11-18-87; 8:45 am]

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Issuance of Decisions and Orders; Week of October 5 Through October 9, 1987

During the week of October 5 through October 9, 1987, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Government Accountability Project, 10/6/87, *KFA-0122*

The Government Accountability Project (GAP) filed an Appeal from a partial denial by the Inspector General (IG) of the DOE of a Request for Information which the GAP had submitted under the Freedom of Information Act (FOIA). The GAP sought access to the withheld portions of a "hotline" complaint received by the DOE's IG Office. In considering the Appeal, the DOE found that the withheld information, including the names, job titles and telephone numbers of the DOE investigatory personnel who obtained copies of the complaint, was properly withheld under Exemption 7(C) of the FOIA. Specifically, the DOE found that the information was compiled for law enforcement purposes, and that its release could reasonably be expected to constitute an unwarranted invasion of personal privacy. The DOE determined that the individuals named in the document might be subject to harassment or other invasions of personal privacy if their identities were disclosed. Furthermore, the DOE did not find any identifiable public interest supporting disclosure. Accordingly, the Appeal was denied.

Mobil Mining & Minerals, 10/5/87, *KFA-0120*

Mobil Mining & Minerals filed an Appeal from a partial denial by the Assistant Manager of the Oak Ridge Operations Office of a request which the firm had submitted under the Freedom of Information Act. Mobil sought information pertaining to a study conducted by the DOE pursuant to the Superfund Act concerning environmental contamination resulting from operation of a DOE facility located in Fernald, Ohio. The Assistant Manager released most of the information requested by Mobil, but he withheld the names and addresses of the owners of the properties upon which groundwater samples were taken and the map coordinates of the sampling locations. The Assistant Manager found that the withheld information was exempt from disclosure pursuant to Exemption 6, pertaining to documents the disclosure of which would constitute an unwarranted invasion of personal privacy.

The DOE found that Exemption 6 applies only to information concerning individuals, and therefore the Assistant Manager's determination was incorrect insofar as it was applied to data concerning wells located on properties owned by businesses and governmental entities. With respect to information showing well locations on properties owned by private individuals, the DOE balanced the privacy interest of the property owners against the public interest in disclosure. The DOE found that the map coordinates should be released because it would further a substantial public interest by making more effective any undertaking by Mobil to remedy environmental contamination resulting from a Mobil plant. The DOE also found that the names and addresses of the individual property owners need not be released, because there was no overriding public interest in the information since it was not necessary for Mobil's investigation. Accordingly, Mobil's Appeal was granted in part, and the matter was remanded to the Assistant Manager for a new determination.

Request for Exception

Glenn E. Wagoner Oil Company, 10/8/87, *KEE-0143*

Glenn E. Wagoner Oil Company filed an Application for Exception on June 11, 1987. The firm sought relief from the reporting requirements of Form EIA-782B pursuant to 10 CFR 205.55(b)(2). In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the reporting requirements that would warrant approval of exception relief. Accordingly, exception relief was denied.

Motions for Discovery

Anchor Gasoline Corporation, 10/9/87, KRD-0330, KRH-0330

Anchor Gasoline Corporation (Anchor) filed a Motion for Discovery and a Motion for Evidentiary Hearing relating to a Proposed Remedial Order (PRO) that was issued to the firm by the Economic Regulatory Administration on August 26, 1986. In the PRO, the ERA alleges that during the period August 1973 through December 1980, Anchor overcharged its customers in sales of gasoline, No. distillate, general refinery

products and crude oil condensate, in violation of the price regulations set forth in 10 CFR Part 212, Subparts D, E and K. In its Motions, Anchor requested ERA's production of documents and responses of interrogatories, and that an evidentiary hearing be convened, in connection with Anchor's contentions that: (i) ERA abused its prosecutorial discretion in applying the "equal application rule" to Anchor, (ii) ERA used an inaccurate and discriminatory computer model in computing the amount of alleged overcharges, (iii) ERA is barred by laches, and (iv) ERA discriminated against Anchor as a result of improper congressional intrusion. In considering Anchor's discovery motion, the DOE determined that the firm had generally failed to establish an adequate legal or factual basis for the discovery requested, but that discovery should be approved of the computer program which ERA used to compute the overcharges alleged against Anchor. The DOE further determined that Anchor had failed to show, with respect to the matters raised by the firm, that there was a genuine factual dispute appropriate for an evidentiary hearing. Accordingly, Anchor's Motion for Discovery was granted in part and Anchor's Motion for Evidentiary Hearing was denied.

Economic Regulatory Administration, 10/8/87, KRD-0029, KRZ-0069

The DOE issued a Decision and Order in connection with an evidentiary hearing to be reconvened in an enforcement proceeding concerning Cities Service Oil and Gas Corporation. With respect to ERA's request to nominate three additional witnesses, the DOE held that the proposed testimony of two of the witnesses was relevant to the credibility of Cities witnesses who have testified that they believed that Cities received substantial discounts on the exempt crude oil that it purchased because the price-controlled crude oil that it sold in reciprocal transactions was destined for entitlements-exempt uses. Accordingly, the DOE permitted the ERA to nominate those two witnesses. With respect to the ERA Motion for Discovery, the DOE found that Cities had previously provided the ERA with all documents responsive to its request. Therefore, no determination on the merits of ERA's discovery request was necessary.

Refund Applications

American Linen Supply Co. et al., 10/8/87, RF270-1549 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of three Applications for Refund from the $10.75 million escrow fund established for surface transporters pursuant to the Settlement Agreement in th DOE Stripper Well Exemption Litigation. However, one claim was adjusted to eliminate gallons claimed for purchases made during months outside of the Settlement Period. Another claim was adjusted to eliminate mathematical errors. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Apco Oil Corporation/Saco Petroleum, Inc., Twin City Oil Co., Inc., Stockton Oil Company, 10/8/87, RF83-19, RF83-152, RF83-160

The DOE issued a Decision and Order concerning three Applications for Refund filed by firms which purchased refined petroleum products from Apco Oil Corporation. Under the standards established in *Apco Oil Corp.*, 12 DOE ¶ 85,149 (1985), the DOE granted the three refund claims. The refunds granted in this proceeding total $12,196 ($8,635 in principal and $3,561 in interest).

Boise Cascade Corporation, 10/7/87, RR270-11

The Department of Energy (DOE) issued a Decision and Order concerning the company's Motion for Reconsideration. The company sought the nullification of application for refund and related waivers and releases which it filed in the Surface Transporters Escrow proceeding and which an affiliate of the company filed in the Rail and Water Transporters Escrow proceeding. The DOE determined that companies which file applications for the M.D.L. 378 escrow and their parents, subsidiaries, affiliates, successors and assigns are bound by the waiver and release language contained in those applications and thus precluded from filing in the Subpart V proceeding.

Bradley Freight Lines, Inc. et al., 10/7/87, RF270-542 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by four companies and will use those gallonages as a basis for the refund that will ultimately be issued to the four firms. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refund will be determined at a later date.

Burlington Northern Railroad Company, The Belt Railway Company of Chicago, 10/7/87, RF271-114, RF271-210

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by two affiliated rail transporters for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. The methods used by the applicants were similar to those accepted by the DOE in previous Rail and Water decisions. The total number of gallons approved in this Decision is 3,946,251,704.

California & Hawaiian Sugar Co., Barge Transport Company, Inc., 10/8/87, RF271-233, RF271-234

On October 8, 1987, the Office of Hearings and Appeals (OHA) issued a Decision and Order to the California & Hawaiian Sugar Co. and the Barge Transport Company, Inc., correcting technical errors in the Ordering Paragraphs of a Decision and Order issued to the same parties on September 15, 1987. The October 8 Decision and Order did not alter either OHA's original determination to grant the Applications for Refund from the Rail and Water Transporters Escrow filed by the two companies, or OHA's determination that the two firms purchased a total of 47,333,809 gallons of U.S. petroleum products during the Stripper Well Settlement Period.

CF Industries, Inc., Agri-Trans Corporation, 10/8/87, RF271-117, RF271-118

The Department of Energy, (DOE) issued a Decision and Order approving applications submitted by two affiliated water transporters for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. Both of the applications were partly owned by agricultural cooperatives which had previously received a refund from another Stripper Well escrow, the Agricultural Cooperatives Escrow. The DOE found that no single agricultural cooperative owned a controlling interest in the applicants, therefore, the applicants were not considered "Affiliates" of the cooperatives under the terms of Section VI.A of the Settlement Agreement. Accordingly, the DOE held that the RWT Waiver and Release did not bar the applicants from receiving an RWT refund. Both applicants used contemporaneous

records to arrive at their respective gallonage and supplied sufficient documention for the DOE to approve their claims. The total number of gallons approved in this Decision is 79,246,127.

Cotter & Company, 10/7/87, RF270-1261

The Department of Energy (DOE) issued a Decision and Order concerning the Application for Refund submitted by Cotter & Company (Cotter) in the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicant based its claim on yearly and monthly trucking statements. The DOE approved Cotter's claim of 2,379,871 gallons. The DOE will determine a per gallon refund amount and establish the amount of the company's refund after it completes its analysis of all Surface Transporter claims.

Crowley Maritime Corporation et al., 10/6/87 RF271-98 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by four water transporters for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. The methods used by the applicants were similar to those accepted by the DOE in previous Rail and Water decisions. One of the applicants, Sonat Marine, Inc. (Sonat) had been absorbed by a partnership after Sonat had filed its claim. Paragraph 16 of the RWT Order states that a claimant must be incorportated in the United States in order to be eligible for an RWT refund. The DOE found that Maritrans Operating Partners, L.P. (Maritrans), the partnership which had absorbed Sonat, could receive Sonat's refund because Sonat was an injured party which the RWT Excrow was intended to remedy, and the RWT Order did not prohibit a successor from inheriting the right to a refund. The DOE will determine a per gallon refund amount and establish the amount of each applicant's refund after it completes its analysis of all Rail and Water claims. The total number of gallons approved in this Decision is 1.023,375,413.

Dallas Transit System, 10/9/87, RF270-1238

The Department of Energy issued a Decision and Order denying the application submitted by Dallas Transit System for a refund from the Surface Transporters Escrow, which was established as a result of the Stripper Well Agreement. Dallas Transit System was a municipally-owned and operated transportation carrier during the Settlement Period. The Court's order in Stripper Well specifically excluded governments and governmental authorities from being eligible to receive a Surface Transporter refund.

Dover Garage II, 10/5/87, RF270-1251

The Department of Energy (DOE) issued a Decision and Order concerning the Application for Refund submitted by Dover Garage II (Dover) in the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. Because the applicant did not perform any transportation services, the DOE determined that Dover is not a member of the class for which the Surface Transporters Escrow was established. Dover's Application for Refund was therefore denied.

Ford Motor Company, 10/5/87, RF271-188, RF270-1511

The DOE issued a Decision and Order analyzing a Rail & Water Transporter (RWT) Claim and a Surface Transportation Claim filed by Ford Motor Company. The DOE determined that waiver language contained in both the RWT release and the Surface Transporter release prohibits the same firm from receiving refunds from the two escrow funds. The OHA approved the larger of the two claims and denied the smaller.

Getty Oil Company/Blue Flame Gas Co., Inc., 10/7/87, RF265-568, et al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of its Getty purchases. In 11 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining four cases, the applicants elected to limit their claims to $5,000. The total refunds approved in this Decision are $67,366, representing $33,583 in principal and $33,783 in accrued interest.

Giant Industries, Inc., 10/5/87, RF270-437

The Department of Energy (DOE) issued a Decision denying the Application for Surface Transporter Refund submitted by Giant Industries, Inc. from the Surface Transporters Escrow pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE determined that Giant's receipt of a refund from the escrow account established for Refiners made it ineligible to receive a Surface Transporter refund.

Greater Houston Transportation Co., Inc., 10/9/87, RF270-1240

The Department of Energy issued a Decision and Order approving the Application for Refund submitted by Greater Houston Transportation Co., Inc. (Greater Houston) from the Surface Transporters Escrow, which was established as a result of the Stripper Well Agreement. The total number of gallons approved in this Decision and Order is 24,684,995.

Gulf Oil Corporation/Bar Mills Market, 10/9/87, RF300-253

The Department of Energy issued a Decision and Order approving the Application for Refund filed by Bar Mills Market from a Consent Order fund made available by Gulf Oil Corporation. Since the firm's refund claim was for an amount below the $5,000 small claims threshold, Bar Mills was not required to demonstrate injury in order to receive a refund. The total refund granted was $756, including $637 in principal and $119 in interest.

Gulf Oil Corporation/Cleveland County, 10/9/87, RF300-256

The Department of Energy issued a Decision and Order approving the Application for Refund filed by Cleveland County, North Carolina, from a Consent Order fund made available by Gulf Oil Corporation. Since the applicant was a government entity and an end-user of Gulf product, it was not required to demonstrate injury in order to receive a refund. The total refund granted was $486, including $409 in principal and $77 in interest.

Hac Farm Lines, Inc. et al., 10/5/87, RF270-1663 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of four Applications for Refund from the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Holly Farms Poultry Industries, Inc., et al., 10/7/87, RF270-1278 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes claimed in six Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. In its analysis, the DOE found that the six claimants are affiliated, but that they should not be deemed to have waived each other's

rights to refunds from the Surface Transporters Escrow. The DOE also decided to apply the 250,000 gallon minimum threshold to the total of the six applicants' purchases, thereby allowing one of the six to qualify for a refund based on 191,232 gallons. The DOE will determine a per gallon refund amount and the amount of each applicant's refund after it completes is analysis of all Surface Transporter claims. The total number of gallons approved in this Decision is 49,583,380.

Holsum Bakeries, Inc., 10/5/87, RF270-1319

The Department of Energy (DOE) issued a Decision and Order concerning the Application for Refund submitted by Holsum Bakeries, Inc. (Holsum) in the Surface Transporters Escrow, established as the result of the Stripper Well Settlement Agreement. The applicant based its claims on the number and length of delivery routes it had during the Settlement Period. The DOE approved Holsum's claim of 1,500,205 gallons. The DOE will determine a per gallon refund amount and establish the amount of the company's refund after it completes its analysis of all Surface Transporter claims.

Inland Moving & Storage Co. et al., 10/5/87, RF270-21 et al.

The Department of Energy (DOE) issued a Decision and Order in connection with its administration of the 10.75 million dollar escrow fund established for Surface Transporters pursuant to the final Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE approved four applicants' purchase volumes of products that include motor gasoline and diesel fuel. Each of the transportation companies was either a "for hire" carrier or operated a "private fleet" of trucks. The companies used various actual records and/or conservative estimates to report their gallonage claims. Three of the companies miscalculated their total purchase volumes of petroleum. The volumes of these three companies were adjusted, and then the volumes of all four firms were approved. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be derived at a later date.

Inland Partners, 10/9/87, RF270-900, RE271-111

The Department of Energy (DOE) issued a Decision and Order dismissing an application submitted by Inland Partners (Inland) for a refund from the Rail and Water Transportation Escrow (RWT) and an application submitted by Inland for a refund from the Surface Transporters Escrow (Surface). Both of these escrows were established as a result of the Stripper Well Settlement Agreement. Inland had previously received a refund from another Stripper Well Escrow, the Resellers Escrow. The DOE found that under the terms of the Waiver and Release which Inland signed in applying for each of the three escrows, Inland waived its right to receive a refund from more than one escrow account. Accordingly, the DOE found that once Inland had received a refund from the Resellers Escrow, it was ineligible for either an RWT or Surface refund. Accordingly, the DOE dismissed Inland's RWT and Surface claims.

Inman Oil Company/Hocker Oil Company et al., 10/5/87, RF293-1 et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed by purchasers of Inman Oil Company motor gasoline. Each firm applied for a refund based on the procedures outlined in *Inman Oil Company*, 15 DOE ¶ 85,514 (1987), governing the disbursement of settlement funds received from Inman pursuant to a June 23, 1980 Consent Order. Three of the applicants, Hocker Oil Company, Stoney Point Service Station and Hamilton & Son Incorporated, are resellers of Inman motor gasoline who claimed refunds of less than $5,000. Using the small claims presumption for resellers, they were deemed to have been injured in their purchases from Inman. Two other applicants, MFA Oil Company and the MFA Cooperative Association No. 280, are required by cooperative agreements and were therefore presumed to have been injured. Since the sixth applicant, the Defense Fuel Supply Corporation was an end user of Inman motor gasoline, it was also presumed to have been injured by Inman's alleged overcharges. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $2,821, representing $1,482 in principal and $1,339 in accrued interest.

International Distribution Centers, Inc. et al., 10/6/87, RF270-1460 et al.

The Department of Energy (DOE) issued a Decision and Order approving Applications for Refund from the Surface Transporters Escrow that was established as the result of the Stripper Well Settlement Agreement. In its analysis of the Applications, the DOE determined that each company had operated motor vehicles for surface transportation during the Settlement Period and that each company's vehicles used over 250,000 gallons of petroleum products during the Settlement Period. As a result, the DOE determined that each company was a member of the class of Surface Transporters for purposes of the Surface Transporters refund proceeding and therefore was eligible to receive a refund from the Surface Transporters Escrow.

Jack B. Kelley, Inc., Younger Brothers, Inc., 10/5/87, RF270-174, RF270-1726

The Department of Energy (DOE) issued a Decision and Order regarding two applications for refunds from the Surface Transporters Escrow established as the result of the Stripper Well Settlement Agreement. The applications were filed by Jack B. Kelley, Inc. and Younger Brothers, Inc., both of which acted as Surface Transporters during the Settlement Period. In reviewing the applications, the DOE determined that gallons purchased by the firms for use in company vehicles should be approved but that owner-operator volumes should be excluded from the firms' claims because the firms' owner-operators paid for the products. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

KLLM, Inc. et al., 10/7/87, RF270-501 et al.

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the settlement agreement in the DOE stripper well exemption litigation. The DOE approved the gallonages of refined petroleum products claimed by four transportation companies and will use those gallonages as a basis for the refund that will ultimately be issued to the four firms. The DOE states that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amounts of the four firms' refunds will be determined at a late date. The total gallonage approved in the Decision was 303,424,769.

M. Cortese Trucking Co., Inc. 10/6/87, RF270-77

The Department of Energy (DOE) issued a Decision and Order in

connection with its administration of the 10.75 million dollar escrow fund established for Surface Transporters pursuant to the final Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE approved Cortese's purchase volumes of diesel fuel utilized to operate its "private fleet" of trucks. The company used various actual records and/or conservative estimates to report its gallonage claim. After examining Cortese's figures, the OHA found that there was reasonable assurance that the company's gallonage claim was no greater than its actual petroleum product consumption during the Settlement Period. The DOE stated that because the size of a surface transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of Cortese's refund will be determined at a later date.

Manufacturers Cartage Company, 10/9/87, RF270-804

The Department of Energy (DOE) issued a Decision and Order approving an application submitted by Manufacturers Railway Company (MRC) for a refund from the Rail and Water Transporters (RWT) Escrow and dismissing an application submitted by Manufacturers Cartage Company (MCC) for a refund from the Surface Transporters (Surface) Escrow. Both of these escrows were established as a result of the Stripper Well Settlement Agreement. MRC and MCC are affiliated companies. The DOE found that under the terms of the Waiver and Release of the RWT and Surface applications, an applicant or its affiliate could not receive a refund from more than one Stripper Well Escrow. Accordingly, the DOE decided to consider MRC's RWT claim and dismiss MCC's Surface claim because the RWT claim was larger than the Surface claim. The DOE found that the method used by MRC to arrive at its gallonage was reasonable and approved MRC's RWT claim in full.

Marathon Petroleum Company/David S. Massengill et al. 10/8/87, RF250-2728 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by retailers who purchased products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant submitted information indicating the volume of its Marathon purchases. None of the applicants was entitled to a refund greater than the $5,000 small claims presumption. The sum of the refunds approved in this Decision is $2,580, representing $2,300 in principal and $280 in accrued interest.

Mayflower Transit, Inc.; Dorsey Bus, Inc., 10/9/87, RF270-1330, RF270-1331

The Department of Energy (DOE) issued a Decision and Order concerning the Applications for Refund submitted by Mayflower Transit, Inc. (Mayflower) and Dorsey Bus, Inc. (Dorsey) in the Surface Transporters Escrow, established as a result of the Stripper Well Settlement Agreement. The vast majority of the gallons claimed by Mayflower were purchased by its owner-operators rather than by Mayflower itself. Dorsey, an affiliated company, did not use any owner-operators. Mayflower requested a refund based on the volumes purchased by its owner-operators so that it could distribute that portion of its refund to its owner-operators. The DOE denied Mayflower's request to receive a refund on behalf of its owner-operators. Mayflower is therefore eligible to receive a refund based on its purchase of 3,348,609 gallons and Dorsey is eligible to receive a refund based on its purchase of 2,270,918 gallons. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Midwest Energy Freight System, Inc. et al., 10/6/87, RF270-143

The Department of Energy (DOE) issued a Decision and Order approving applications for refund from the Surface Transporter Escrow filed by eleven trucking companies. The companies based their claims on motor gasoline, motor oil, diesel fuel and transmission fluid that their vehicles consumed during the settlement period. The DOE approved each company's purchase volumes with adjustments in some cases to discount volumes purchased by owner-operators. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Nabisco Brands, Inc. et al., 10/9/87, RF270-1567 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes of seven Applications for Refund from the $10.75 million escrow fund established for surface transporters pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. In this Decision, a Canadian firm was deemed eligible to receive a refund based upon its purchases of fuel in the U.S. during the Settlement Period. Three other claims were adjusted to eliminate ineligible gallons. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transportation claims.

Pyrofax Gas Corporation/Cherokee Brick & Tile et al., 10/7/87, RF277-1 et al.

The DOE issued a Decision and Order concerning 56 Applications for Refund filed by purchasers of Pyrofax propane. Each firm applied for a refund based on the procedures outlined in *Pyrofax Gas Corporation* 15 DOE ¶ 85,494 (1987), governing the disbursement of settlement funds received from Pyrofax pursuant to a March 23, 1981 Consent Order. The applications were submitted by resellers and retailers claiming $5,000 or less, end users and public utilities. All of the applicants were identified in the ERA audit file and all agreed to rely on the information therein. Using the small claims presumption for resellers and retailers, we concluded that such applicants were injured. Moreover, all end users and customers of public utilities were presumed to have been injured. Public utilities were required to submit plans explaining how they would pass their refunds on to their customers and how they would notify the appropriate regulatory body of their refund. After examining the applications and supporting documentation submitted by the claimants, the DOE concluded that they should receive refunds totaling $1,904,848, representing $1,076,126 in principal and $82,722 in accrued interest.

Red Star Express Lines of Auburn, Inc., 10/9/87, RF270-227

The Department of Energy (DOE) issued a Decision and Order approving an application for refund from the Surface Transporter Escrow filed by a trucking company. The company based its claim on motor oil and diesel fuel which it used during the Settlement Period. The DOE approved the company's purchase volume and will determine the amount of the company's refund after it completes its analysis of all Surface Transporter claims.

Regional Transit Service, Inc., 10/9/87, RF270-1630

The Department of Energy issued a Decision and Order in connection with its administration of the $10.75 million Surface Transporters Escrow fund established pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE

determined that because Regional Transit Service, Inc. is a governmental authority, it is not a Surface Transporter as that term is defined in the Court's order. Accordingly, the application filed by Regional Transit Service, Inc. was denied.

Saltzman, Inc., et al., 10/9/87, RF270-1000, et al.

The Department of Energy (DOE) issued a Decision and Order approving some of the volumes claimed in six Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Owner-operator gallons were excluded from each of the claims because none of the applicants demonstrated that it purchased the fuel and that it was not reimbursed specifically for such purchases. The DOE will determine a per gallon refund amount and the amount of each applicant's refund after it completes its analysis of all Surface Transporter claims. The total number of gallons approved in this Decision is 13,191,514.

Sea-Land Service, Inc., 10/8/87, RF271-200

The Department of Energy (DOE) issued a Decision and Order approving an application submitted by Sea Land Service, Inc. (Sea-Land) for a refund from the Rail and Water Transporters (RWT) Escrow and dismissing Sea-Land's application for a refund from the Surface Transporters (Surface) Escrow. Both of these escrows were established as a result of the Stripper Well Settlement Agreement. The DOE found that under the terms of the waiver and Release of the RWT and Surface applications, an applicant could not receive a refund from more than one Stripper Well Escrow. Accordingly, the DOE decided to consider Sea-Land's RWT claim and dismiss its Surface Claim because the RWT claim was significantly larger than the Surface claim. The DOE found that the documentation submitted by Sea-Land to support its RWT claim was persuasive and approved the entire amount of the claim.

State Escrow Distribution, 10/7/87, RF302-1

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $12,260,000 to the State Governments. Those funds had been set aside for distribution to the States in five previously issued decisions. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

T.L. James & Company, 10/8/87, RF270-1582

The Department of Energy (DOE) issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for surface transporters pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE approved T.L. James & Company's claim after Litigation. The DOE approved T.L. James & Company's claim after deducting gallons claimed for use in off/road vehicles. The DOE will determine a per gallon refund amount and establish the amount of the company's refund after it completes its analysis of all Surface Transporter claims.

The Kroger Co. et al., 10/7/87, RF270-20 et al.

The Department of Energy (DOE) issued a Decision and Order approving 21 of 23 Applications for Refund from the Surface Transporters Escrow established as the result of the Stripper Well Settlement Agreement. The applicants, all of which operated "for hire" or a private fleet of trucks, applied for refunds based on purchases of diesel fuel, motor gasoline, and lubricating oils between August 19, 1973 and January 27, 1981. Thirteen of the firms' claims were adjusted to exclude volumes consumed by trucks which the firms leased from owner-operators. Two of the applicants were denied because documentation submitted by the firms demonstrated that they utilized owner-operators on a 100 percent basis during the Settlement period. After examining the figures presented by the other eight applicants and adjusting some of their volumes, the DOE found that there is reasonable assurance that the 21 companies' gallonage claims were no greater than their actual petroleum product consumption during the Settlement Period. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

The Penn Central Corporation, et al., 10/9/87, RF271-79 et al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by three affiliated rail transporters for refunds from the Rail and Water Transporters (RWT) Escrow established as a result of the Stripper Well Settlement Agreement. The applicants arrived at their respective gallonage using methods similar to those used by other RWT applicants and, accordingly, the DOE approved the claims in full. The total number of gallons approved in this Decision is 3,507,371,806.

Thompson Brothers Inc., et al., 10/9/87, RF270-2291 et al.

The Department of Energy (DOE) issued a Decision and Order approving some of the volumes claimed in six Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Owner-operator gallons were excluded from four of the claims because none of the four applicants demonstrated that it purchased the fuel and that it was not reimbursed specifically for such purchases. The DOE will determine a per gallon refund amount and the amount of each applicant's refund after it completes its analysis of all Surface Transporter claims. The total number of gallons approved in this Decision is 26,029,760.

Tresler Oil Company/Defense Fuel Supply Center, 10/8/87, RF295-4

The DOE issued a Decision granting a refund from the Tresler Oil Company escrow account to a retailer of Tresler motor gasoline. The Applicant elected to apply for a refund based upon the presumptions set forth in the *Tresler* decision. *Tresler Oil Company*, 15 DOE ¶ 85,522 (1987). The DOE granted a refund of $240 ($210 principal and $30 interest).

Wells Cargo, Inc., Nu-Car Carriers, Inc., 10/8/87; RF270-1538, RF270-1562

The Department of Energy (DOE) issued a Decision and Order approving the volumes of two Applications for Refund from the $10.75 million escrow fund established for surface transporters pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. However, both claims were adjusted to eliminate gallons of ineligible products. The DOE will determine a per gallon refund amount and establish the amount of each company's refund after it completes its analysis of all Surface Transporter claims.

Wiley Sanders Truck Lines, Inc., Loser & Loser, Inc., 10/6/87; RF270-186, RF270-225

The DOE issued a Decision and Order in connection with its administration of the $10.75 million escrow fund established for Surface Transporters pursuant to the Settlement Agreement in the DOE Stripper Well Exemption Litigation. The DOE approved the volumes of refined petroleum products claimed by two Surface Transporters and will use those volumes as a basis for the refunds that will ultimately be

issued to the two firms. The DOE stated that because the size of a Surface Transporter applicant's refund will depend upon the total number of gallons that are ultimately approved, the actual amount of the two firms' refunds will be determined at a later date. The total volume approved in this Decision is 13,080,721 gallons.

Womeldorf, Inc. et al., 10/8/87; RF270-985 et al.

The Department of Energy (DOE) issued a Decision and Order approving the volumes claimed in 11 Applications for Refund from the Surface Transporters Escrow established as a result of the Stripper Well Settlement Agreement. Aviation gasoline was excluded from one of the claims because it was not a product used for Surface Transportation. The total number of gallons approved in this Decision is 117,017,018.

Dismissals

The following submissions were dismissed:

Name and Case No.

Bueres Mobil Service; RF225-10504
Chas F. Cates & Sons, Inc.; RF270-1642
Golden Gate Petroleum Co.; RF225-9920
Keller Bus Service; RF270-1656
Land O'Lakes, Inc.; RF270-1523
Pittsburgh & Ohio Valley Railway Co.; RF271-132
Riteway Transport, Inc.; RF270-1668
Sackett Oil Co., Inc.; RF225-5519
Sause Brothers Ocean Towing Company; RF271-165
Tajon, Inc.; RF270-1535
Tex Pack Express; RF2270-1669
The Quaker Oats Co.; RF225-5569
Tinus A. Chatman; RF270-441
Total Petroleum, Inc.; RF225-1179, RF225-1180
Warren Transport, Inc.; RF270-1606

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

November 10, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 87-26761 Filed 11-18-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3292-8]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1986, as amended, notice is hereby given of a proposed administrative settlement concerning the Union Chemical Co., Inc., hazardous waste site in South Hope, Maine. This settlement agreement lists different signatory parties and contains more stringent settlement terms that the settlement agreement published for comment on September 22, 1987, and finalized on November 4, 1987. This settlement agreement has been proposed for approval by the Regional Administrator for EPA Region I on November 4, 1987. Below are listed the Settling Parties to the agreement:

American Biltrite, Inc.; BALSO Liquidating Trust for Ball & Socket Plastics Co.; Bass Harbor Marine; Borduas Graphics, Inc.; C&C Yachts, Inc.; Colby College; Cooper Industries, Inc., (for Guardian Corp.); Crownmark Corp.; Custom Coating & Laminating Corp.; Edlund Company, Inc.; EM Industries, Inc., (Maine Pearl Essence); Global Specialties, Inc.; GWNCO, Successor to George Newman & Co.; GWNCO, Successor to Biddeford Industries; Power Electronics Corp.; Precision Components, Inc.; Quality Spraying & Stenciling, Co.; Spot-Bilt Inc./Hyde Athletic Industries, Inc.; Standard Foundry Company, Inc.; Symmons Industries, Inc.; Total Waste Management Corp.; TRANSCO; The Pro Corporation; U.S. Air Force; Wolverine World Wide, Inc.

EPA is entering into this agreement under the authority of section 122(h) and 122(d)(3) of CERCLA. The agreement obligates each Settling Party to pay its volumetric share of Federal and State past response costs and to pay its volumetric share for costs in performing a Remedial Investigation/Feasibility Study plus a 20% premium on the RI/FS and oversight costs.

The Environmental Protection Agency will receive for thirty days from the date of publication of this notice written comments relating to this agreement. Comments should be addressed to the Regional Administrator, US EPA, Region I, JFK Federal Building, Boston, MA 02203 and should refer to; In the Matter of Union Chemical Co., Inc. Site, U.S. EPA Docket No. 1-88-1003.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the Region I Office of Regional Counsel, JFK Federal Building, Boston, MA 02203.

Michael R. Deland,

Regional Administrator.

[FR Doc. 87-26725 Filed 11-18-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL ELECTION COMMISSION

Clearinghouse on Election Administration; Clearinghouse Advisory Panel; Meeting

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I) and Office of Management and Budget Circular A-63, as revised, the Federal Election Commission announces the following Advisory Panel meeting:

Name: Federal Election Commission Clearinghouse Advisory Panel

Date: 9-10 December 1987

Place: Grand Hyatt Washington, Washington Center, 1000 H St., NW., Washington, DC.

Time:

0900-1200; 1330-1700 on 9 December 1987

0900-1200; 1330-1770 on 10 December 987

Proposed Agenda: Discussion sessions addressing Absentee Voting Issues; Recent Election Case Law; Implementation of Federal Voting System Standards, Including Software Escrow, Model for Certifying Test Authorities; Review of Draft Standards for Direct Electronic Systems; Status of Legislation Introduced in 100th Congress; Strategies for Implementing a Computerized Election Management System; Review and Impact of New Immigration Laws; Upcoming Census; Polling Place Accessibility; and Election Management Guidelines.

Purpose of the Meeting: The Panel will discuss the agenda items, present their views on problems in the administration of Federal elections, and formulate recommendations to the Federal Election Commission Clearinghouse for its future program development.

The Advisory Panel meeting is open to the public, dependent on available space. Any member of the public may file a written statement with the Panel before, during, or after the meeting. To the extent that time permits, the Panel Chairman may allow public presentation or oral statements at the meeting.

All communications regarding this Advisory Panel should be addressed to Penelope Bonsall, Clearinghouse on Election Administration, Federal Election Commission, 999 E Street NW., Washington, DC 20463.

Date: November 12, 1987.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 87-26721 Filed 11-18-87; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-801-DR]

Major Disaster and Related Determinations; New York

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA-801-DR), dated November 10, 1987, and related determinations.

DATED: November 10, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated November 10, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of New York resulting from a severe, unseasonable winter storm which occurred on October 4, 1987, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I, therefore, declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Gerald J. Connolly of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared major disaster: The Counties of Albany, Columbia, Dutchess, Greene, Rensselaer, Schenectady, and Washington for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 87-26679 Filed 11-18-87; 8:45 am]

BILLING CODE 6718-02-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, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200058

Title: Indiana Port Commission Terminal Agreement

Parties: Indiana Port Commission (Indiana); Ceres Marine Terminals, Inc. (Ceres)

Synopsis: Under the proposed agreement, Ceres leases from Indiana Transit Shed No. 1, receives preferential use of Berths 10 and 11, and receives full exclusive use of outside storage areas adjacent to each of the two berths at the Port of Indiana—Burns International Harbor for a term to run from April 1, 1987, through March 31, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: November 16, 1987.

[FR Doc. 87-26678 Filed 11-18-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers Bank Holding Companies of and Acquisitions of Nonbanking Companies; Banc One Corp., et al.

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation,* Columbus, Ohio; to acquire 100 percent of the voting shares of The Marine Corporation, Milwaukee, Wiconsin, and thereby indirectly acquire Marine Bank, N.A., Milwaukee, Wisconsin; Marine Bank, West Delafield, Wisconsin; Peoples Marine Bank of Green Bay, Green Bay, Wisconsin; Marine Bank South, N.A., Mt. Pleasant, Wisconsin; Marine Bank Appleton, N.A., Appleton, Wisconsin; Marine Bank Dane County, Madison Wisconsin; Marine First National Bank, Janesville, Wisconsin; Citizens Marine National Bank, Stevens Point, Wisconsin; Marine Bank Southwest, N.A., Elkhorn, Wisconsin; Marine Bank Monroe, Monroe, Wisconsin; West Bend Marine Bank, West Bend, Wisconsin; Marine Bank Oshkosh, N.A., Oshkosh, Wisconsin; Marine Bank of Beaver Dam, Beaver Dam, Wisconsin; Marine National Bank of Neenah, Neenah, Wisconsin; Fidelity Marine Bank, Antigo, Wisconsin; Marine Bank Seymour, N.A., Seymour, Wisconsin; Marine Bank of Campbellsport, Campbellsport, Wisconsin; Firstar Bank of Clintonville, N.A., Clintonville, Wisconsin; Marine Bank Larsen, Larsen Wisconsin; Marine Bank Freedom, Town of Freedom, Wisconsin; Marine Bank Mequon, Mequon, Wisconsin; Marine Bank, Bloomington, Minnesota; Marine Bank, Bloomington, Minnesota; Marine Bank Chicago, Chicago, Illinois.

In connection with this application, Applicant also proposes to acquire Marinebanc Leasing Company, Inc., Milwaukee, Wisconsin; Elmhurst, Illinois; and Bloomington, Minnesota; and thereby engage in leasing personal property and in acting as agent, broker, and adviser to Marine affiliate banks in connection with the leasing of personal property pursuant to § 225.25(b)(5); Marine Bank Services Corporation, Milwaukee, Wisconsin; and Elmhurst, Illionis; and thereby enagage in providing data processing pursuant to § 225.25(b)(7); and The Marine Trust Company, N.A., Milwaukee, Wisconsin, and thereby engage in performing functions and activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature pursuant to § 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Farmers & Merchants Bank Employee Stock Ownership Plan & Trust,* Beach, North Dakota; to become a bank holding company by acquiring an additional 13.6 percent of the voting shares of Farmers & Merchants Bancshares, Inc., Beach, North Dakota; and thereby indirectly acquire Farmers & Merchants Bank, Beach, North Dakota.

In connection with this application, Applicant also proposes to engage in making and servicing loans for its own account pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig. Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Sunwest Financial Services, Inc.,* Albuquerque, New Mexico; to acquire through its wholly owned subsidiaries, Sunwest Acquisition Corp., Albuquerque, New Mexico and Sunwest Merger Corp., Albuquerque, New Mexico, the voting shares of Southwest Bancshares, Inc., El Paso, Texas, and thereby indirectly acquire American Bank of Commerce, El Paso, Texas, and American Bank of Commerce-East, El Paso, Texas. In addition, Sunwest Acquisition Corp. and Sunwest Merger Corp. have applied to become bank holding companies.

In connection with this application, Applicant has also applied to expand its current credit related insurance agency and reinsurance activity to cover extensions of credit by the proposed Texas subsidiary banks. Comments on this application must be received by December 9, 1987.

Board of Governors of the Federal Reserve System, November 13, 1987

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26661 Filed 11-18-87; 8:45 am]

BILLING CODE 6210-01-M

The Bank of New York Co., Inc.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-23787) published at page 38273 of the issue for Thursday, October 15, 1987.

Under the Federal Reserve Bank of New York, the entry for Bank of New York Company, Inc. is revised to read as follows:

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.,* New York, New York; to acquire 100 percent of the voting shares of Irving Bank Corporation, New York, New York, and thereby indirectly acquire Irving Trust Company, New York, New York; The Bank of Lake Placid, Lake Placid, New York; Bank of Long Island, Babylon, New York; Central Trust Company, Rochester, New York; Dutch Bank and Trust Company, Poughkeepsie, New York; Endicott Trust Company, Endicott, New York; The First National Bank of Hancock, Hancock, New York, the First National Bank of Moravia, Moravia, New York; the Fulton County National Bank & Trust Company, Gloversville, New York; the Hayes National Bank, Clinton, New York; The Merchants National Bank & Trust Company of Syracuse, Syracuse, New York; Nanuet National Bank, Nanuet, New York; Union National Bank, Albany, New York; and Scarsdale National Bank and Trust Company, Scarsdale, New York.

In connection with this application, Applicant has also applied to acquire Irving Business Center, Inc., New York, New York, and thereby engage in the business of marketing the products and services of Irving Trust Company pursuant to § 225.25(b) (1) and (5); Irving Financial Centers, Inc., New York, New York, and thereby engage in consumer lending and commercial lending to local business pursuant to § 225.25(b)(1); Irving Life Insurance Company, New York, New York, and thereby engage in providing credit-related life, mortgae and health insurance pursuant to § 225.25(b)(8); Irving Trust Company California, San Francisco, California; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); Irving Trust Company Florida, Miami, Florida; and thereby engage in providing fiduciary, custody and investment management services pursuant to § 225.25(b)(3); One Wall Street Brokerage, Inc., New York, New York, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15); Briggs, Schaedle Futures Inc., New York, New York, and thereby engage in futures commission merchant for nonaffiliated persons in the execution and clearance of futures contracts and options on futures contracts pursuant to § 225.25(b)(18); Liberty Brokerage, Inc., New York, New York, and thereby engage as interdealer broker of U.S. Government Securities

pursuant to § 225.25(b)(15); Irving Services Corporation, New York, New York, and thereby engage in servicing loans primarily related to credit card purchases and providing data processing services to others pursuant to § 225.25 (b)(1) and (b)(7); and Irving Leasing Corporation, New York, New York, and its twelve subsidiaries, and thereby engage in leasing personal or real property or acting as agent, broker or adviser in leasing such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Comments on this application must be received by December 4, 1987.

Board of Governors of the Federal Reserve System, November 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26660 Filed 11-18-87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de novo In Permissible Nonbanking Activities; Northern Trust Corp., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage de novo, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northern Trust Corporation,* Chicago, Illinois; to engage de novo through its subsidiary, Northern Futures Corporation, Chicago, Illinois, in acting as a futures commission merchant and providing investment advice on financial futures and options on futures, pursuant to § 225.25 (b)(18) and (b)(19) of the Board's Regulation Y. Comments on this application must be received by December 2, 1987.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Bren-Mar Properties, Inc.,* Columbia, Missouri; to engage de novo in direct lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *San Diego Financial Corporation,* San Diego, California; to engage de novo through its subsidiary, San Diego Financial Capital Management, Inc., San Diego, California, in serving as investment advisor to an investment company pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 13, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26662 Filed 11-18-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget to authorize a new information collection required under the Buy American Act.

AGENCY: Office of Acquisition Policy, GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ida Ustad, 202-566-1224.

Purpose: Contractors must provide information on costs of foreign construction materials so the costs can be compared with costs of domestic materials to see which must be used under the law.

Annual Reporting Burden: Respondents, 120; responses, 120; estimated average response time, 1 hour.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Rm. 3015, GS Bldg., Washington, DC 20405, or by telephoning 202-566-0668.

Dated: November 13, 1987

Emily C. Karam

Director, Information Management Division.

[FR Doc. 87-26655 Filed 11-18-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Advisory Mental Health Council; Meeting

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the agency's National Advisory Mental Health Council in the month of December 1987. Committee members will discuss NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

COMMITTEE NAME: National Advisory Mental Health Council.

DATE AND TIME: December 3-4: 9:00 a.m.

PLACE: National Institutes of Health, Building #31, Conference Room #10, 9000 Rockville Pike, Bethesda, Maryland 20892.

STATUS OF MEETING: Open.

CONTACT: Rachel Driver, Parklawn Building, Room 9-105, 5600 Fishers Lane Rockville, Maryland 20857, (301) 443-3367.

PURPOSE: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health

regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the filed of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Substantive information, summaries of the meetings, and roster of committee members may be obtained from Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-94, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: November 13, 1987.

[FR Doc. 87-26657 Filed 11-18-87; 8:45 am]

BILLING CODE 4160-20

Food and Drug Administration

[Docket No. 76N-0366]

Provisionally and Permanently Listed Uses of FD&C Red No. 3 and of Its Lakes; Request for Data for Specific Uses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that all persons interested in the continued use of FD&C Red No. 3 and its lakes in food, drugs, and cosmetics submit to FDA data pertaining to the sale and use of this color additive (in food, drugs, and cosmetics). The requested information will be used to assess potential exposure and to allocate the allowable safe uses of FD&C Red No. 3 among the prevailing uses if allocation is necessary and appropriate, based upon the agency's evaluation of available toxicological data.

DATES: Information to be submitted by December 21, 1987.

ADDRESS: All information is to be submitted to the Division of Food and Color Additives (HFF-330), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Division of Food and Color Additives (HFF-330), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION:

I. Background

FD&C Red No. 3 is provisionally listed for use in cosmetics and externally applied drugs. Its lakes are provisionally listed for all uses (21 CFR 81.1). The use of FD&C Red No. 3 in food and ingested drugs is permanently listed (21 CFR 74.303 and 74.1303, respectively).

The results of long-term feeding studies on FD&C Red No. 3 submitted by The Certified Color Manufacturers' Association (CCMA) showed a treatment related occurrence of thyroid tumors when the color additive was administered in the diet of Charles River CD-1 rats. In 1983 at the request of the agency the results of the long-term feeding studies were reviewed by the Board of Scientific Counselors of the National Toxicology Program Review Committee (the Board).

The Board concluded that long-term administration of FD&C Red No. 3 at a level of 4 percent in the diet of Charles River CD-1 male rats resulted in a significantly higher incidence of thyroid follicular cell adenomas and carcinomas when compared to concurrent control rats and that the evidence was insufficient to support a determination as to the mechanism (primary or secondary) of the effects. The report of the Board and the other reports referenced here are on file in Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

CCMA subsequently notified the agency that it was sponsoring short-term studies to attempt to elucidate the mechanism of action of FD&C Red No. 3—primarily to determine if it is due to a secondary effect. The results of these studies were submitted to FDA for evaluation.

A Peer Review Panel of scientists (the Panel) was convened and directed to make an inquiry into whether available data indicated that FD&C Red No. 3 had a secondary mechanism of action and whether any potential human risk from exposure to the color additive could be determined. The Panel's report, "An Inquiry Into The Mechanism of Carcinogenic Action of FD&C Red No. 3 And Its Significance for Risk Assessment," was submitted to the agency in July 1987.

The agency's preliminary review of the Panel's report along with all available data indicate that it may be necessary for the agency to limit the aggregate uses of FD&C Red No. 3, i.e., it may be necessary to allocate the allowable uses of the color additive among all of its prevailing uses in food, drugs, and cosmetics. If necessary, such allocation would be based on the information received in response to this notice from persons interested in the use of FD&C Red No. 3 in food, drugs, and cosmetics, and other available information.

Moreover, the agency is considering what effect, if any, the recent decision in *Public Citizen* v. *Young* (D.C. Cir. No. 86-1548, October 23, 1987), has on the listing of this color additive.

Pursuant to section 706(b)(8) of the Federal Food, Drug and Cosmetic Act and to 21 CFR 70.45 of the color additive regulations, the Commissioner of Food and Drugs hereby notifies all persons interested in the use of FD&C Red No. 3 in food, drugs, or cosmetics to submit, not later than December 21, 1987, data on all uses of FD&C Red No. 3 in food, ingested drugs, and ingested cosmetics, and externally applied drugs, and externally applied cosmetics. This section of the act directs the Secretary to allocate the allowable levels of use of a color additive when the data before him or her fail to show that the additive would be safe and otherwise permissible to list for all uses. In determining which use or uses of the additive, if any, shall remain or be listed, the Secretary shall take into account, among other things, safety, marketability, industry dependence, aggregate exposure due to all uses, and availability of substitutes for the additive.

Persons responding to this notice should include (but are not limited to) primary color manufacturers; secondary color manufacturers (e.g., manufacturer or distributors of the color additive, its lakes or mixtures containing FD&C Red No. 3 or its lakes); manufacturers of food, drug, and cosmetic products; trade associations, and other manufacturing organizations.

II. Data Requested

Sales of FD&C Red No. 3 in 1986

FDA is requesting from primary and secondary manufacturers of FD&C Red No. 3, the following information on the use and distribution of FD&C Red No. 3 straight color additive, its lakes, or color additive mixtures containing FD&C Red No. 3 or its lakes:

For primary manufacturers:

(1) The identity of each form (i.e., straight color, lake, or mixture) of FD&C Red No. 3 sold. For color additive lakes and mixtures, include the content of FD&C Red No. 3 in percent. For color additive mixtures, include the trade name or brand name of the mixture.

(2) For each form of FD&C Red No. 3 identified in (1) above, the poundage sold, categorized by use, i.e., whether for

use in food, drugs, cosmetics, or other use.

(3) For each form of FD&C Red No. 3 identified in (1) above, the poundage sold to secondary manufacturers for unspecified use.

For secondary manufacturers:

(4) The identity of each form (i.e., straight color, lake or mixture) of FD&C Red No. 3 sold for use in food, drugs, cosmetics or other use.

(5) The identity, including trade name or brand name, of each color additive mixture containing FD&C Red No. 3 sold for use in food, drugs, cosmetics, or other use.

(6) For each form identified in (4) above, the content of FD&C Red No. 3 in percent.

(7) The poundage of each form of FD&C Red No. 3 identified in (4) above that was sold, categorized by use, i.e., whether for use in food, drugs, cosmetics, or other use.

For the purposes of this request, a primary manufacturer is the manufacturer who obtains certification of the batch of color additive. (Under the color additive regulations, a primary manufacturer may (1) sell the certified color additive without further processing for use in food, drugs, and cosmetics; (2) process the certified color additive into mixtures for distribution to the food, drug, or cosmetic industry; or (3) sell the certified color additive to secondary manufacturers.) A secondary manufacturer may be defined as a manufacturer who does not obtain certification of the batch of FD&C Red No. 3 but who formulates mixtures of previously certified color additives including color additive(s)—plus-diluent mixtures or color additive(s)—plus-excipient mixtures for distribution to the food, drug, or cosmetic industry.

Permanent and Provisional Listed Uses of FD&C Red No. 3 in Food, Drugs, and Cosmetics in 1986

FDA is requesting from manufacturers of food, drugs, and cosmetic products, the following information about products containing FD&C Red No. 3 or its lakes or mixtures thereof:

(1) The name (including brand name) of the product containing FD&C Red No. 3.

(2) Product class descriptor for each product identified in (1) above. For foods, use the descriptors found in 21 CFR 170.3(n) plus the descriptor "dietary supplement." For drugs classify the product (a) as oral, or externally applied; (b) as over-the-counter (OTC) or prescription; and (c) by one (or more if appropriate) of the following use descriptors:

analgesic
antimicrobial
antiperspirant
cardiological
coagulation
contraceptive
dental
ear
endocrine
eye
gastrointestinal
metabolic
neuropharmacological
nose, throat, and oral cavity (other than dental)
oncological
radiopharmaceutical
renal
surgical

For cosmetics, use the cosmetic product categories found in 21 CFR 720.4 (c), including the appropriate subcategory within each of the 13 main categories of product.

(3) For each product identified in (1) above, the identity of the form of FD&C Red No. 3 (straight color or lake) or the identity (trade name) of the mixture used in the product.

(4) For each product identified in (1) above, the poundage of FD&C Red No. 3, lake, or mixture used in the product.

(5) For each product identified in (1) above, the level of FD&C Red No. 3 (or if a lake or mixture, the amount of the lake or mixture) in percent (g/100gms of product) in the product as sold to the consumer.

(6) Any use instructions for the product, including dilution of the product or specific use (e.g., dosage) of the product that would affect exposure to the product.

Justification for the Permanent and Provisional Listed Uses of FD&C Red No. 3 in 1986

FDA is also requesting data to provide detailed reasons at to why FD&C Red No. 3 is needed in each product identified above. These data should identify the name of possible alternative color additives and any other information that will assist the agency in determining the relative importance of the use of FD&C Red No. 3 in specific products.

Address

The requested data should be sent to the Division of Food and Color Additives (HFF-330), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. The requested data should be identified with Docket No. 76N-0366 and the label should read "FD&C Red No. 3 Usage Information."

Failure to submit the requested data could result in some uses not being considered if it is necessary to allocate an "allowable safe tolerance".

Dated: November 9, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-26658 Filed 11-18-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Privacy Act of 1974; Annual Review of Systems of Records

AGENCY: Health Care Financing Administration (HCFA), HHS.

Pursuant to the provisions of paragraph 3a(8) of Appendix I to the Executive Office of Management and Budget (EOMB) Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985, we have conducted a review of each Privacy Act system of records under our control to ensure accuracy. As a result of this review, notice is hereby given that HCFA is deleting thirteen and revising ten systems of records. All changes being published are editorial in nature, and reflect organizational changes and other minor administrative revisions which have occured since the last publication of the material in the **Federal Register.**

The following systems are being eliminated:

Note.—All systems were last published on October 13, 1982 unless otherwise noted.

1. 09-70-0001 "Medicare Second Surgical Opinion Experiments", HHS/HCFA/ORD. (47 FR 45694).

2. 09-70-0004 "Durable Medical Equipment Experiment", HHS/HCFA/ORD. (47 45695).

3. 09-70-0011 "Evaluation of the Impact of Surgical Screening Based Upon Union Member Utilization of the Pre-Surgical Consultant Benefit (Statistics)", HHS/HCFA/ORD. (47 FR 45700).

4. 09-70-0014 "Survey of Physicians' Administrative and Practice Costs and Medicaid Participation", HHS/HCFA/ORD. (47 FR 45701).

5. 09-70-0015 "Ambulatory Surgery Research Project", HHS/HCFA/ORD. (47 FR 45702).

6. 09-70-0021 "Health Maintenance Organization Prospective Reimbursement Demonstrations", HHS/HCFA/ORD. (47 FR 45706).

7. 09-07-0023 "Evaluation of Home Dialysis Aide Demonstration", HHS/HCFA/ORD. (47 FR 45708).

8. 09–07–0024 "Medicare/Medicaid Hospice Demonstration", HHS/HCFA/ORD. (47 FR 45710).

9. 09–70–0025 "Evaluation of the Long-Term Health Care Program", HHS/HCFA/ORD. (47 FR 45713).

10. 09–07–0027 "Evaluation of the HMO Capitation Demonstrations", HHS/HCFA/ORD. (47 45715).

11. 09–70–0521 "Medicare Beneficiary Claims for Emergency Services", HHS/HCFA/BPO. (47 FR 45732).

Note. Records incorporated into two Systems, "Intermediary Medicare Claims Records" 09–70–0503 and "Explanation of Medicare Benefits Records" 09–70–0513.

12. 09–70–0524 "Payments for Interns and Residents", HHS/HCFA/BPO. (50 FR 6395; February 15, 1985).

13. 09–70–2004 "Credit Reports for Medicaid Recipients (Credits Bureaus)", HHS/HCFA/BQC. (50 FR 14457; April 12, 1985).

These systems (except No. 11) have been discontinued and the records are no longer maintained. All records were destroyed in compliance with the "Retention and Disposal" section of each notice.

The applicable text of each system of records being revised is published below. Since these changes do not involve any new or intended use of the information in the systems of records the notices shall be effective November 19, 1987. Additional information regarding these revisions may be obtained from HCFA's Privacy Act Officer, Richard A DeMeo, Office of Management and Budget, Room G–M–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Dated: November 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

The following systems of records were all updated at 51 FR 33134; September 18, 1986. The last date the systems were published in their entirety (along with any amendments) is listed with each system.

09–70–0005 Last published: 49 FR 49942; December 24, 1984, amended 50 FR 27407; July 2, 1985.

System Name:

Medicare Bill File (Statistics) HHS/HCFA/BDMS.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Routine use No. 5, Line 7: Delete the word "sex".

* * * * *

109–70–0022 Last published: 47 FR 45706; October 12, 1982.

System name:

Municipal Health Services Program HHS/HCFA/ORD.

* * * * *

Categories of individuals covered by the system:

Delete "and Medicaid" in first line.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete routine use No. 1. Renumber routine use No. 2 as No. 1 and routine use No. 3 as No. 2.

* * * * *

Storage:

Delete: "The Division of Health Services Studies (DHSS) and CHAS" and add "Office of Research and Demonstrations (ORD)".

Retrievability:

In the 1st line delete "DHSS and CHAS" and add "ORD".

In the 3rd line, delete "DHSS" and add "ORD".

Safeguards:

In the 1st line, delete "DHSS and CHAS" and add "ORD".

In the 7th line, delete "DHSS and CHAS" and add "ORD".

In the 12th and 14th line, delete "D" from "DHSS".

Retention and disposal:

In the 1st line, delete "DHSS and CHAS" and add "ORD"

In the 6th line, change "1984" to "1989"

In the 8th line, change "1985" to "1990"

* * * * *

Record source categories:

In line 4: Delete "or"

In line 5: Delete "Medicaid"

* * * * *

Appendix A—Participating Centers and Clinics

Appendix B—City Health Departments Where Records Will Be Stored

Delete entire entry and replace with the following:

Appendix A—Participating Centers and Clinics

Contact the System Manager for further information about potential sites(*), Clinics or center not yet built (**), and those that are to be moved.

Albert Witzke Medical Center, 3411 Bank Street, Baltimore, Maryland 21224

Brehms Lane Medical Center, 3400 Brehms Lane, Baltimore, Maryland 21213

Matilda Koval Medical Center, 2323 Orleans Street, Baltimore, Maryland 21224

Hollander Ridge Health Center, 2000 O'dell Avenue, Baltimore, Maryland 21237

Washington Village Community Medical Center, 700 Washington Avenue, Baltimore, Maryland 21204

Milwaukee Johnston Health Center, 1230 West Grant Street, Milwaukee, Wisconsin 53215

Isaac Coggs Community Health Center, 2770 North Fifth Street, Milwaukee Wisconsin, 53212

Cincinnati Winston Hills Medical and Health Center, 5275 Winneste Avenue, Cincinnati, Ohio 45232

Braxton-Cann Memorial Medical Clinic, 5919 Madison Road, Cincinnati, Ohio 45227

San Jose Gardener Community Health Center, Inc., 195 Virginia Street, San Jose, California 95112

Family Health Foundation of Alviso, Inc., Olinder Health Center, Inc., 1245 E. Santa Clara Street, San Jose, California 95116

Appendix B—City Health Departments Where Records Will be Stored

Baltimore City Department of Health, 111 N. Calvert Street, Baltimore, Maryland 21202

Cincinnati Department of Health, 3101 Burnet Avenue, Cincinnati, Ohio 45229

Milwaukee Department of Health, 841 N. Broadway, Milwaukee, Wisconsin 53202

09–70–0026 Last published: 50 FR 27631; July 2, 1985.

System Name:

Study of Comparative Effectiveness of State Approaches to Regulation of Medicare Supplemental Policies: Medigap HHS/HCFA/ORD.

* * * * *

Categories of individuals covered by this system:

Change "eight participating States" to "six participating States."

* * * * *

09–70–0032 Last published: 49 FR 14442; April 11, 1984, amended 51 FR 18044; May 16, 1986.

SYSTEM NAME:

Physicians' Practice Costs and Incomes Survey HHS/HCFA/ORD.

* * * * *

SYSTEM LOCATION:

Change: "6030 South Ellis," to read "1115 East 60th Street,"

* * * * *

System Name:

Evaluation of Social/Health Maintenance Organization (S/HMO) Demonstrations HHS/HCFA/ORD.

* * * * *

Retention and disposal:

Change "September 1986" to "December 1992"

* * * * *

System name:

Carrier Medicare Claims Records.

* * * * *

System location:

Delete: Bureau of Quality Control, HCFA, Office of Systems Analysis, 6325 Security Blvd, Baltimore, Maryland 21207.

Delete: Appendix A, Section 4 and replace with the following:

Appendix A—Medicare Carriers

Medicare Coordinator, Blue Cross and Blue Shield of Alabama, 450 Riverchase Parkway East, Birmingham, Alabama 35298
Vice President for Medicare and Medical Services, Arkansas Blue Cross and Blue Shield, Inc., 601 Gaines Street, Little Rock, Arkansas 72203
Medicare Coordinator, California Physicians Service (d/b/a Blue Shield of California), P.O. Box 7013, No. 2 Northpoint, San Francisco, California 94120
Medicare Coordinator, Transamerica Occidental Life Insurance Company, P.O. Box 54905 Terminal Annex, Los Angeles, California 90054
Assistant Vice President, Rock Mountain Hospital and Medical Service (d/b/a Blue Cross and Blue Shield of Colorado) 700 Broadway, Denver, Colorado 80273
Medicare Administrator, Travelers Ins. Co., One Towne Square, Hartford, Connecticut 06183
Medicare Administrator, Aetna Life & Casualty, 151 Farmington Avenue, Hartford, Connecticut 06156
Medicare Coordinator, Blue Cross and Blue Shield of Florida, Inc., P.O. Box 1798, Jacksonville, Florida 32231
Health Care Service Corporation, 233 North Michigan Avenue, Chicago, Illinois 60601
Associated Insurance Companies, Inc., (d/b/a Blue Cross and Blue Shield of Indiana) 8320 Craig Street, Suite 100, Indianapolis, Indiana 46250–0453
Assistant Executive Director, Blue Shield of Iowa, Ruan Building, 636 Grand Avenue, Station 28, Des Moines, Iowa 50309
Medicare Asssistant, Blue Cross and Blue Shield of Kansas, Inc., P.O. Box 239, Topeka, Kansas 66601
Blue Cross and Blue Shield of Kentucky, Inc., 10 East Vine Street, 6th Floor, Lexington, Kentucky 40517
Medicare Coordinator, Blue Cross and Blue Shield of Maryland, Inc., 700 E. Joppa Road, Baltimore, Maryland 21204
Medicare Coordinator Part B, Blue Shield of Massachusetts, Inc., 100 Summer Street, Boston, Massachusetts 02110
Assistant Vice President Government Affairs Department, Blue Cross and Blue Shield of Michigan, 600 Lafayette East, Detroit, Michigan 48226
Blue Cross and Blue Shield of Minnesota, P.O. Box 64357, 3535 Blue Cross Road, St. Paul, Minnesota 55164
Vice President Government Programs, Blue Cross and Blue Shield of Kansas City, P.O. Box 169, Kansas City, Missouri 64141
Director, Medicare Administration, General American Life Insurance Co., P.O. Box 505, St. Louis, Missouri 63166
Blue Cross and Blue Shield of Montana, Inc., P.O. Box 4309, 404 Fuller Avenue, Helena, Montana 59601
Medicare Coordinator, Prudential Insurance Co. of America, Tri-City Office Drawer 471, Millville, New Jersey 08332
Director of Medicare Part B, Blue Shield of Western New York, Inc., 298 Main Street, Buffalo, New York 14202
Medicare Coordinator, Group Health Insurance, Inc., 330 West 42nd Street, New York, New York 10036
Medicare Coordinator, Empire Blue Cross and Blue Shield, 622 Third Avenue, New York, New York 10017
Medicare Coordinator, EQUICOR, Inc., 1285 Avenue of the Americas, New York, New York 10019
Medicare Coordinator, Blue Cross and Blue Shield of North Dakota, 4510 13th Avenue, SW., Fargo, North Dakota 58121
Medicare System and Processing Division, Nationwide Mutual Insurance Company, P.O. Box 16788, Columbus, Ohio 43216
Medicare Coordinator, Pennsylvania Blue Shield, P.O. Box 65, Camp Hill, Pennsylvania 17011
Chief, Internal Operations, Seguros de Servicio de Salud de Puerto Rico, Inc., G.P.O. Box 3628, San Juan, Puerto Rico 00936–3628
Medicare Coordinator, Blue Cross and Blue Shield of Rhode Island, 444 Westminster Mall, Providence, Rhode Island 02901
Medicare Coordinator, Blue Cross and Blue Shield of South Carolina, Fontaine Business Center, 300 Arbor Lake Drive, Suite 1300, Columbia, South Carolina 29223
Blue Cross and Blue Shield of Texas, Inc., 901 South Central Expressway, P.O. Box 833815, Richardson, Texas 75083–3815
Manager, Part B, Blue Cross and Blue Shield of Utah, P.O. Box 30270, 2455 Parley's Way, Salt Lake City, Utah 84130
Assistant Administrator, Washington Physicians Service, 4th and Battery Building, 2401 4th Avenue, 6th Floor, Seattle, Washington 98121
Director, Medicare Claims Department, Wisconsin Physicians' Service Insurance, Corp., 1717 West Broadway, Monona, Wisconsin 53713

* * * * *

Retrievability:

Delete the following starting with the fourth sentence: "Copies of selected parts of the records will be used by the Office of Systems Analysis and data will be retrieved in Rockville from Baltimore via dial-up telecommunications lines."

* * * * *

09–70–0503 Last published: 51 FR 11643; April 4, 1986.

System name:

Intermediary Medicare Claims Records HHS/HCFA/BPO.

* * * * *

Categories of records in the system:

Add the following to this section:

Note.—These are not new records. They were part of the "other records used to support payments to beneficiaries and providers of services."

The following elements are outpatient data provided to Medicare intermediaries by rehabilitation agencies, skilled nursing facilities, hospital outpatient departments, and home health agencies that provide physical therapy in addition to home health services:

- Outpatient's name
- HI number
- Admission date to provider
- Place treatment rendered
- Number of visits since start of care
- Diagnosis
- Diagnosis requiring treatment
- Onset of condition for which treatment is being sought
- Dates of previous therapy for same diagnosis
- Other therapy outpatient is currently receiving
- Observations
- Precautions and medical equipment
- Functional status immediately prior to this therapy
- Types of treatment—modalities
- Frequency of treatment
- Expected duration of treatment
- Rehabilitation potential
- Level of communication potential
- Average time per visits
- Goals
- Statement of problem at beginning of billing period
- Changes in problem at end of billing period
- Signature of therapist
- Certification and recertification by physician that services are to be provided from an established plan of care
- Tests results
- Biopsy reports
- Methods of administration, e.g., pill vs. injection
- Physician's orders
- Procedure codes
- Charges
- Weekly progress notes

* * * * *

09–70–0508 Last published: 47 FR 45725; October 13, 1982.

System name:

Reconsideration and Hearing Case File (Part A) Hospital Insurance Program HHS/HCFA/BPO.

* * * * *

System location:

Add:

Office of Financial Operations
Division of Overpayment Prevention
Beneficiary Debt Management Branch

* * * * *

09-70-0513 Last published: 47 FR 45728; October 13, 1982.

System name:

Explanation of Medicare Benefit Records HHS/HCFA/BPO.

* * * * *

System location:

Delete: "and carriers."

* * * * *

09-70-0517 Last published: 47 FR 45730; October 13, 1982.

System name:

Physician/Supplier 1099 File (Statement for Recipients of Medical and Health Payments HHS/HCFA/BPO.

* * * * *

Categories of individuals covered by the system:

In the third line change "of" to "or".

* * * * *

09-70-1509 Last published: 47 FR 45736; October 13, 1982.

System name:

Complaint Files on Nursing Homes HHS/HCFA/HSQB.

* * * * *

System manager:

Delete entire entry and substitute the following:

Director of Institutional and Ambulatory Services, Office of Standards and Certification, Health Standards and Quality Bureau, Health Care Financing Administration, 6325 Security Blvd., Baltimore, Maryland 21207

09-70-3001 Last published: 50 FR 21356; May 23, 1985.

System name:

Record of Individuals Authorized Entry to HCFA Buildings via a Card Key Access System HHS/HCFA/OMB.

* * * * *

Purpose:

Change "during security hours" to "during regular and security hours."

09-70-4002 Last published: 52 FR 30435: August 14, 1987.

System name:

Beneficiary Inquiry Tracking System (BITS), HHS/HCFA/OPHC.

* * * * *

Categories of records in the system:

The use of the Social Security Number was approved for use but inadvertently not included in the categories of records. Therefore, add item 19: Social Security Number.

* * * * *

[FR Doc. 87-26659 Filed 11-18-87; 8:45 am]

BILLING CODE 4120-03-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting Rescheduled

Agency holding the meeting: President's Committee on Mental Retardation (PCMR).

Changes in meeting: In the Federal Register of November 3, 1987, the President's Committee on Mental Retardation announced that a meeting of the President's Committee on Mental Retardation would be held November 15-17, 1987. This meeting is rescheduled.

Time and date: Executive Committee, Sunday, December 6, 1987, 1:00 p.m.-5:00 p.m.; Full Committee, December 7-8, 1987; 9:00 a.m.-5:00 p.m., December 7, 1987; 9:00 a.m.-5:00 p.m., December 8, 1987.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Contact person for more information: Jim F. Young, 330 Independence Ave., SW., Room 4725—North Building, Washington, DC 20201, (202) 245-7634.

Dated: November 10, 1987.

Jim F. Young,

Acting Executive Director, PCMR.

[FR Doc. 87-26701 Filed 11-18-87; 8:45 am]

BILLING CODE 4130-01-M

Social Security Administration

Disability Advisory Council; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces the schedule, proposed agenda, and location of a forthcoming meeting of the Disability Advisory Council (the Council). The Council published a notice of meetings in the **Federal Register** on December 24, 1986 at 51 FR 46724. The notice announced the schedule of regular meetings to be held by the Council. The Council is scheduling an additional regular meeting for December.

Date: December 7, 1987, 9:00 a.m. to 5:00 p.m.; December 8, 1987, 9:00 a.m. to 4:00 p.m.

Place: North Building, Room 5167-5169, 330 Independence Ave., SW., (Use "C" Street Entrance) Washington, DC 20201.

Agenda: Approval Final Report.

FOR FURTHER INFORMATION CONTACT: W. Douglas Badger, Executive Director, Disability Advisory Council, P.O. Box 17064, Baltimore, Maryland 21203, (301) 965-4643.

SUPPLEMENTARY INFORMATION: The Council is established and governed by the provisions of section 12102 of Pub. L. 99-272. The Council is chaired by Dr. John E. Affeldt.

This meeting is open to the public to the extent that space is available.

A transcript of the Council meeting is available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Executive Director of the Council.

Date: November 4, 1987.

W. Douglas Badger,

Executive Director, Disability Advisory Council.

[FR Doc. 87-26720 Filed 11-18-87; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-]

Submission of Proposed Information Collections to OMB

AENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management

Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telelphone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requisition for Development or Modernization Funds.

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The U.S. Housing Act of 1937, as amended, authorizes HUD to assist Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) in the development and rehabilitation of lower income housing. This form will be used by the PHAs/IHAs to requisition funds for their immediate needs.

Form Number: HUD-5402A.

Respondents: State or Local Governments.

Frequency of Response: On Occasion.

Estimated Burden Hours: 9,000.

Status: New.

Contact: Stephanie Avery-Boyd, HUD, (202) 755-7920; John Allison, OMB (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 4, 1987.

Proposal: Public Facility Loans Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: Under Title II of the Housing Amendments of 1955, HUD made loans to non-Federal agencies to build essential public works. The loans are secured mainly by the net revenues generated by the non-Federal agencies. The program was terminated and transferred to the Revolving Fund (Liquidating Programs) in 1975. Audit reports are utilized by HUD to assist in the protection of the Federal investment through monitoring and analysis. The borrowers submit an annual Audit Report and this is the only tool available to HUD to monitor and evaluate the financial management of the facility.

Form Number: None.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Response: Annually.

Estimated Burden Hours: 650.

Status: New.

Contact: Stanley F. Victor, HUD, (202) 755-6182; John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 4, 1987.

Proposal: Minimum Property Standards—Request for Local Code Review.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The information is needed to determine if state and local codes are comparable to national model codes. If the state and local codes have been approved in the past, the information is needed to determine if there have been changes. If the information is not collected about state or local codes, parties would have to comply with both state or local codes and HUD standards (model codes).

Form Number: None.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Response: On Occasion.

Estimated Burden Hours: 12,150.

Status: Reinstatement.

Contact: Earl L. Flanagan, HUD, (202) 755-6590, John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 29, 1987.

Proposal: Background Data on Request for Assignment of Mortgage, 24 CFR 203.654.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The information is needed for purposes of evaluating a homeowner's eligibility under HUD's Temporary Mortgage Assistance Payments (TMAP)/Assignment program. HUD uses the information in the administration of the TMAP/Assignment program.

Form Number: HUD-92206.

Respondents: Businesses or Other For-Profit.

Frequency of Response: On Occasion.

Estimated Burden Hours: 15,000.

Status: Reinstatement.

Contact: Mary Lou Hinchey, (202) 755-6664, John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 29, 1987.

Proposal: Title I Claim for Loss.

Office: Administration.

Description of the Need for the Information and its Proposed Use: Lenders in the Title I Insurance Program execute and submit this form to receive insurance benefits for claims filed on defaulted Title I property improvements and manufactured home loans. The information provided on this form is analyzed in determining the claim amount to be disbursed to the lender.

Form Number: HUD-637.

Respondents: Businesses or Other For-Profit.

Frequency of Response: On Occasion.

Estimated Burden Hours: 15,000.

Status: Extension.

Contact: Lucy B. Matthews, HUD, (202) 755-5640, John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 6, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-26644 Filed 11-18-87; 8:45 am]

BILLING CODE 4210-01-M

Office of Environment and Energy

[Docket No. I-87-146]

Intent To Issue a Finding of No Significant Impact on the Demolition of 13 Family High-Rise Buildings (Scudder Homes and Hayes Homes) Newark, NJ

The Department of Housing and Urban Development (HUD) gives notice concerning proposed actions for the demolition of 13 Family High-Rise buildings, Newark, NJ, that it intends to issue a Finding of No Significant Impact (FONSI) based on the Environmental Assessments prepared for each project, discussion of the relocation issues as part of the environmental assessment, and a discussion of the need for demolition. This FONSI is on the demolition of the site and not its potential reuse.

Description

The Newark Housing Authority requested the demolition of the high-rise family units of the Scudder and Hayes Homes due to inherent design deficiencies, high density, inadequate maintenance, neighborhood deterioration and a high level of crime. The combination of these problems has lead to a situation where these buildings are no longer marketable (72 percent vacant for Scudder Homes and 62 percent vacant for Hayes Homes), a high percentage of these units have remained vacant for several years, and architectural studies have determined that rehabilitation of these structures is infeasible due to inherent design limitations and excessive costs.

The Scudder Homes site consists of seven high-rise family buildings and one high-rise elderly building occupying 17.6 acres. Four family buildings (816 units) have already been demolished. The remaining three family buildings are located at:

Address	No. of units
170-188 Howard St. (Bldg. No. 5)	204
200-216 Howard St. (Bldg. No. 7)	204
101-131 Lincoln St. (Bldg. No. 8)	204
Total	612

The Hayes Homes site consists of 10 high-rise family buildings occupying 19.15 acres, all structures are scheduled for demolition:

Address	No. of units
326-330 Springfield Ave./Hunterdon St. (Bldg. No. 1)	150
73-77 17th Avenue/Hunterdon St. (Bldg. No. 2)	150
338-342 West Kinney St. (Bldg. No. 3)	150
61-65 17th Ave. (Bldg. No. 4)	144
41-45 17th Ave./Boyd St. (Bldg. No. 5)	144
304-308 West Kinney/Boyd St. (Bldg. No. 6)	144
84-88 Boyd St./17th Ave. (Bldg. No. 7)	144
54-60 Boyd St./West Kinney St. (Bldg. No. 8)	144
7-9 17th Ave./Belmont Ave. (Bldg. No. 9)	144
174-178 West Kinney/Belmont Ave. (Bldg. No. 10)	144
Total	1,458

Purpose of the FONSI Notice

Pursuant to HUD's environmental regulations, 24 CFR Part 50, an Environmental Assessment was prepared by the staff of the Newark Field Office for the Scudder and Hayes project. It is the finding of the EA's that demolition of the structures would cause no significant impact upon the human environment. All demolition will use the implosion method and will be conducted in accordance with City clearances and permits. Demolition will occur during day light hours and noise will last about 5 seconds. Part of the noise will result from the building falling to the ground. The displacement of 776 tenants (264 Scudder and 512 Hayes) tenants will be in accordance with NHA's relocation plan (approved by HUD) which will permit the relocation of tenants to other decent, safe, sanitary and affordable housing in other public assisted housing of housing available under the Section 8 Housing Voucher Program.

Demolition of the Scudder and Hayes Homes is consistent with the Newark Housing Authority's Master Plan (adopted in December 1984) which identified high-rise family housing as the core of the problems confronting public housing in Newark. Redevelopment of these sites for 860 low-rise townhouse units is consistent with the master plan and the City of Newark's Housing Assistance plan dated October 1, 1985 to September 30, 1988.

It is for these reasons that the Department does not intend to prepare an Environmental Impact Statement. Instead of an EIS, it is the intent of the Newark Field Office to issue a FONSI and notice is hereby given. Pursuant to 40 CFR 1501.4(e)(2) of the Council on Environmental Quality regulations, there will be a thirty (30) day comment period before HUD makes its final decision on the FONSI. Interested individuals, governmental agencies and private organizations are invited to comment on the FONSI within 30 days following the date of publication of this notice at either the HUD New York Regional Office or the Newark Field Office (Military Park Building, 60 Park Place, Newark, NJ) between 9:00 a.m. and 5:00 p.m. Monday through Friday.

Comments

Written comments on the FONSI should be submitted to Joseph D. Monticciolo, Regional Administrator-Regional Housing Commissioner, 26 Federal Plaza, New York City, New York 10278-0068, Attention: Marvin Krotenberg, Regional Environmental Officer, telephone at 212-264-0793 or FTS 264-0793. (These are not toll-free commercial numbers.)

Dated: November 13, 1987.

Dorothy S. Williams,

Deputy Director Office of Environment and Energy.

[FR Doc. 87-26642 Filed 11-18-87; 8:45 am]

BILLING CODE 4210-29-M

Office of the Regional Administrator, Regional Housing Commissioner

[Docket No. D-87-867]

Acting Manager, Region IV (Atlanta); Designation for Columbia Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Manager for the Columbia Office.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Manager for Columbia Office

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence of, or vacancy in the position of, the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, That no official is authorized to serve as Acting Manager unless all other employees whose titles precede his/hers in this designation are unable to serve by reason of absence:

1. Deputy Manager
2. Chief Counsel
3. Director, Housing Development Division
4. Director, Housing Management Division

5. Director, Community Planning and Development Division

6. Director, Fair Housing and Equal Opportunity Division

This designation supersedes the designation effective February 25, 1987, (52 FR 17480, May 8, 1987).

(Delegation of Authority by the Secretary effective October 1, 1970 (36 FR 3389, February 23, 1971))

This designation shall be effective as of October 2, 1987.

Ted B. Freeman,

Manager, Columbia Office.

Raymond A. Harris,

Regional Administrator, Regional Housing Commissioner, Office of the Regional Administrator.

[FR Doc. 87-26641 Filed 11-18-87; 8:45 am]

BILLING CODE 4210-01-M

Office of the Secretary

[Docket No. D-87-1746; FR-2389]

Delegation of Authority With Respect to Supplemental Assistance for Facilities To Assist the Homeless

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority; correction.

SUMMARY: This document corrects a notice that appeared in the **Federal Register** on October 19, 1987 (52 FR 38898). It corrects typographical errors in the text of the notice.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7055. (This is not a toll-free number.)

Accordingly, the Department is correcting FR Document D-87-866, published October 19, 1987 (52 FR 38898) as follows:

1. On page 38898, first column, paragraph entitled "SUMMARY", first sentence, the citation to "Title VI, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act" is corrected to read "Title IV, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act."

2. On page 38898, second column, paragraph under the heading: "Section A. Authority Delegated," the citation to "Title VI, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act" is corrected to read "Title IV, Subtitle D, of the Stewart B. McKinney Homeless Assistance Act."

3. On page 38898, second column, paragraph under the heading: "Authority to Redelegate," line 9, the reference to "section 8 of this delegation" is corrected to read "section B of this delegation."

Date: November 16, 1987.

Donald A. Franck,

Acting Assistant General Counsel for Regulations.

[FR Doc. 87-26757 Filed 11-18-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-4212-24; N-46058]

Battle Mountain District Tonopah Resource Area, NV; Reality Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; application for airport lease in Nye County, Nevada.

SUMMARY: In response to an application from Round Mountain Gold Corporation for public airport purposes, a portion of the following described lands have been examined and found to be suitable for lease pursuant to the Act of May 24, 1928, as amended (49 U.S.C. 211-214):

Mount Diablo Meridian, Nevada

T. 10 N., R. 43 E.,
Section 22, SW¼SW¼SW¼;
Section 27, W½W½W½;
Section 33, NE¼SE¼NE¼;
Section 34, W½W½NW¼.

The area to be utilized comprises 34.6 acres and will consist of a 7,500-foot long runway with a 100-foot wide asphalt surface, a 3.3-acre tie-down area and a 50-foot by 100-foot hangar.

Segregation: Upon publication of this notice in the **Federal Register**, the affected lands are segra against all forms of appropriation under the public land laws, including location under the mining laws. The segretative effect will terminate as specified in an opening order to be published in the Federal Register.

Comments: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Dated: November 12, 1987.

Michael C. Mitchel,

Acting District Manager, Battle Mountain District.

[FR Doc. 87-26735 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-08-4212-11; N-46271]

Battle Mountain District Tonopah Resource Area, NV; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; classification of Federal lands for lease or sale for recreation and public purposes in Nye County, Nevada.

SUMMARY: In response to an application from the Central Nevada Sportsmen's Association for a fish pond and picnic area, the following described lands have been examined and found to be suitable for lease or sale under the authority of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian

T. 4 N., R. 44 E.,
Sec. 19, SE¼NW¼SE¼,NE¼SW¼SE¼;
A parcel of land containing 20 acres.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest.

The lands described in this notice meet the criteria for classification set forth in 43 CFR 2410.1-2 and 2430.4. They will not be offered for lease or sale until the classification becomes effective.

A patent, if issued, would contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 94).

2. All mineral deposits in the land so patented, and to the United States, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law.

And would be subject to:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. Any other reservations the Authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Under publication of this Notice in the **Federal Register**, the above described public lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act. The segregative effect will end upon issuance of patent or as specified in an opening order to be published in the **Federal Register**.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, PO Box 1420, Battle Mountain, NV 89820. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: November 2, 1987.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 87-26739 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-HC-M

Availability of Amended San Juan River Regional Coal Environmental Impact Statement Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended notice of availability.

SUMMARY: The original notice given in the **Federal Register** on Monday November 2, 1987, Vol. 52, No. 211, Page 42044, concerning the Record of Decision (ROD) for the San Juan River Regional Coal Environmental Impact Statement, has been amended to include modifications to the Multiple Use Screening Analysis for PRLA's No. 4, on Page 15 and Appendix 3, PRLA Special Stipulation No. 21, Page 24. All other parts of the ROD remain unchanged.

ADDRESS: Copies of the changes to the original ROD can be obtained by calling (505) 988-6000, or writing to: New Mexico State Office, Joseph M. Montoya Federal Building, Rm. 313, South Federal Place, P.O. Box 1449, Santa Fe, NM 87504-1449.

FOR FURTHER INFORMATION CONTACT: Ron Fellows, Farmington Resource Area Manager at Caller Service 4104, Farmington, NM 87499-4104: Telephone (505) 325-4572 or FTS 476-6441.

SUPPLEMENTARY INFORMATION: Changes to the original ROD are being sent to all parties who received the original.

Larry L. Woodward,

State Director.

Dated: November 13, 1987.

[FR Doc. 87-26647 Filed 11-8-87; 8:45 am]

BILLING CODE 4310-FB-M

[MT-930-4212-13; M-62060-ND]

Order Providing for Opening of Public Land in Bowman, Grant, and McKenzie Counties, ND and Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As part of a land exchange proposal, the lands described in this order were segregated from settlement, sale, location and entry, but not from exchange, by the Notices of Realty Action published in the **Federal Register** on June 25, 1986 (51 FR 23161) and September 11, 1986 (51 FR 32371). The exchange has been completed. Since the lands described in this order were not used in the exchange, the segregation is no longer needed.

The original NORA for the exchange was published on December 31, 1985 (50 FR 53404-53405). The segregation covering lands that were described in that notice, but not used in the exchange, will automatically terminate on December 31, 1987.

EFFECTIVE DATE: At 9 a.m. on January 13, 1988, the following described lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications reveived at or prior to 9 a.m. on January 13, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-657-6082.

Fifth Principal Meridian, North Dakota

T. 131 N., R. 86 W.,
Sec. 22, E½SW¼, SE¼.
T. 134 N., R. 86 W.,
Sec. 4, S½SW¼.
T. 149 N., R. 95 W.,
Sec. 1, lot 1;
Sec. 10, SE¼SE¼.
T. 150 N., R. 95 W.,
Sec. 24, lot 4;
Sec. 25, lot 1.
T. 147 N., R. 99 W.,
Sec. 22, NW¼NW¼.
T. 149 N., R. 99 W.,
Sec. 35, NE¼NE¼.
T. 152 N., R. 100 W.,
Sec. 24, SE¼NW¼, SW¼SW¼.
T. 131 N., R. 105 W.,
Sec. 17, S½SE¼;
Sec. 18, SW¼NE¼;
Sec. 21, W½NW¼.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

November 10, 1987.

[FR Doc. 87-26651 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-08-4212-13; A-22971]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Exchange, Public Land, Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 18 N., R. 21 W.,
Sec. 6, lots 1-5 N½SW¼NE¼, SE¼NE¼, N½SE¼NW¼, NE¼SE¼, E½NW¼SE¼, SW¼NW¼SE¼, N½N½SW¼SE¼.
T. 19 N., R. 21 W.,
Sec. 18, lots 3 and 4, E½SW¼.
T. 22 N., R. 17 W.,
Sec. 2, that portion lying east of the centerline of Stockton Hill Road.
T. 22 N., R. 19 W.,
Sec. 34, W½.
T. 24 N., R. 17 W.,
Sec. 8, NE¼NE¼, except the east 66 feet;
Sec. 10, N½, except the north 66 feet.

Containing 1,476.23 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from ARNN Ranch Properties and Association of Kingman, Arizona:

Gila and Salt River Meridian

T. 24 N., R. 17 W.,
Sec. 1, a strip of land 66 feet wide along the south section line from the centerline of Stockton Hill Road to the west section line;
Sec. 3, a strip of land 66 feet wide and 66 feet long adjacent to the south and east section lines;
Sec. 5, lots 2-4, W½SW¼, SE¼SW¼, NW¼SE¼;
Sec. 7, NE¼NW¼;
Sec. 8, NE¼NW¼, W½W½, NE¼SW¼, and the east 66 feet of the SE¼NE¼;
Sec. 9, a strip of land 66 feet wide along the north section line;

Sec. 13, that portion of the SE¼NW¼, SW¼ and W½SE¼ lying south and west of a straight line connecting the northwest and southeast section corners;
Sec. 15, E½NW¼
Sec. 17, NE¼NE¼, S½NE¼, NW¼NW¼, E½SW¼;
Sec. 19, lot 3, SE¼NW¼, SE¼SW¼, NW¼SE¼;
Sec. 21, NW¼NE¼, W½W½, SE¼NW¼, NW¼SE¼, SE¼SE¼;
Sec. 23, S½NE¼, NE¼NW¼, S½
Sec. 29, SE¼NW¼, NW¼SW¼, N½SE¼.
T. 24 N., R. 18 W.,
Sec. 13. N½SW¼, SW¼SW¼.
T. 25 N., R. 17 W.,
Sec. 21, NW¼SE¼;
Sec. 27, NW¼SE¼, S½SE¼;
Sec. 29, S½;
Sec. 33, N½NE¼, E½NW¼, NW¼SW¼;
Sec. 35, S½NE¼, N½SW¼.
T. 25 N., R. 18 W.,
Sec. 5, lots 1–4, S½N½,S½;
Sec. 7, E½ (portion).
Sec. 9, all.
T. 26 N., R. 14 W.,
Sec. 31. all.
T. 26 N., R. 15 W.,
Sec. 25, that portion lying south and east of a straight line connecting the southwest and northeast corners of said section, except the S½NE¼SE¼,E½SW¼SE¼, and SE¼SE¼;
Sec. 35, that portion lying south and east of a straight line connecting the southwest and northeast corners of said section, except the SE¼SW¼.
T. 26 N., R. 17 W.,
Sec. 1, lot 1, SE¼NE¼,N½SW¼, SW¼SW¼;
Sec. 11, all.
T. 26 N., R. 18 W.,
Sec. 33, all.
T. 27 N., R. 17 W.,
Sec. 27, all.
Containing 7,884.65 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: a). right-of-way for ditches and canals pursuant to the Act of August 30, 1890; and b). all the oil and gas and with it the right to prospect for, mine, and remove same (except sec. 2).

2. Subject to: a). right-of-way to the Mohave Electric Cooperative (A–1876); b). right-of-way to the Southwest Gas Corporation (A–4545); c). rights-of-way to the Mohave County Board of Supervisors (A–13877, A–12433, A–20910 and A–20911); d). right-of-way to Citizens Utilities Rural Company, Inc., (A–22101); e). reservation of all minerals to the State of Arizona (sec. 2 only); and f). restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county flood plain regulations established under Resolution No. 84–10 adopted on December 3, 1984, as amended.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals to the Santa Fe Pacific Railroad Company together with the right to prospect for, mine, and remove same (except sec. 33, T. 26 N., R. 18 W.); and

2. One-half interest in all minerals by Mr. & Mrs. Bonelli (sec. 33, T. 26 N., R. 18 W).

The purpose of the exchange is to consolidate federal land and provide public access to facilitate resource management in range, wildlife and recreation and to dispose of isolated and/or difficult to manage land with speculative development potential.

Publication of this Notice will segregate the subject lands from operation of the public land laws, including the mining laws, but not the mineral leasing or livestock grazing laws. This segregation will terminate upon the issuance of a deed or patent or two years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Detailed information concerning this exchange may be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Henri R. Bisson,
District Manager.
Dated: November 12, 1987.
[FR Doc. 87–26653 Filed 11–8–87; 8:45 am]
BILLING CODE 4310–32–M

[CO–050–4112–11; C–40756]

Realty Action; Clear Creek County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed recreation and public purposes classification, C–40756, Clear Creek County, Colorado.

SUMMARY: The following described public lands are being examined for classification and disposal under the Recreation and Public Purposes (R & PP) Act of June 14, 1926 (43 U.S.C. 869) and the regulations thereunder (43 CFR Part 2740):

Sixth Principal Meridian
T. 3 S., R. 74 W.,
Sec. 27: all unsurveyed lands within the SE¼;
Sec. 34; all unsurveyed lands within the N½NE¼.
Containing approximately 19 acres.

The Colorado Easter Seal Society has applied for these lands to be used for recreational purposes in connection with their adjacent Handicamp. The proposed classification would be consistent with BLM land use plans for the area. A final BLM decision will be made after survey and title problems involving the land are resolved.

Publication of this notice will segregate these lands from all appropriation, including mineral entry, except applications under the R & PP Act or the Color-of-Title Act.

Segregation will terminate eighteen (18) months from publication of this notice, or upon publication of a notice of termination, whichever occurs first, unless lease or patent issues.

Any patent issued for these lands under the R & PP Act will reserve all minerals to the United States, and will contain a clause which would result in the lands reverting back to the United States if the use of the land is altered or if the land is transferred.

DATES: Interested parties may submit comments on this action for a period of 45 days after publication of this notice. Comments should be directed to the District Manager, P.O. Box 311, Canon City, CO 81212. Objections will be reviewed and this realty action may be sustained, vacated, or modified. In the absence of any objection resulting in vacation or modification, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: The Northeast Resource Area Office at 303–236–4399.

Donnie R. Sparks,
District Manager.
[FR Doc. 87–26646 Filed 11–18–87; 8:45 am]
BILLING CODE 4310–JB–M

[NM–030–08–4212–11; NM67590, NM69986]

Recreation and Public Purposes Lease/Patent in Dona Ana County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following described parcels of public land have been examined and identified as suitable for lease/patent under section 212 of the

Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713):

T. 22 S., R. 2 E., NMPM,
Sec. 23: SW¼NW¼, N½N½NW¼SW¼ (50 acres).
T. 22 S., R. 3 E., NMPM,
Sec. 18: Lots 11 and 12 (64.26 acres).

The subject lands, comprising 114.26 acres, will be offered to the City of Las Cruces and the Las Cruces Public Schools District No. 2 for fire station and school purposes, respectively.

This lease/patent is consistent with the Bureau of Land Management's planning system and is compatible with County plans. The public interest will be served by offering this land under the Recreation and Public Purposes Act.

DATES: Comments must be submitted on or before January 4, 1988.

ADDRESSES: Comments should be sent to Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Madeline Dzielak at the address above or at 505-525-8228, (FTS 571-8350).

SUPPLEMENTARY INFORMATION: Publication of this notice will segregate the public land from all appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from the date of publication of this Notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

H. James Fox,
District Manager.

[FR Doc. 87-26654 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-FB-M

[UT-060-08-4212--14; U-52803, U-52804]

Realty Action; Sale of Public Lands in Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, U-52803 and U-52804, sale of public lands in Emery County, Utah.

SUMMARY: Notice is given that the following described parcels of public land have been examined, and through the development of land use planning decisions based on public input, resource considerations, regulations, and Bureau policies, have been found suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713) using noncompetitive (direct sale) procedures (43 CFR 2711.3-3) for parcel U-52803 and competitive sale procedures (43 CFR 2711.3-1) for parcel U-52804. Sale will be at no less than the appraised fair market value of $3,000 for each parcel. Bids at less than such value will be rejected as required by FLPMA. Both parcels are within T. 18 S., R. 9 E., SLM, Utah. Parcel U-52803 is described as the NW¼ SE ¼, Section 6 and Parcel U-52804 is described as the NE ¼ NE ¼, Section 7. Each aformentioned parcel contains 40 acres.

The sale involves two parcels which are difficult and uneconomical to manage and are not suitable for management by another Federal department or agency.

Sale Procedures: Parcel U-52803 is being offered for sale to Utah Power and Light Company, which owns adjoining land north, east, and south of the parcel, using direct sale procedures. A portion of the sales lands were improved and used for agricultural purposes in the past. Physical access only exists across the private land. Disposal by direct sale will resolve a nonwillfull unauthorized agricultural use problem. The parcel will be offered for sale to Utah Power and Light Company not less than 60 days after the date of publication of this notice.

Sealed bids for Parcel U-52804 will be accepted at the San Rafael Resource Area Office, P.O. Drawer AB, 900 North 700 East, Price, Utah 84501, until 11:00 a.m. on January 26, 1988, at which time the sealed bids will be opened. Oral bidding, if required, will be held immediately following the opening of the sealed bids. If not sold on the sale date, the parcel will remain available for sale over the counter on a first come basis until sold or withdrawn from the market. Sealed bids will be accepted at the San Rafael Resource Area Office during regular business hours, 7:45 a.m. to 4:30 p.m. Sealed bids will be opened the second and last Tuesday of each month at 11:00 a.m.

Bidder Qualifications: Bidders must be U.S. citizens, 18 years of age or more; a State or State instrumentality authorized to hold property; or a corporation authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Bid Standards: The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Publication of this Notice in the **Federal Register** segregates the public land from the operation of the public land laws and the mining laws. The segregation effect will end upon issuance of a patent or 270 days from the date of publication, whichever occurs first.

The terms and conditions applicable to these sales are:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the Moab District Office and the San Rafael Resource Area Office.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The sale of the lands will be subject to all valid existing rights and reservations of record. Existing rights and priviliges of record include, but are not limited to, the following:

a. Federal oil and gas lease U-50352 (Parcel U-52803).

b. Federal oil and gas lease U-41046 (Parcel U-52804).

DATES: For a period of forty-five (45) days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Moab District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concening the lands, the terms and conditions of the sales, and the bidding instructions may be obtained from Laurelle Hughes, Area Realty Specialist, San Rafael Resource Area Office, 900 North 700 East, P.O. Drawer AB, Price, Utah 84501, (801) 637-4584, or from Brad Groesbeck, District Realty Specialist, Moab District Office, 82 East Dogwood, P.O. Box 970, Moab, Utah 84532, (801) 259-6111.

Date: November 12, 1987.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 87-26645 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-040-8-4212-13; U-60052]

Intent To Prepare Planning Amendment and Notice of Realty Action Exchange of Public and Private Land, Washington and Kane Counties, UT

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to prepare a planning amendment to allow an exchange and Notice of Realty Action for said exchange of public and private lands in Kane and Washington Counties, Utah. The value of the lands to be exchanged will be equalized by an adjustment in acreage of the private lands to be determined by an appraisal. The public lands described are hereby segregated from the operation of the federal mining laws pending disposition of this action.

SUMMARY: The Cedar City District of the Bureau of Land Management has received a proposal to exchange under section 206 of the *Federal Land Policy and Management Act of 1976* (43 U.S.C. 1716), the surface and mineral estate of public lands in the Dixie and Kanab Resource Areas described as: T. 41 S., R. 15 W., Sec. 32, W½SW, containing 80 acres. Also, T. 42 S., R. 10 W., SLM; Sec. 3, N½SW; Sec. 8, lots 5, 6, SWNE; Sec. 9, lots 1-4, 6-11; Sec. 10, lots 1, 2; containing 601.28 acres. In exchange for these lands, the United States would acquire the surface estate of the following described lands from Mr. James Trees: T. 42 S., R. 9 W., Sec. 19, lots 3, 4, E½SW, SE; Sec. 29, all; Sec. 30, lot 1, NENW, N½NE; comprising 1,108 acres. The United States owns the mineral estate of these lands.

The public land selected by the proponent is located in three parcels within the Virgin River Planning Unit of the Dixie Resource Area. The land offered by the proponent is located in the Vermilion Planning Unit of the Kanab Resource Area. The Virgin River Management Framework Plan (MFP) calls for the exchange of lands to make larger, more manageable blocks of land. However, a portion of the selected land is within an area identified for retention. In addition, the Vermilion MFP does not address land exchange for blocking purposes. Therefore, the proposal does not conform to these two land use plans and a planning amendment is required.

The Virgin River Planning Unit is located in Washington County, Utah. The Vermilion Planning Unit is located in southwestern Kane County, Utah. One of the parcels selected by the proponent is located adjacent to Zion National Park. A second selected parcel is located near the Canaan Mtn. Wilderness Study Area (WSA). The final selected parcel is located just north of St. George. The offered lands are near Zion National Park and the Canaan Mtn. WSA. Part of the selected lands are adjacent to existing private land owned by the applicant. The remainder are near St. George, Utah. The proponent plans to develop an orchard, small reservoir, and possibly a small guest ranch on the selected lands and his existing private land. The offered lands are surrounded by BLM and State administered lands.

Transfer of offered lands to public ownership will allow for a larger block of BLM administered public lands to manage in these sensitive areas next to Zion National Park and the Canaan Mtn. WSA. The offered lands also have two springs and riparian vegetation which will benefit under BLM administration.

The public lands described in sections 3 and 10 are presently precluded from disposal pending resolution of a preliminary injunction in the National Wildlife Federation V. Burford, et al. Lawsuit, Civil Action No. 85-2238. An exchange agreement will therefore be entered into allowing for completion of the exchange on the lands affected by the injunction upon favorable settlement of the lawsuit. The remainder of the lands will be exchanged not sooner than 60 days following publication of this notice in the **Federal Register.**

A draft environmental assessment/planning amendment has been written using an interdisciplinary team. Staff members representing range, wildlife, hydrology, minerals, realty, threatened or endangered plants and animals, cultural, and visual resources have been used in the preparation of the analysis. The draft environmental assessment/planning amendment is ready for public review.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are: Wildlife, hydrology, minerals, realty, threatened or endangered plants and animals, cultural, and visual resources have been used in the preparation of the analysis. The draft environmental assessment/planning amendment is ready for public review.

The terms and conditions applicable to the exchange are:

1. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, (43 U.S.C. 945).

2. Title transfer will be subject to valid existing rights.

FOR FURTHER INFORMATION CONTACT: Interested parties may receive a copy of the document by contacting Frank Rowley, Dixie Resource Area Manager at 225 North Bluff Street, P.O. Box 726, St. George, Utah 84770; or by calling (801) 673-4654.

Comments: Written comments pertaining to the planning amendment must be received within 30 days from the date of publication of this notice in the **Federal Register.** After the comments have been reviewed, a decision on the planning amendment will be published in the **Federal Register.** Written comments pertaining to the Notice of Realty Action for the exchange must be received within 45 days from the date of publication of this notice in the **Federal Register.** Any objections received during the comment period pertaining to the Notice of Realty Action will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Dated: November 12, 1987.

Dave Everett,

Acting District Manager.

[FR Doc. 87-26650 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-DQ-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

November 12, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 A.M., November 12, 1987.

The plat representing the dependent resurvey of portions of Tracts 37, 38, 51, and 56, T. 11 N., R. 85 W., Sixth Principal Meridian, Colorado for Group No. 805, was accepted October 30, 1987.

The plat representing the dependent resurvey of portions of Tracts 50, 52, and 53, T. 11 N., R. 86 W., Sixth Principal Meridian, Colorado for Group No. 805, was accepted October 30, 1987.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat, in three sheets, representing the dependent resurvey of a portion of the Base Line (south boundary) and east boundary, the north boundary, and a portion of the subdivisional lines and certain tracts, and the survey of the subdivision of certain sections, T. 1 N., R. 95 W., Sixth Principal Meridian, Colorado for Group No. 562, was accepted October 30, 1987.

This survey was executed to meet certain administrative needs of this Bureau, to facilitate administration of oil shale lands.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-26649 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-JB-M

[NM-940-084520-1]

New Mexico; Filing of Plat of Survey

November 12, 1987.

The plat of surveys described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on the dates shown.

The survey representing the corrective dependent resurvey of small holding claim 1785, Tract 1, in section 6, the dependent resurvey of certain small holding claim boundaries, and the survey of lots in sections 5, 6, 8 and 9, Township 4 South, Range 1 East, New Mexico Principal Meridian, New Mexico, executed under Group 768, filed November 12, 1987.

The survey representing the dependent resurvey of a portion of the subdivisional lines, a portion of the adjusted record meanders of the former right bank of the North Canadian River, and a survey of a portion of the 1986 meanders of the right bank of the North Canadian River in section 35, Township 13 North, Range 2 West of the Indian Meridian, Oklahoma, executed under Group 52, Oklahoma, filed November 12, 1987.

These surveys were requested to meet administrative needs of the Bureau of Land Management.

The survey representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of section 12, Township 13 North, Range 12 West, Indian Meridian, Oklahoma, executed under Group 49, Oklahoma, filed November 12, 1987.

The survey representing the dependent resurvey of a portion of the subdivisional lines, the adjusted record meanders of a portion of the left bank of the Wasbita River to sections 10, 15 and 16, the subdivision of a portion of section 15, the survey of a portion of the meanders of the present left bank of the Washita River in sections 10, 15 and 16, the survey of the meanders of the left bank of the 1949 avulsed bed of the Washita River in section 15, the informative traverse of the meanders of the right bank of the 1949 avulsed bed of the Washita River in section 15, the survey of the medial line of the 1949 avulsed bed of the Washita River in section 15 and the survey of partition lines in sections 10, 15 and 16, Township 7 North, Range 9 West of the Indian Meridian, Oklahoma, executed under Group 40, Oklahoma, filed November 12, 1987.

The survey representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 9, Township 6 North, Range 18 West of the Indian Meridian, Oklahoma, executed under Group 40, Oklahoma, filed November 12, 1987.

These surveys were requested by the Area Director, Bureau of Indian Affairs, Auadarko, Oklahoma.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the plats may be obtained from the office upon payment of $2.50 per sheet.

Kelley R. Williamson,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 87-26648 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-FB-M

[CA-930-08-4332-09]

Extension of Comment Period For Draft Environmental Impact Statement; Preliminary Wilderness Recommendations for the Garcia Mountain, Rockhouse, Domeland, Machesna, South Warner Contiguous, Yolla Bolly-Big Butte, and Carson Iceberg Section 202 Wilderness Study Areas, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of public comment period for draft EIS.

SUMMARY: Due to delays in the official filing of the draft EIS for the California Section 202 Wilderness Study Areas, the public comment period has been extended. The original Notice of Availability was published in the Federal Register on Thursday, October 15, 1987 (52 FR 38279).

DATE: Written comments should be submitted by February 15, 1988, to the California State Director (CA-930.16), Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, in order to be considered in the Final Environmental Impact Statement.

FOR FURTHER INFORMATION CONTACT:

James T. Jennings, Bakersfield District Office, 800 Truxton Avenue, Bakersfield, CA 93301, (805) 861-4287;

Roger A. Farschon, Surprise Resource Area Office, (Susanville District), 602 Cressler Street, Cedarville, CA 96104, (916) 279-6101;

Earle G. Curran, Ukiah District Office, 555 Leslie Street, Ukiah, CA 95482-5599, (707) 462-3873;

Stephen Weiss, Walker Resource Area (Carson City District), 1535 Hot Springs Road, Suite 300, Carson City, NV 89701, (702) 882-6134;

Dated: November 12, 1987.

Ronald D. Hofman,

Associate State Director.

[FR Doc. 87-26738 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-40-M

[NV-010-08-4212-11; N-47511]

Realty Action; Lease for Recreation and Public Purposes; Elko County, NV

The following described lands have been examined and found suitable for classification and lease with the option of purchase after development, under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease until at least 60 days after the date of publication of this Notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 47 N., R. 64 E.,
Section 12, S½NW¼SW¼NW¼NE¼.
Containing 1.25 acres.

These lands are hereby classified for public purpose use as a church site. The Jackpot Community Church has made application for, and intends to use these public lands within the unincorporated town of Jackpot, Nevada, to construct a church and related facilities. This church wil serve the needs of the Presbyterians, United Methodist, Church of the Brethern and Roman Catholic faiths, as well as any other religious denominations interested in becoming a part of the church.

The lease/patent, when issued, will be subject to the privisions of the Recreation and Public Purposes Act, applicable regulations of the Secretary

of the Interior, and will contain the following reservations to the United States:

1. All minerals

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

The lease/patent will be subject to an easement of 30 feet in width along the east and west boundaries of the parcel in favor of Elko County for road and public utilities purposes to insure continued ingress and egress to adjacent lands.

Initially the lands will be leased and after substantial development of the parcel, the land may be purchased at the appraised fair market value less 50 percent.

The land is not required for any Federal purpose. The classification and the land's subsequent lease/disposal is consistent with the Bureau's planning for the area.

Upon publication of the Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from appropriation under any other public land law, including locations under the mining laws. If after 18 months following the publication of this Notice in the **Federal Register**, an application has not been filed for the purpose for which the public lands have been classified, the segregative effect of the classification shall automatically expire and the public lands classified in this Notice shall return to their former status without further action by the Authorized Officer.

Detailed information concerning this action is available for review at the Elko District Office, Bureau of Land Management. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to District Manager, Elko District Office, 3900 E. Idaho St., Elko, Nevada 89801. Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of timely objections, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Rodney Harris,

District Manager.

Date: November 10, 1987.

[FR Doc. 87-26734 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Development Operations Coordination Document; ARCO Oil & Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document. (DOCD)

SUMMARY: Notice is hereby given that ARCO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1612, Block 67, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on November 10, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 12, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-26736 Filed 11-18-87;8:45am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Exploration Partners, Ltd.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Exploration Partners, Ltd. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS 0204 and 0205, Block 38, and Lease 0207, Block 42, (portion) Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject was deemed submitted on November 12, 1987.

ADDRESS: A copy of the Subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 13, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-26737 Filed 11-8-87; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Deep River Basin Lands Unsuitable For Mining Petition

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

ACTION: Notice of petition receipt. Notice of completeness. Notice of intent to prepare a combined petition evaluation document/environmental impact statement, and notice of scoping meeting and scoping comment period for the petition to designate certain lands in the Deep River Basin in Lee and Chatham Counties, North Carolina, as unsuitable for surface coal mining operations.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSMRE) received, declared complete, and intends to prepare a combined petition evaluation document/environmental impact statement (PED/EIS) on a petition to designate certain lands within the Deep River Basin, Chatham and Lee Counties, North Carolina, as unsuitable for surface coal mining operations in accordance with section 522 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. OSMRE has identified four alternatives that the combined PED/EIS would evaluate as described in the supplementary information of this notice. OSMRE requests that other agencies and the public submit written comments or statements on the need for an EIS on the petition and the scope of the issues which should be analyzed in the combined document.

DATES: Written comments must be received by 5 p.m. local time, January 29, 1988. Oral comments may be presented at the scoping meeting to be held at the Chatham County Court House. Pittsboro, North Carolina, at 7 p.m. on December 8, 1987.

ADDRESS: Written comments must be received at, or hand delivered to, the Office of Surface Mining Reclamation and Enforcement, Division of Tennessee Permitting, attention of Willis Gainer, 530 Gay Street, SW., Suite 500, Knoxville, Tennessee 37902. Copies of the petition are available upon request from the Office of Surface Mining Reclamation and Enforcement at the above address. The public record on the petition is available for review during normal working hours at the OSMRE office listed above.

FOR FURTHER INFORMATION CONTACT: Bruce Klein at the OSMRE office listed above, telephone (615) 673-4330.

SUPPLEMENTARY INFORMATION: On June 18, 1987, the Goldston-Gulf Sanitary District, the Town of Goldston, and fourteen citizens filed a petition with OSMRE requesting, in accordance with section 522(c) of Pub. L. 95-87, that certain lands within the Deep River Basin in Chatham and Lee Counties, North Carolina, be designated as unsuitable for surface coal mining operations. North Carolina Federal program, as administered by OSMRE, applies to all surface coal mining operations in North Carolina, including the processing of land unsuitable petitions (48 FR 30302, June 30, 1983). OSMRE determined the petition incomplete according to 30 CFR 933.764.13. On August 10, 1987, additional information was filed with OSMRE. The petition was declared administratively complete and accepted for processing on October 9, 1987. The 16-page petition and 183 pages of exhibits were submitted by John F. Graybeal, attorney for the petitioners. Mr. Graybeal's address is Adams, McCullough, & Beard, P.O. Box 389, Raleigh, North Carolina 27602-0389. A copy of the petition is available for public inspection at the County Clerks' offices in Sanford and Pittsburgh, North Carolina, and at the OSMRE Knoxville Field Office listed above. In addition, the public record on the petition is available for review during normal working hours at the OSMRE office listed above.

The major allegations of the petition are:

1. Reclamation is not technologically and economically feasible.
2. Mining the area would be incompatible with local land-use plans.
3. Mining could result in substantial pollution of the water supply.
4. Area is subject to frequent flooding.
5. Mining could result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems.

The several alternatives available to OSMRE for evaluation in the combined document range from not designating any of the lands in the area as unsuitable, to designating all the lands in the petition area as unsuitable. The alternatives are as follows:

Alternative 1—Designate the entire petition area as unsuitable for all surface coal mining operations.

Alternative 2—Not designate any of the petition area as unsuitable for all surface coal mining operations.

Alternative 3—Designate parts of the petition area as unsuitable for surface coal mining operations.

A. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area in which such operations would be incompatible with existing State or local land-use plans or programs.

B. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area in which such operations would result in significant damage to important historic, cultural, scientific, and esthetic values and natural systems.

C. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area in which such operations could result in substantial pollution of water supply.

D. Designate as unsuitable for all or certain types of surface coal mining operations those parts of the petition area which are subject to frequent flooding.

Alternative 4—Designate the entire petition area as unsuitable for surface coal mining but allow underground mining with or without certain restrictions.

A scoping comment period is intended to raise the relevant issues to be addressed by the combined document. The scoping meeting will be held at the Chatham County Courthouse on December 8, 1987, at 7 p.m. The comment period will close on January 29, 1988, at 5 p.m. local time. OSMRE seeks public comments in relation to the scope of issues to be addressed by the impact evaluation, including impacts and alternatives that should be addressed. Written comments submitted should be specific and confined to issues pertinent to the petition. The public comment received during the scoping period will assist OSMRE in making a decision on the petition evaluation and in preparing the environmental impact statement. OSMRE believes that the proposed action is a major Federal action that may significantly affect the quality of human environment and may require the preparation of an EIS. OSMRE additionally gives notice here that should information or analysis show that the proposed action does not require an EIS, it will terminate the environmental impact statement process through an appropriate notice in the **Federal Register.**

Brent Wahlquist,

Assistant Director, Program Policy.

Date: November 10, 1987.

[FR Doc. 87-26677 Filed 11-18-87; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31144]

The Ferdinand and Huntingburg Railroad Co.; Acquisition and Operation of Rail Line; Ferdinand Railroad Co.

The Ferdinand and Huntingburg Railroad Company (F&H), a noncarrier, has filed a notice of exemption to acquire and operate all of the approximately 6.38 miles of line of the Ferdinand Railroad Company (Ferdinand). This rail line runs from Huntingburg, IN to Ferdinand, IN. F&H will be a wholly owned subsidiary of Itel Rail Car Corporation (IRC). IRC is a newly created subsidiary of Itel Rail Corporation (Itel Rail), which directly or indirectly controls various rail and motor carriers. Itel Rail, in turn, is wholly owned by Itel Corporation, which has filed a Petition for Exemption in Finance Docket No. 31143 pursuant to 49 U.S.C. 10505 for an exemption from the provisions of 49 U.S.C. 11343 with regard to its continued control of F&H.[1]

Comments must be filed with the Commission and served on Thomas J. Byrne and Carl V. Lyon, The Ferdinand and Huntingburg Railroad Company, 1101 30th Street NW., Suite 302, Washington, DC 20007, (202) 338-9022.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically say the transaction.

Decided: November 10, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26546 Filed 11-18-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31139]

The Golden Cat Railroad Corp.; Acquisition and Operation Exemption; Certain Line Of Missouri Pacific Railroad Co.

The Golden Cat Railroad Corporation, a noncarrier (GCR), has filed a notice of exemption to acquire and operate certain properties of Missouri Pacific Railroad Company (MPR). The property includes 10.8 miles of rail line formerly known as the Delta Branch, between milepost 149.5 located at or near Delta, MO, and milepost 160.3 located at or near Newman Spur, MO. The acquisition agreement includes the involved right-of-way and associated real estate.

It is indicated that, initially, the proposed operator of the rail line will be Cape County Development, Inc., doing business as The Jackson & Southern Railroad (JSR). It is unclear whether JSR will be operating the line in its own name or on behalf of GCR. A separate notice of exemption will be required with respect to the operation of the line by JSR (or any other operator) in its own name.

Any comments must be filed with the Commission and served on Robert B. Hebert, Miller, Faires, Hebert & Woddell, Suite 2300, One Indiana Square, Indianapolis, IN 46204.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: October 29, 1987

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26545 Filed 11-18-87; 8:45 am]

BILLING CODE 7035-01-M

[1] A voting trust agreement between IRC and Peter A. Greene is being created whereby the common stock of F&H will be placed in a voting trust, with Mr. Greene to serve as voting trustee. This will enable the acquisition of the Ferdinand assets to occur prior to Commission action on the petition for exemption.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87-2]

Herbert Berger, M.D.; Removal of Stay

On May 11, 1987, the Administrator of the Drug Enforcement Administration (DEA) published an order in the Federal Register revoking DEA Certificate of Registration PB0122731, issued to Herbert Berger, M.D. (Respondent) at 7440 Amboy Road, Staten Island, New York 10307, as a narcotic treatment program. 52 FR 17645. This order was effective June 11, 1987.

At the request of Respondent's counsel, the Administrator granted a stay of the order revoking Respondent's DEA registration on June 15, 1987. This stay was subject to certain conditions, including that Respondent's controlled substances be placed under seal, and that he was prohibited from procuring or dispensing any methadone until the final disposition of the proceeding. The stay was granted in order to permit Respondent to have a hearing.

On October 14, 1987, the Administrator received correspondence from counsel for the Respondent dated October 9, 1987. In this letter counsel for the Respondent withdrew Respondent's previous request for a hearing, and requested that the previous stay be vacated.

Accordingly, the Administrator for the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby vacates the stay of his final order revoking DEA Certificate of Registration PB0122731. This order is effective November 19, 1987.

Dated: November 16, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-26719 Filed 11-18-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87-96]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (ACC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on Acoustic Wind Tunnel Requirements.

DATE AND TIME: December 8, 1987, 8:30 a.m. to 5 p.m. and December 9, 1987, 8:30 a.m. to 12:15 p.m.

ADDRESS: National Aeronautics and Space Administration, Ames Research Center, Committee Room, Building 200, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph A. Graves, Jr., Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2828.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology

(OAST) on aeronautics research and technology activities. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Acoustic Wind Tunnel Requirements, chaired by Mr. Dean Borgman, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

December 8, 1987

8:30 a.m.—Presentation of Industry and NASA requirements for acoustic wind tunnel testing.

December 9, 1987

8:30 a.m.—Discussion of briefings and response to industry/government survey.

12:15 p.m.—Adjourn.

November 10, 1987.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-26705 Filed 11-18-87; 8:45 am]

BILLING CODE 7510-01-M

[87-95]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATE AND TIME: December 15, 1987, 8:30 a.m. to 5 p.m.; December 16, 1987, 8 a.m. to 5 p.m.; and December 17, 1987, 8 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Ames Research Center, Building 201, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2775.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the SSTAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Norman R. Augustine, is comprised of 20 members. The Subcommittee is comprised of 26 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda:

December 15, 1987

8:30 a.m.—Opening Remarks.

9:15 a.m.—Agency Strategic Overview.

9:45 a.m.—Space Technology Overview.

10:30 a.m.—Parallel Discipline Reviews.

5 p.m.—Adjourn.

December 16, 1987

8 a.m.—Continuation of Parallel Discipline Reviews.

3 p.m.—Presentation of Reports for Discipline Reviews.

5 p.m.—Adjourn

December 17, 1987

8 a.m.—Comments by Chairperson.

8:30 a.m.—Status Reports by Ad Hoc Team Chairpersons.

9 a.m.—Discussion of Ad Hoc Team Reports, Discipline Review Reports and Requirements for Additional Ad Hoc Reviews.

12:30 p.m.—Adjourn.

November 10, 1987.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 87-26706 Filed 11-18-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on December 9-11, 1987, from 9:00 a.m.-6:00 p.m., and on December 12, 1987, from 9:00 a.m.-3:30 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on December 21, 1987 from 10:00-12:30 p.m. The topics for discussion will be guidelines review and policy issues.

The remaining sessions of this meeting on December 9-11, 1987, from 9:00 a.m.-6:00 p.m. and on December 12, 1987, from 9:00 a.m.-10:00 a.m. and 1:30 p.m.-3:30 p.m. are for the purpose of review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

November 16, 1987.

[FR Doc. 87-26758 Filed 11-18-87; 8:45 am]

BILLING CODE 7537-01-M

Office of Partnership Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office of Partnership Advisory Panel (Local Programs Selection) to the National Council on the Arts will be held on December 7, 1987, from 9:00 a.m.-5:15 p.m., and on December 8, 1987, from 9:00 a.m. 5:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of the meeting will be open to the public on December 8, 1987 from 1:30-5:00 p.m. The topics for discussion will be guidelines review and policy issues.

The remaining sessions of this meeting on December 7, 1987, from 9:00 a.m.–5:00 p.m. and on December 5, 1987, from 9:00 a.m.–1:30 p.m. are for the purpose of review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

November 16, 1987.

[FR Doc. 87–26759 Filed 11–18–87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Division of Ocean Sciences; Advisory Panel for Ocean Sciences Research; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Ocean Sciences Research.

Date and time: December 1–2, 1987; 8:30 a.m. to 5:30 p.m. each day.

Place: The Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Type of meeting: Closed.

Contact person: Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9600.

Summary minutes: May be obtained from the Contact Person at the above address.

Purpose of meeting: To provide advice and recommendations concerning support for research in oceanography.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c). Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

November 13, 1987.

[FR Doc. 87–26695 Filed 11–18–87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on December 2, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 2, 1987—8:30 A.M. until the conclusion of business

The Subcommittee will discuss the Staff's proposed implementation plan for the Safety Goal Policy Statement and the Staff's proposed final resolution for USI A–17 (Systems Interaction).

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: November 16, 1987.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 87–26740 Filed 11–18–87; 8:45 am]

BILLING CODE 7590-01-M

Long Island Lighting Co. Shoreham Nuclear Power Station, Unit 1; Reconstitution of Board

In the matter of Docket No. 50–322–OL3–R (EP—Remand) (ALAB–832) ASLBP No. 86–529–02–OLR; Docket No. 50–322–OL3–R2 (EP—Remand) (CLI–86–13) ASLBP No. 86–535–04–OLR; Docket No. 50–322–OL3–R3 (EP—Remand) (ALAB–847) ASLBP No. 86–539–07–OLR; Docket No. 50–322–OL–6 (25% Power) ASLBP No. 86–553–04–SP.

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Boards for *Long Island Lighting Company* (Shoreham Nuclear Power Station, Unit 1), Docket Nos. above, are hereby reconstituted by appointing Administrative Judge James P. Gleason in place of Administrative Law Judge Morton B. Margulies who has withdrawn as Chairman of the Atomic Safety and Licensing Boards conducting these proceedings because of personal health considerations.

As reconstituted, the Boards are comprised of the following Administrative Judges: James P. Gleason, Chairman; Dr. Jerry R. Kline; Mr. Frederick J. Shon.

All correspondence, documents and other material shall be filed with the Boards in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge James P. Gleason, Chairman, 513 Gilmoure Drive, Silver Spring, Maryland 20901.

Issued at Bethesda, Maryland, this 13th day of November 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-26741 Filed 11-18-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275-OLA and 50-323-OLA]

Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant Units 1 and 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license amendment proceeding. As reconstituted, the Appeal Board for this proceeding will consist of the following members:

Alan S. Rosenthal,

Chairman

Christine N. Kohl,

Howard A. Wilber.

C. Jean Shoemaker,

Secretary to the Appeal Board.

Dated: November 12, 1987.

[FR Doc. 87-26742 Filed 11-18-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co. (Pilgrim Nuclear Power Station); Receipt of Petition For Director's Decision

Notice is hereby given that by Petition submitted October 15, 1987, Michael S. Dukakis, Governor, and James M. Shannon, Attorney General, on behalf of the Commonwealth of Massachusetts and its citizens (Petitioners), have requested that the Director of the Office of Nuclear Reactor Regulation institute a proceeding pursuant to 10 CFR 2.202 to modify, suspend, or revoke the operating license held by the Boston Edison Company (BECo) for the Pilgrim Nuclear Power Station (Pilgrim). The Petitioners request that the NRC (1) modify the Pilgrim license to bar restart until a plant-specific probabilistic risk assessment (PRA) is performed for Pilgrim and all indicated safety modifications are implemented; (2) modify the Pilgrim license to extend the current shutdown pending the outcome of a full hearing on the significant outstanding safety issues and the development and certification by the Governor of adequate emergency plans; and (3) issue an immediately effective order to modify the Pilgrim license to preclude BECo from taking any steps in its power ascension program until a formal adjudicatory hearing is held and findings of fact are made concerning safety questions raised regarding Pilgrim.

The Petitioners assert as grounds for their request (1) evidence of continuing serious managerial deficiencies at Pilgrim, (2) evidence that a plant-specific PRA as well as the implementation of any safety modifications indicated thereby should be required prior to Pilgrim's restart, and (3) evidence that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency during operations at Pilgrim.

With respect to the request for an immediately effective order to modify the Pilgrim license to preclude BECo from taking any steps in its power ascension program until a formal adjudicatory hearing is held and findings of fact are made, the Director did not find that the public interest required such an immediate effective order. The basis for that decision is that the plant is presently shut down and reactor startup and power ascension will not be permitted until NRC determines that there is reasonable assurance that the public health and safety will be protected.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on the Petition within a reasonable time.

A copy of the Petition is available for inspection in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555 and in the local public document room for the Pilgrim Nuclear Power Station located at the Plymouth Public Library, 11 North Street, Plymouth, MA 02360.

Dated at Bethesda, Maryland, this 13th day of November 1987.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-26731 Filed 11-18-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc. (Fermi-2); Exemption

I

Detroit Edison Company (DECo) and the Wolverine Power Supply Cooperative, Incorporated (the licensees) are the holders of Facility Operating License No. NPF-43 which authorizes the operation of the Fermi-2 facility at steady-state power levels not in excess of 3292 megawatts thermal. The license provides, among other things, that the facility is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a boiling water reactor (BWR) located at the licensee's site in Monroe County, Michigan.

II

The Fermi-2 Containment Leakage Detection System includes a Primary Containment Radiation Monitor (PCRM) configured in parallel with the Drywell Hydrogen/Oxygen Sampling System panel. Both systems normally operate during reactor operation and sample the drywell atmosphere from five zones through containment penetrations. The initial isolation design for the PCRM and the Drywell Hydrogen/Oxygen Sampling System is described in Section 6.2.4 of the Fermi-2 Final Safety Analysis Report. Containment isolation requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 56, were achieved using a single remote manual isolation valve and a closed piping system outside the containment, instead of one automatic isolation valve inside and one automatic isolation valve outside containment. As stated in Section 6.2.4 of the Commission's Safety Evaluation Report for Fermi-2 (NUREG-0798), this design is acceptable. The design intent was that the PCRM would operate following a loss-of-coolant accident (LOCA) and that the PCRM would be in compliance with the closed system requirements approved as an alternative to GDC 56.

In January 1984, DECo determined that the PCRM did not meet the closed system design requirements for a containment design pressure of 56 psig. Seismic and material certifications provided by the PCRM vendor also were found to be deficient. Two actions were taken by DECo as a result of these findings: (1) The PCRM was reclassified as nonessential following a LOCA and, as such, should be isolated automatically upon receipt of a LOCA signal (the Drywell Hydrogen/Oxygen Sampling panel retained its essential classification); and (2) one automatic isolation valve and one local manual valve were added to each of two branch lines to the PCRM to provide isolation of the reclassified nonessential PCRM. The automatic isolation valve was designed to close on a high drywell pressure

signal from the Reactor Protection System.

Following this modification, the configeration provided two barriers in the event of a LOCA, one barrier consisting of the automatic isolation valve and the second barrier was the remote manual isolation valve. DECo later discovered that the use of a remote manual isolation valve as a barrier for a nonessential system (such as the current PCRM design) is not an acceptable alternative to the requirements of GDC 56. By letter dated October 27, 1987, as supplemented by letters dated October 29 an November , 1987, DECo requested a temporary exemption from the requirements of GDC 56 of Appendix A to 10 CFR Part 50 until such time as it can complete modifications to the PCRM by providing two barriers, each consisting of two sets of automatic containment isolation valves to meet fully GDC 56 requirements (currently scheduled to be complete prior to startup from a planned local leak rate test in March 1988).

The PCRM is one of three Containment Leakage Detection Systems in the plant. The plant Technical Specifications (Section 3.4.3.1) require that all three detection systems be operable, and that with only two of the three systems operable, the inoperable system must be restored to operable status within 30 days; otherwise the plant must be shut down following the 30-day period. The plant is currently operating within this 30-day Action as a Limiting Condition for Operation with the nonessential system isolated. The requested exemption would permit DECo to return to service the now isolated PCRM utilizing the existing isolation design configeration while DECo designs, procures, and installs necessary isolation features to achieve full compliance with the provisions of GDC 56.

III

During an October 1987 maintenance servicing of the PCRM, valves T50–F450 and T50–F451 were used to isolate the inlet and return lines of the system from the primary containment. This isolation procedure was reviewed by Fermi-2 operations personnel and questioned since these valves were not indicated as containment isolation valves in either the plant procedures or Technical Specifications. The PCRM uses the penetration of the essential Drywell Hydrogen/Oxygen Sample panel by tapping off between the inboard remote isolation valve. The valves used to isolate the PCRM are located in these tap-off lines.

In response to the questions raised by the operations personnel, DECo submitted a Technical Specification (TS) change request to add the above two valves into the table of containment isolation valves (Table 3.6.3–1 of the Technical Specifications). At this point in time, DECo concluded that the design did satisfy the provisions of GDC 56. The supporting documentation showed that the isolation barriers for the inlet and return line of the PCRM were the remote manual inboard isolation valve and automatic isolation valve.

Initial Commission staff review of the Technical Specification change request determined that the PCRM was a nonessential system. It was also recognized that a remote manual valve cannot be considered as one of the isolation barriers for a nonessential system. In addition, the newly added valves had only high drywell pressure as the isolation signal. This does not satisfy the diversity requirement for isolation. Subsequent discussions between DECo and the Commission's staff determined that additional automatic isolation valves with proper signal diversity would be required to satisfy GDC 56. Also, signal diversity would be necessary on the existing set of automatic valves.

To support operation with the above arrangement, while the requested exemption is in effect, DECo has proposed a program consisting of a series of additional actions intended to upgrade the effectiveness of the isolation scheme. This includes the incorporation of both the local manual and the automatic system isolation valves, as well as the safety-related automatic isolation valves, into the surveillance program for containment isolation valves. This surveillance program includes various operability tests including leak rate and functional tests. The leak rate testing will be conducted monthly to ensure leak tight integrity. The additional testing is intended to add confidence that if and when isolation is needed, these valves will establish a leak tight boundary.

Also included as interim compensatory actions are emergency operating procedure revisions and enhanced operator training. A training program will be implemented to instruct the operators to isolate manually the PCRM when there is an upset condition that could require containment isolation. Upset conditions that will initiate operator action include low reactor vessel water level (level 2) or the drywell pressure-high alarm setpoint (1.5 psig). Additionally, DECo will conduct daily visual inspections of the valves and associated piping for evidence of leakage, piping deformation, or any other abnormality.

Based on the compensatory measures proposed by DECo, as summarized above, the Commission's staff concludes that adequate safety margins will be maintained during the operating period while the limited exemption is in effect. DECo has shown that both manual and automatic valves are available for containment isolation. These valves will be treated as containment isolation valves and will receive frequent (monthly) leak rate testing. While this system does not satisfy GDC 56, revised emergency operating procedures, operator training, and daily visual inspections provide adequate assurance that isolation would be available if needed. In view of this defense in depth, the Commission's staff finds the proposed limited exemption from the requirements of GDC 56 of Appendix A to 10 CFR Part 50 to be acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption would provide only temporary relief from the applicable regulation, and DECo has made a good faith effort to comply with the regulation. The good faith effort by DECo is demonstrated by its relatively prompt response following DECo's discovery that it misinterpreted earlier established requirements. This discovery occurred during an October 16, 1987, maintenance outage. This discovery was documented in the DECo's letters of October 27, October 29 and November 2, 1987.

Based on this prompt response and DECo's commitment to implement the long-term resolution at the earliest practical opportunity (i.e., the March 1988 leak rate test outage), the Commission concludes that DECo has made a good faith effort to come into compliance with the requirements of GDC 56. Therefore, the Commission hereby approves the following exemption:

With respect to the requirement in General Design Criterion 56 to provide each line that connects directly to the containment atmosphere and penetrates primary reactor containment, with two containment isolation valves, one inside and one outside containment, exemption is granted from this requirement for

penetrations X-48 (a) through (e), X-215 and X-230 for a limited period not extending beyond startup from the March 1988 leak rate test outage.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will have no significant impact on the environment (52 FR 43258).

For further details with respect to this action, see DECo's request dated October 27, 1987, as supplemented by letters dated October 29 and November 2, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 13th day of November 1987.

For The Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-26732 Filed 11-18-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 55-20674]

Mr. Christopher D. Gentile (Senior Reactor Operator License No. 20359; Order Suspending License Effective Immediately

I

Mr. Christopher D. Gentile (the Lincensee) is holder of Senior Reactor Operator License No. 20359 (the License) authorizing Mr. Gentile to operate the controls of the nuclear reactor at the Shearon Harris facility (the Facility). The License was issued by the Nucleaer Regulatory Commission (NRC or Commission) on December 26, 1985, and is due to expire on December 26, 1987.

II

In an application received August 15, 1985, the Lincensee applied to the Commission for a senior reactor operator license to operate the controls of the nuclear reactor at the Facility. The Licensee successfully completed both a written and operating test in accordance with the Commission's requirements in 10 CFR Part 55 then in effect. The License was issued to the Licensee on December 26, 1985. Subsequent to the issuance of the License, the Commission determined that the Licensee should undergo a limited operating examination on the newly activated simulator for the Facility for which he held a License. The NRC has previously agreed with the Facility licensee, Carolina Power and Light Company (CP&L) (as documented in a Letter of November 22, 1985, from NRC to CP&L) that the November 1985 Group I candidates of which the Licensee was a member would not be required to take simulator examinations unless unforeseen circumstances arose. Examples of such circumstances were stated by the NRC to be:

1. An exceptionally high failure rate on the simulator phase of Group II examinations (those candidates taking the written test in January 1986).

2. An unusually long delay in the fuel load date of Shearon Harris.

Both these circumstances did arise. The simulator examination passing rate was 70.6 percent for the Group II candidates as compared to a national average of approximately 90 percent. In addition, significant simulator training deficiencies with respect to the Group I licensed operators were identified by Regional inspectors in June 1986 (Inspection Report No. 50-400/86-48). Also, Shearon Harris licensing and fuel load did not occur in February 1986 as anticipated but was delayed until after October 24, 1986.

The NRC then decided, based on these circumstances, to administer simulator examinations to all Group I operators who had been previously licensed. The Licensee failed the simulator operating examination administered to him on February 25, 1987. The Facility training department was informed of that failure on March 19, 1987. The Facility Licensee informed the NRC on March 20, 1987 that the Licensee would not be used for licensed duties until he passed an NRC-administered simulator examination. In a letter received on April 23, 1987, the Licensee requested an informal review of his simulator examination. On June 26, 1987, the Lincensee was informed that the informal review sustained the failure. The Licensee requested further informal review on July 15, 1987. The results of the NRC informal review process confirm the initial finding that the Licensee failed the simulator operating test that was administered to him on February 25, 1987. The results were provided to the Licensee by letter dated October 22, 1987.

III

Under section 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations, specifically 10 CFR 55.61, a reactor operator license may be revoked or suspended in whole or in part because of conditions revealed by any report, record, inspection, or other means that would warrant the Commission to refuse to grant a license on an original application. The failure of a Licensee to successfully pass the simulator portion of an operating test administered to him calls into question his ability to safely operate the Facility and would have warranted denial of the Licensee's initial application.

Based on the foregoing, I have concluded that, if it has been known that the Licensee would have performed unsuccessfully in a simulator test such as the one administered to him on February 25, 1987, the license would not have been issued. I have also determined that the public health and safety requires immediate action be taken to ensure that the Licensee not operate the controls of the nuclear reactor at the Facility until such time as he has successfully passed an operating test.

IV

Accordingly, pursuant to sections 107, 161 i, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 55, it is ordered that:

Effective immediately, License No. 20359 is suspended until the Licensee successfully completes either an NRC administered operating test for the Facility, or the next annual operating test administered by the Facility Licensee (and observed by the NRC) as part of the NRC approved requalification program.

Should the Licensee fail to successfully complete an operating test at the Facility by December 26, 1987, License No. 20359 will expire.

V

The Licensee, or any other person who has an interest adversely affected by this order, may request a hearing on this Order within 30 days of the date of its issuance. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the request shall also be sent to the Office of General Counsel, Assistant General Counsel for Enforcement, at the same address. If a person other than Licensee requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d).

If the Licensee fails to request a hearing within 30 days of the date of this

Order, the provisions of this Order shall be effective without further proceedings.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing. If a hearing is held, the issue to be considered at the hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland this 10th day of November 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-26733 Filed 11-18-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25120; File Nos. SR-NYSE-87-04, SR-NASD-87-11, SR-PSE-87-18]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; National Association of Securities Dealers Inc.; Pacific Stock Exchange Inc.; Order Approving Proposed Rule Changes

I. Summary and Introduction

In March 1987, the New York Stock Exchange, Inc. ("NYSE") and the National Association of Securities Dealers, Inc., ("NASD"), filed with the Commission similar proposed rule changes under section 19(b) of the Securities Exchange Act of 1934 ("Act"). These filings concern member use of securities depository facilities for trade settlement with customers to whom the member extends collection on delivery or payment on delivery ("COD") privileges.[1] Notice of the filings appeared in the **Federal Register** on March 20, 1987.[2] In May 1987, the Pacific Stock Exchange, Inc. ("PSE") filed a similar proposal, which was noticed in the **Federal Register** on July 17, 1987.[3] No comments were received. This order approves the three proposed rule changes.

The proposals would modify existing NYSE, NASD, and PSE rules to eliminate certain exceptions applicable to COD privileges. Essentially, the proposed changes would require NYSE, NASD, and PSE member organizations to deny COD privileges to customers on transactions in securities that are eligible for deposit in registered securities depositories unless depository services are used to process and settle such transactions.

II. Background and Description

A. Background

Street-side settlement occurs routinely five business days after the trade date and within the clearing agency environment, but customer-side settlement, particularly for institutional trades, may occur as many as 35 calendar days after the trade date. Because institutional trades involve several parties (the investment manager, custodian bank, and broker) who must accomplish various settlement tasks in a short time frame, settlement may involve delays and errors that significantly increase settlement-related expenses to all parties.[4] Historically, the most significant expense has been the cost to broker-dealers of financing customer positions until settlement finally occurs. Given the prevalence of COD settlement arrangements, institutional trades pending settlement could threaten a broker-dealer's solvency, particularly if coupled with antiquated settlement procedures that generate unnecessary exposure of members to default.

The registered securities depositories operate an automated settlement system for institutional transactions termed the National Institutional Delivery System ("NIDS").[5] The NIDS system coordinates among brokers, investment managers, and custodian banks all of the tasks that must be accomplished (*i.e.*, confirmation, affirmation, and book-entry settlement). NIDS also facilitates the settlement of institutional trades whenever an agent bank participates indirectly in a depository through an actual participant (often referred to as "piggy-backing"). NIDS confirmation can be sent directly to piggy-backing correspondent banks, and, as a result, brokers and their customers can be assured that the party that must release the funds or securities will obtain timely information regarding the trade.

NYSE Rule 387 and the related NASD and PSE rules were amended in January 1983 to help ensure that their members could process high-volume trading.[6] Those rules require brokers and institutions that have access to NIDS to use NIDS to settle COD transactions. Those rules were adopted in response to recommendations of a Joint Committee formed by the Operations Committee of the Securities Industry Association and the NYSE to address concerns about the industry's ability to process institutional trades during periods of sustained high-volume trading. The Joint Committee identified the DK problem as a primary obstacle to the safe and efficient handling of institutional trades, particularly when DKs occur during customer-side settlement.

Since the adoption of the current COD rules in 1983, the use of NIDS for customer-side settlement has increased dramatically. In 1986, DTC processed 35 million transactions in the NIDS system compared with 9 million transactions in 1982. At year end 1986, approximately 6,500 institutions, broker-dealers, and banks used DTC's NIDS system.[7] Estimates indicate that NIDS can save the industry approximately $100 million annually by reducing or eliminating costs for nonautomated, customer-side settlements.[8]

When the NYSE adopted its current Rule 387 in 1983, it specifically noted in the Rule that exemptions for members and customers would be reviewed periodically to determine the continued necessity of the exemptions.[9] A recent

[1] COD privileges commonly are extended by broker-dealers to institutional customers. The privileges result from an exception in the requirement of Regulation T of the Board of Governors of the Federal Reserve System that customers pay for securities within seven business days after the date of purchase. The exception permits payments on delivery within 35 calendar days of a trade. *See* 12 CFR 220.8(b) (2) (1986).

[2] Securities Exchange Act Release Nos. 24213 (March 13, 1987), 52 FR 9001; 24214 (March 13, 1987), 52 FR 8999.

[3] Securities Exchange Act Release No. 24698 (July 10, 1987), 52 FR 27092.

[4] In the typical institutional trade, there are at least three parties involved in the customer-side settlement process: the investment manager, the custodian bank, and the customer-side broker-dealer. After executing the trade for the investment manager, the broker must confirm the terms of the trade in writing to the investment manager ("confirmation"). *See* 17 CFR 240.10b-10 (1986). If the confirmation conforms to the investment manager's records of the ordered trade, the investment manager must issue instructions to the custodian bank authorizing the receipt or delivery of securities against payment to or by the broker ("affirmation"). In the absence of appropriate instructions, the custodian bank will refuse to settle the trade with the broker. This refusal to complete timely customer-side settlement historically has been referred to as the "Don't Know" ("DK") problem.

[5] DTC acts as the central processor for NIDS. The other operating securities depositories, *i.e.*, Philadelphia Depository Trust Company and Midwest Securities Trust Company, are linked to DTC's system and offer NIDS services to their participants.

[6] *See* Securities Exchange Act Rel. No. 19227 (November 9, 1982), 47 FR 51658.

[7] *See* DTC 1986 Annual Report.

[8] *See* Division of Market Regulation, *Progress and Prospects: Depository Immobilization of Securities and Use of Book-Entry Systems*, June 14, 1985.

[9] *See* NYSE Rule 387, Suppplementary Material .20.

review of those exemptions led the SROs to conclude that they no longer are necessary and that their elimination should provide significant benefits to the securities industry. Accordingly, the NYSE and other SROs have filed the instant proposed rule changes.

B. Description

The proposals by the three self-regulatory organizations (collectively the "SROs") amend their respective rules [10] to eliminate certain exceptions that permit SRO members to settle a COD transaction by physical delivery if either side of such transaction (*i.e.*, the customer and its agent or the member and its agent) are not participants in a registered securiteis depository.[11] The elimination of those exceptions would mean that SRO members would be required to deny COD privileges on transactions in securities that are eligible for deposit in registered securities depositories unless the customer and its settlement agent agree to use clearing agency facilities to process and settle their transactions. In other words, the amendments would require all member organizations and their institutional customers to obtain access to a securities depository. The SROs have set the effective date for the proposed rule change as 90 days after the commission issues a release approving the proposal.

The SROs state that as a result of implementing their proposals virtually all COD transactions in eligible securities would be confirmed, affirmed and book-entry settled through a registered securities depository. The NYSE notes in its filing that the vast majority of COD transactions in dollar amount already are settled this way, and cites statistics from the Depository Trust company ("DTC") that 98.0% of bank-managed assets and 99.5% of investment manager assets currently settle in this manner.

III. Rationale

The SROs believe that the proposals are consistent with the requirements of sections 6(b)(5) and 15A(b)(8) of the Act in that they are designed to foster cooperation and coordination with persons engaged in clearing, settling, processing information with respect to, and facilitating transactions in securities.[12] The SROs also believe that the proposals would provide to an increased number of COD customers the more efficient procedures of electronic processing and book-entry settlement.[13]

Likewise, the SROs believe that the proposals are consistent with section 17A(a) of the Act because they would encourage the prompt and accurate clearance and settlement of COD transactions by requiring that transaction settlement take place electronically within a depository environment.[14] Further, they state that the use of depositories would enhance the transfer of record ownership and would help safeguard funds and securities. They believe that the wider use of more efficient depository procedures for processing COD transactions would mean diminished reliance on less efficient physical delivery methods and reduced clerical and interest expenses that otherwise would be borne by broker-dealers and passed along to their customers.

The SROs state in their filings that since 1983 the financial industry has realized the benefits of book-entry settlement in the form of reduced DK rates, lowered processing expenses, and more timely transaction settlement. They assert that book-entry settlement currently is saving the industry about $100 million annually in finance charges on COD orders. They state that consequently, the efforts toward industry-wide use of book-entry settlement should be continued.

These SROs believe that the existing exemptions to their book-entry settlement rules contribute to processing delays and in two ways increase the operating expenses of broker-dealers and depositories. First, inasmuch as book-entry systems have become the ordinary way of doing business for institutional trades, processing by outdated physical methods now constitutes an anomoly that interrupts routine processing work and requires more expensive special handling. Second, the large quantities of security certificates that must be inventoried to satisfy physical deliveries of institutional trades constitute a major expense that would be eliminated if the transactions were processed by book-entry.[15] Accordingly, where depository-eligible securities are involved, the SROs believe that the time has come to eliminate the two-tiered approach and to require the use of the more efficient book-entry systems.

The SROs also state that the costs of compliance with the proposals would be negligible.[16] First, SRO members generally are required today, under existing SRO rules, to use securities depositories for interdealer ("street-side") settlement of securities transactions.[17] Second, the SROs believe that institutional customers and their agent banks that do not use depositories can access depository services at costs that are less than their current costs associated with ex-depository settlements.[18]

[10] Specifically, the proposals would amend NYSE Rule 387.10; Section 64 of the NASD's Uniform Practice Code ("UPC"); and PSE Rule X, section 12(b).

[11] The Commission understands that the other registered securities exchnges are considering filing similar proposed rule changes.

[12] Section 6(b)(5) and 15A(b)(8) apply, respectively, to the rules of securities exchanges and securities associations.

[13] The reasons that the exemptions in question were adopted by the SROs in 1983 were twofold: (1) Some persons at that time reasonably lacked means of depository access; and (2) the exemptions were part of an overall effort to encourage the use of book-entry settlement at securities depositories and it was thought desirable to permit certain exemptions in order to ease the industry into using these new systems. Telephone conversations between Eugene Blier, Attorney, NASD, and Thomas Etter, Attorney, Securities and Exchange Commission, June 17, 1987.

[14] Section 17A(a) deals with the clearance and settlement of securities transactions.

[15] Securities depositories maintain those certificates and provide urgent withdrawal service to their participants, usually making a certificate registered in the depository's nominee name available within several hours notice.

[16] The NYSE and PSE state in their filings that they neither solicited nor received any comments on their proposals. The NASD stated that it published its proposal for comment to its members on August 27, 1986 (NASD Notice 86-80). It reported receiving 14 comments, 11 generally favoring the proposal and three opposing it. The negative comments indicated that: it is difficult to persuade smaller institutional clients and their agent banks that lack access to a depository to move to a book-entry environment; small regional firms have a competitive disadvantage to branch offices of large wire houses and that this proposal would aggravate that situation; and book-entry clearance by a correspondent bank for clients would be expensive, time consuming, or not offered by their clients' correspondents. The comments favoring the proposal generally emphasized the operating efficiencies it would provide. The NASD stated in its filing that after considering all of the comments, its Board of Governors concluded that the impact of the proposal upon smaller broker-dealers would be minimal.

[17] *See, e.g.*, NYSE Rule 132.

[18] The NYSE states in its filing, relying on an estimate by DTC, that: (1) Currently, there are 1,500 daily COD settlements being done a physical basis, which cost about $25 to $50 per delivery; and (2) if these settlements were made through a registered depository, savings of $9 million to $18 million annually could be realized. *See* File No. SR-NYSE-87-04, Form 19b-4 at 3.

The NASD estimates, in support of that position, that it costs about $10 to process a book-entry transaction and about $35 to process a physical delivery transaction, including certificate expenses. Telephone conversation between Grant Callery, Associate General Counsel, NASD, and Thomas C. Etter, Attorney, Securities and Exchange Commission, June 19, 1987.

The SROs assert, in effect, that: (1) The benefits of the proposals would exceed the costs; and (2) the proposals would impose no net additional costs, but would reduce overall costs to the advantage of all parties. The SROs believe that the proposals would not disadvantage small broker-dealers inasmuch as such broker-dealers could employ, at reasonable rates, an agent bank or broker-dealer with access to a depository. The SROs add that banks, including small banks, that are not themselves members of a depository typically have coorespondent relationships with banks that are depository members.

IV. Discussion

The Commission believes that the proposed rule changes are consistent with the Act, particularly sections 6(b)(5), 15A(b)(8), and 17A of the Act.[19] Potential benefits of the proposal include: (1) Single-stream processing for street-side and customer-side settlement; (2) the encouragement of more efficiencies in transaction processing together with a reduction in broker-dealer expenses; (3) increased immobilization of securities; and (4) increased liquidity, freeing broker-dealer capital for other uses.

First, the proposals should provide single-stream processing by eliminating the necessity for broker-dealers and banks to maintain dual facilities at a securities depository to process COD transactions both physically and through book-entry settlement arrangements. Maintenance of two separate settlement services and related accounting and recordkeeping systems creates unnecessary expense and confusion.[20] The proposals generally should eliminate the physical delivery arrangements for customer-side COD settlements and thereby reduce those unnecessary expenses.

Second, the proposals also should reduce broker-dealer financing costs associated with delayed physical delivery settlements that are permissable under current SRO rules. As noted above, broker-dealers generally settle the street side of customer-related transactions five days after trade date ("T+5"), but may not settle with the customer until up to 35 days after trade date. Between street-side settlement on T+5 and settlement with the customer, the broker-dealer must finance the transaction itself, *i.e.*, it must deliver its own or borrowed securities or funds and wait until the customer is prepared for settlement to receive appropriate funds or securities from the customer. As noted above, the SROs estimate that the proposals' elimination of current exemptions that permit physical delivery could save the industry $9 million to $18 million annually.

Third, the proposals should increase immobilization of securities and thereby reduce processing costs to clearing members and their customers, and reduce risk. The proposals will increase the number of securities transactions that must be settled by book-entry and thereby increase securities immobilization because securities to be delivered or received must be deposited at a securities depository to be eligible for book-entry services. Although delivered securities can be withdrawn from a securities depository, the Commission understands that many institutions using a depository for the first time realize cost savings from depository custody and book-entry delivery services, and therefore do not routinely withdraw their securities.[21] Finally, immobilization of those securities at the depository also should increase securities liquidity because they can be delivered quickly by book-entry compared to the much longer time needed to effect physical delivery.

Moreover, the use of NIDS results in the affirmation of approximately 90% of institutional trades within the five-day street-side settlement period, which substantially reduces risks of failed trades. The value of NIDS was demonstrated during the recent period of high volume and price volatility in October 1987. Without NIDS, market participants would have been faced with much larger numbers of DK trades. In periods of high price volatility, the costs of handling such DKs could be extremely high.

The Commission believes that costs associated with the proposed rule changes should be minimal. As indicated above, the vast majority of COD transactions, in dollar amount, already settle through the NIDS, including 98.0% of bank-managed assets and 99.5% of funds managed by investment managers. The principal cost of the proposal will be for those entities that currently lack access to clearing agencies. Although those entities may elect direct participation in a depository, they also can establish correspondent relationships with banks or broker-dealers that participate directly. The Commission notes that the NYSE has estimated that the access cost for such entities would be as little as $2,500 per year and that the cost could be recovered in the form of reduced settlement processing expenses even if the entity processed as few as two trades per week.[22]

The Commission recognizes that some smaller institutions that lack direct clearing connections may be reluctant to change from customary practices to a depository environment, and that some broker-dealers specialize in providing COD services to those institutions. The Commission also understands that several states require local insurance companies and pension funds to maintain securities certificates within that state after the settlement process.[23] Furthermore, book-entry settlement may not always be a readily available service through a correspondent bank, perhaps meaning that in some locations a direct clearing link would be the only option.[24] Nevertheless, the Commission believes that the broad improvements in cost efficiency, accuracy, timeliness, and lower system risk provided to the securities markets by book-entry

[19] Those sections of the Act provide that the rules of a securities exchange or securities association should be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in, securities. Further, section 17A(a)(1) of the Act specifically directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities and to facilitate efficient and effective procedures for clearance and settlement.

[20] For physical delivery, urgent withdrawals often are made from the depository and certificates are hand-delivered to the institution's agent. Certificates then must be delivered to the transfer agent for cancellation and reissance in the institution's or its agent's name. Because urgent withdrawals are registered in the depository's nominee name, confusion often is created as to ownership of intervening dividend or interest payments. Alternatively, certificates are withdrawn by transfer (*i.e.*, the depository obtains certificates from the transfer agent registered in the institution's name), a process that often takes several days or more.

[21] The Commission understands that COD privileges generally are not extended by broker-dealers to individual retail customers. Thus, the proposal generally would not apply to retail customers.

[22] *See* File No. SR-NYSE-87-04, Form 19b-4 at 4.

[23] These states include Arkansas, New Mexico, and Wyoming. The Commission understands, however, that settlement at a depository followed by withdrawal and custody within those states complies with applicable state laws. Because depositories maintain automated connections to many transfer agents, settlement followed by withdrawal at the depository can result in the institution receiving a certificate registered in its name at an earlier time than under non-automated methods.

[24] Advances in telecommunications, however, enable banks and institutions in any geographical area to access depository services through remote computer terminals connected by telephone lines. *See, e.g.*, Securities Exchange Act Release No. 21227 (August 9, 1984), 49 FR 32698.

settlement constitute overriding considerations.

The Commission believes that the NYSE, NASD, and PSE proposals should improve the general efficiency of the securities markets and benefit the public interest.[25] The Commission further believes that the benefits of the proposal substantially outweigh the costs. Accordingly, the Commission is approving the proposal.

V. Conclusion

For the foregoing reasons, the Commission finds that NYSE's, NASD's, and PSE's proposals are consistent with the Act, particularly sections 6, 15A and 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-NYSE-87-04, SR-NASD-87-11, and SR-PSE-87-18) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: November 13, 1987.

[FR Doc. 87-26688 Filed 11-18-87; 8:45 am]

BILLING CODE 8010-01-M

[25] The Commission also notes that the proposals are SRO rules, which the SRO's are obligated to enforce and to discipline appropriately their members for violations under section 19(g)(1) of the Act.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

November 13, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

British Gas PLC
- Second Interim American Depositary Receipts (File No. 7-0705)

CMS Energy Corporation (Holding Company)
- Common Stock, $.01 Par Value (File No. 7-0706)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 7, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26686 Filed 11-18-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATE: Comments should be submitted by December 21, 1987. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (S.F. 83s), supporting statements, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer: William Cline, Small Business Administration, 1441 L. Street NW., Room 200 Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Business Development Program Field Visit Report
Form No.: SBA 1010H
Frequency: Annually
Description of Respondents: The field visit report provides for an on-site overview of the entire operations of the 8(a) concern.
Annual Responses: 3,000
Annual Burden Hours: 9,000

Title: Authorization for Publication of 8(a) Contractor Profiles
Form No.: SBA 1449
Frequency: On occasion
Description of Respondents: The information collectd on each exhibiting 8(a) firm would be consolidated into a booklet profiles. This booklet is given to each attending purchasing agency and serve as a marketing device for these firms.
Annual Responses: 3,000
Annual Burden Hours: 1,500

Title: Settlement Sheet
Form No.: SBA 1050
Frequency: On occasion
Description of Respondents: The settlement sheet is used to evidence the disbursement of a loan in accordance with terms and conditions agreed to between SBA and the borrower.
Annual Responses: 14,000
Annual Burden Hours: 28,000

Title: Loan Closing Documents
Form No.: SBA 147, 148, 159, 160, 160A, 529B, 928, 1059
Frequency: On occasion
Description of Respondents: These are legal instruments necessary to evidence a loan transaction such as a note, mortgage or deed of trust and collateral documents needed to support the loan. They are required as a matter of law by section 7 of the Small Business Act, 15 U.S.C. 636.
Annual Responses: 14,000
Annual Burden Hours: 84,000

Title: Contract Progress Report of Certificate of Competency
Form No.: SBA 104A
Frequency: Monthly
Description of Respondents: The information obtained from the followup procedure and compiled on SBA Form 104A will be used to determine the status of the contract and if the contractor needs any SBA assistance.
Annual Responses: 14,400
Annual Burden Hours: 7,200

Title: Survey of Commercialization Activities of SBIR Awardees
Frequency: One-time, nonrecurring
Description of Respondents: These forms will be used to survey

recipients of Small Business Innovation Research Awardees. The plan is to conduct a survey of initial SBIR awardees to determine the extent of commercial activities undertaken to market the product developed under this program.

Annual Responses: 378

Annual Burden Hours: 174

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 87-26700 Filed 11-18-87; 8:15am]

BILLING CODE 2670-12-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Commercial Motor Vehicle Safety Regulatory Review Panel

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FNWA announces that the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) will hold a meeting on December 2, 1987, beginning at 9:00 a.m., in Washington, DC, at the Department of Transportation's Headquarters Building, 400 Seventh Street, SW., Washington, DC, Room 4234.

The agenda for this meeting includes consideration of the results of Dynamac Corporation's preliminary review of the scope and relatively stringency of the laws and regulations of one or more states pertaining to commercial motor vehicle safety. The Safety Panel will consider whether further contact with the affected state or states will be required before making its recommendations to the Secretary of Transportation pursuant to section 208 of the Motor Carrier Safety Act of 1984, 49 U.S.C. app. 2507 (Supp.III 1985).

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, Commercial Motor Vehicle Safety Regulatory Review Panel, Federal Highway Administration, HOA-1, Room 4218, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

Issued on November 12, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 87-26716 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

[FRA Docket No. 87-2, Notice No. 2]

Automatic Train Control; Northeast Corridor Railroads; Final Orders

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final Orders of Particular Applicability.

SUMMARY: This document provides notice to the affected parties and the general public of FRA's issuance of orders requiring that all trains operating on the Northeast Corridor (NEC) be controlled by locomotives equipped with Automatic Train Control (ATC).

EFFECTIVE DATE: December 21, 1987.

FOR FURTHER INFORMATION CONTACT: S.H. Stotts, Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0628).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1987, FRA issued a Report of Investigative Findings and Notice of Proposed Orders of Particular Applicability (published May 26, 1987, 52 FR 19620), in which FRA proposed issuing railroad-specific orders requiring that all trains operating on the NEC be controlled by locomotives equipped with functioning ATC receiver devices. FRA requested comments from the public and scheduled a public hearing.

The hearing was held on June 24, 1987 in Washington, DC, during which six organizations presented their views regarding the proposed orders. Appearing were the National Railroad Passenger Corporation (Amtrak), the Consolidated Rail Corporation (Conrail), Southeastern Pennsylvania Transportation Authority (SEPTA), Brotherhood of Locomotive Engineers (BLE), Railway Labor Executives' Association (RLEA), and the National Association of Railroad Passengers (NARP).

In addition to those presenting views at the public hearing, written comments were filed by the National Transportation Safety Board, Congressman James J. Florio, New Jersey Transit, the Delaware & Hudson Railway Company, three individuals, a passenger association, and a group of passenger transportation consultants.

Among the issues raised by the commenters, three received special attention: (1) Whether ATC should be required on the NEC; (2) whether the implementation timetable is too slow or too fast; and (3) whether the scope of the orders should be expanded to include railroad lines in addition to the NEC spine. We will address these issues in order.

1. ATC on the NEC

The objective of the proposed orders drew support from most commenters. Amtrak, SEPTA, and New Jersey Transit generally supported the proposals, with some suggested refinements.

Conrail took the position that automatic train stop (ATS) should be adequate for safe freight operations on the NEC. We disagree. Automatic train stop actuates the train's brakes only if the locomotive operator fails to acknowledge a more restrictive signal. Once a more restrictive signal has been acknowledged, ATS does not distinguish between an operator obeying signals and one disregarding them. ATC, on the other hand, will not permit a train to be operated at speeds that are in contravention of signal indications. The critical difference between the two systems, the ability of ATC to override a locomotive operator's noncompliance with a signal indication, is essential in FRA's judgment to ensure the proper level of safety in freight train operations on the NEC.

Conrail further expressed the view that the present ATC system in use on Amtrak locomotives is unsatisfactory for freight trains and testified that it has been working with suppliers to devise an ATC system safe and suitable for freight service. Similarly, the Delaware & Hudson Railway Company (D&H) expressed its opposition to the proposed ATC requirements, claiming that the technology is "not yet at prototype level" and is "not in use anywhere in this country." We disagree. Freight railroads have used this safety system for many years without difficulties arising from either unwanted penalty brake applications or from braking applications during actual emergencies. The Richmond, Fredericksburg & Potomac Railway Co. (RF&P) and the Chicago and Northwestern Transportation Company (C&NW) both have ATC systems, RF&P's being essentially the same as Amtrak's and the C&NW's providing an even more severe brake application than Amtrak's. Indeed, both Penn Central Transportation Company and Conrail itself have operated ATC-equipped locomotives in freight service on the NEC. During the period 1960 through 1981, a fleet of some 66 ATC-equipped,

electric locomotives, identified as E-44 class locomotives, were safely operated in freight service on the NEC.

FRA rejects any assertion that ATC is inherently unsafe for freight service on the NEC. We do, however, recognize a legitimate safety concern with respect to the timing and severity of brake applications initiated by ATC devices. That concern stems from computer simulation studies indicating that under limited, but not atypical, operating conditions, undesirably severe in-train force levels can be generated when freight trains are subjected to heavy ATC-initiated brake applications.

This issue does not go to the safety of ATC itself, but rather to the calibration of the ATC system, i.e., the timing and severity of its brake applications. Concern over this issue is not entirely new, since this subject was explored in the context of FRA's consideration of Block Signal Application No. 1588. In that proceeding, FRA established a Special Task Force Committee to investigate this precise issue. The Committee concluded that the Amtrak ATC system could be safely adapted for freight application if it permitted locomotive braking at a 15 to 17 pounds per square inch brake pipe reduction.

FRA is currently conducting tests to affirm the validity of the Committee's conclusions. The tests deal with severity of brake application, hazards of severe buff and draft forces, and depletion of air reservoirs. Information developed from these tests will be shared with the railroad community, and the details of these calibration issues will be furnished to the railroads and suppliers well in advance of the deadlines for equipment acquisition contained in these orders. It should be emphasized that the modifications, if any, will entail changes only in the timing of the brake application(s) and in air brake pressure so as to adjust for buff and draft forces. We do not anticipate modifications to the hardware itself. Of course, should it develop that hardware modifications are necessary, we will grant reasonable extensions of time limits set forth in these orders.

One commenter, a locomotive engineer representing a labor union, expressed concern that ATC on freight locomotives could present new safety problems by complicating train handling. ATC will certainly require changes in train handling techniques, but those changes will not increase the hazards of railroading. FRA does not believe that train handling is significantly more difficult with ATC than without.

ATC will, to some degree, restrict widespread use of dynamic braking. But the trade-off is an increase in safety by positively ensuring compliance with signal aspects, and proper train separation. ATC simply imposes the requirement that an engineer control his train in accordance with the signal system. His latitude of control is limited, but limited solely to enhance the safety of the movement.

2. Implementation Schedule

The views of commenters differed regarding the proposed implementation schedule. A number of commenters, including Representative Florio, the National Association of Rail Passengers, and various individuals, felt that installation of the ATC should be accomplished more quickly. We agree with the sentiments of those who expressed the desire that the orders be implemented as "expeditiously as possible"—and real world considerations of equipment availability and time requirements for retrofit are the parameters against which the proposed implementation schedule was constructed.

In fashioning the implementation timetable, we took into consideration the ability of suppliers to manufacture the unusually large number of devices, the funding cycle of publicly financed agencies, the need for possible design changes, and the number of locomotives to be equipped by each carrier. We continue to believe the proposed schedule embodies implementation as expeditiously as possible. Reality dictates that considerable time will be required to complete the installation process. It is important to note, however, that the orders require that the devices be installed on a rolling basis as they are delivered. After one-third of the required installation period, a minimum of one-third of the locomotives must be equipped with ATC devices. Two-thirds of the locomotives must be equipped two-thirds into the installation period. No evidence has been developed during this rulemaking indicating that the process can be completed more quickly than FRA proposed on May 20, 1987. As a consequence the orders issued today incorporate that schedule. Note, however, that FRA retains jurisdiction to either accelerate or extend the implementation deadlines if supply considerations or similar factors make acceleration possible (or extension unavoidable). We intend to monitor the implementation closely, to determine whether opportunities for acceleration exist.

Some commenters stated that there may be a need for extensions of time due to the inability of public agencies to affect the timing of the approval of grant applications. However, subsequent to receipt of these commenters, the Urban Mass Transit Administration (UMTA) announced its intention to award grants to both SEPTA and New Jersey Transit to fund installation of automatic train control equipment on their rail fleets. SEPTA has also testified that although it could meet the proposed schedule (assuming receipt of grant funds from UMTA), it would like an additional eight months in order to incorporate other safety modifications in its train control systems. Similarly, Conrail has indicated its concern that there be provisions in the orders to accommodate unforseen delays in the development, production, or installation of the devices. FRA's continuing jurisdiction over the implementation schedule provides ample authority to deal with such contingencies should they arise.

New Jersey Transit has indicated that, for technical reasons, development of its ATC specifications can not be completed by the proposed contract execution date of January 1, 1988. We are thus extending by two months the date by which New Jersey Transit must execute ATC purchases contracts. However, we will not extend the final implementation deadline, and New Jersey Transit will require an expedited delivery schedule of the devices so as to offset the initial two month delay.

3. ATC Beyond NEC Mainline

Various commenters have proposed that some or all of the following rail lines should be included within the jurisdiction of the orders: Philadelphia to Harrisburg; New Haven to Springfield; Philadelphia to Atlantic City; and New York City to Albany.

While mandating ATC equipment on the NEC spine is appropriate, given the heavy inter-city, commuter, and freight mix, at this time we do not have sufficient information to adequately assess the relative merits of installation on the other "connecting" corridors, which feature very different demographics. Moreover, should FRA attempt to incorporate such a provision in this order, a scope of notice issue would arise under the May 20, 1987 Report of Investigative Findings and Notice of Proposed Orders of Particular Applicability. We are therefore requesting information from the public on the specifics of this issue. Elsewhere in today's **Federal Register**, FRA has published a notice proposing that every controlling locomotive on the above "connecting" corridors be ATC-equipped. FRA is seeking sufficient information to determine whether requiring such equipment is appropriate

given the traffic mix, operating speeds, and installation costs.

Technical Issues

Conrail has suggested that, to limit the extent of the retrofit, ATC-equipped units should not be required for short movements under certain defined circumstances. FRA will implement any such exceptions on a case-by-case basis through the waiver process as provided in 49 CFR Part 235.

Amtrak has expressed reservations regarding the proposal to prohibit it from allowing any train not controlled by an ATC-equipped locomotive from operating on the NEC after July 1, 1990. Amtrak expressed concern over its ability to monitor compliance by each train entering the NEC. However, as made clear at the public hearing on June 24, that requirement imposes no obligation on the owners of NEC trackage beyond those already in force, since they must now ensure that locomotive are equipped with automatic cab signals.

There have been proposals in the past (BS–AP–1588) to increase the present 4-aspect signal system on the NEC to one incorporating a greater number of aspects which, while not necessarily increasing train safety, increases the potential capacity of the system. One proposal, an 8-aspect system, would use the existing 4-aspect cab signal for the lower speeds at which freight trains operate on the NEC, while adding additional signal aspects to govern the high speeds of intercity and commuter passenger trains. If 8-aspect signal systems are adopted in the future, freight carriers presently installing ATC with 4-aspect cab signals will not be affected. However, such a new system would have an effect on commuter and passenger trains operating at high speeds.

Under the orders issued today, affected railroads have the option of installing either ATC on-board equipment that can be made compatible with both 4 and 8-aspect systems or ATC equipment compatible only with today's 4-aspect cab signals. If 8-aspect systems are indeed adopted in the future, commuter and passenger railroads that now install ATC equipment compatible with both 4 *and* 8-aspect systems will have relatively small conversion costs compared to those railroads installing only 4-aspect compatible equipment. That decision is a business decision each railroad will have to make based on its own judgments as to whether and when 8-aspect systems may be installed on the NEC and the relative costs involved.

Regulatory Impact

FRA has evaluated this action and its potential impacts in accordance with existing regulatory policies. The cost of equipping each locomotive depends on the type of signal equipment already installed on the unit; thus, the cost of equipping one locomotive can range from $25,000 to $40,000. When both the cost range and the possible numbers of locomotive to be equipped is calculated, the potential cost of these orders ranges from $17.5 million to a maximum of approximately $30.5 million.

The technology used in ATC devices is not new and has been thoroughly tested and refined over the years. We do not anticipate any reliability problems or more than minimal maintenance costs associated with these devices. Amtrak, which has had extensive experience with the devices, testified that the technology "has been proven to be reliable, as well as reasonable to maintain."

FRA is constrained in its analysis of the benefits of its proposed orders because of the impossibility of predicting with any degree of accuracy the occurence of an accident absent these devices. Of the three percent of reported railroad accidents nationwide investigated by FRA during a recent six-year period (1980—1985), approximately 95 could have been avoided had ATC been installed. Although the vast majority of these accidents involved only freight trains, they still resulted in 29 deaths and 477 injuries. The eight accidents involving passenger trains that might have been prevented by ATC during that period resulted in more than 300 injuries and one death. However, the devastating results of just one passenger or commuter train accident were demonstrated tragically by the deaths and 170 injuries that occurred in the Chase, Maryland accident on January 4, 1987.

FRA is limiting these orders to a heavily travelled passenger corridor constituting less than two percent of Amtrak's trackage, yet carrying more than 25 percent of Amtrak's passenger traffic (1.3 billion passenger-miles). The high number of passengers carried over a relatively short distance, when combined with heavy commuter and freight service, presents risks justifying the cost of an ATC system. Since the large investment associated with installation of the ATC track infrastructure has been made, the cost of further reducing the risk of catastrophic accident is relatively small. We note that the accident at Chase, Maryland might have been avoided had the Conrail locomotive been equipped with ATC equipment. Preliminary estimates indicate that the costs of that accident will total $40 to $50 million.

In its Notice of Proposed Orders, FRA solicited information related to the costs and benefits of ATC devices, but the commenters did not provide appreciable specific information in response. However, the public's general comments on the continuing benefits of these devices compared to their relatively low one-time cost have been considered in this action. FRA has concluded that the benefits of installation of ATC devices on all controlling locomotives on the NEC outweigh the costs associated with their purchase and installation.

The five carriers affected by these orders include two large regional transit authorities and two Class I railroads, Consolidated Rail Corporation and Delaware and Hudson Railway Company. The only arguably "small entity," the Providence and Worcester Railroad Company, would have to equip seven of its 15 locomotives at a cost of approximately $175,000.

Based on the facts set forth in this Notice, it is certified that these orders 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.*).

FRA has concluded that the actions will have no significant impact on the environment.

Final Orders

In consideration of the foregoing, the orders in the Appendix to this Notice are hereby issued.

Authority: The Signal Inspection Act (49 U.S.C. 26) and the Federal Railroad Safety Act of 1970 (45 U.S.C. 431 *et seq.*), delegated to the Federal Railroad Administrator by the Secretary of Transportation (49 CFR 1.49(f), (g), and (m)).

Issued in Washington, DC, on November 16, 1987.

John H. Riley,

Administrator.

Report and Final Order

Date:

Affected Party: Consolidated Rail Corporation (Conrail)

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration (FRA) has determined that the party noted above operates freight service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

FRA has determined that further analysis is necessary to assure the establishment of optimally safe braking specifications for such ATC devices on freight trains in the Northeast Corridor, and therefore will conduct appropriate tests. If found to be necessary, FRA will issue revised ATC specifications to all interested parties prior to January 15, 1988.

Therefore, under the authority of the Signal Inspection Act and the Federal Railroad Safety Act of 1970:

1. No later than January 15, 1988, Conrail shall execute a contract for acquisition of sufficient numbers of ATC devices to comply with this Order. The initial delivery of ATC devices shall be at the earliest practical date achievable by the device manufacturer. Conrail's purchasing program and delivery schedule shall, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2.a. No later than 18 months after delivery of the first ATC devices purchased pursuant to this Order, any train operated by or on behalf of Conrail, its successors and assigns, that operates on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an operative ATC device.

b. Installation of ATC devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of ATC devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The ATC devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 CFR Part 236, Subpart E.

4. FRA shall be notified (i) when the contract for acquisition of ATC devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. Conrail shall furnish FRA with monthly progress reports, which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. Petitions for modification or waiver of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

7. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

John H. Riley,

Administrator.

Report and Final Order

Date:

Affected Party: Delaware and Hudson Railway Company (D&H)

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration (FRA) has determined that the party noted above operates freight service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

FRA has determined that further analysis is necessary to assure the establishment of optimally safe braking specifications for such ATC devices on freight trains in the Northeast Corridor, and therefore will conduct appropriate tests. If found to be necessary, FRA will issue revised ATC specifications to all interested parties prior to January 15, 1988.

Therefore, under the authority of the Signal Inspection Act and the Federal Railroad Safety Act of 1970:

1. No later than January 15, 1988, D&H shall execute a contract for acquisition of sufficient numbers of ATC devices to comply with this Order. The initial delivery of ATC devices shall be at the earliest practical date achievable by the device manufacturer. D&H's purchasing program and delivery schedule shall, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2.a. No later than 12 months after delivery of the first ATC devices purchased pursuant to this Order, any train operated by or on behalf of D&H, its successors and assigns, that operates on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an operative ATC device.

b. Installation of ATC devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of ATC devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The ATC devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 C.F.R. Part 236, Subpart E.

4. FRA shall be notified (i) when the contract for acquisition of ATC devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. D&H shall furnish FRA with monthly progress reports, which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. Petitions for modification or waiver of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

7. This order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

John H. Riley,

Administrator.

Report and Final Order

Date:

Affected Party: Providence and Worcester Railroad Company (P&W)

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration (FRA) has determined that the party noted above operates freight service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

FRA has determined that further analysis is necessary to assure the establishment of optimally safe braking specifications for such ATC devices on freight trains in the Northeast Corridor, and therefore will conduct appropriate tests. If found to be necessary, FRA will issue revised ATC specifications to all interested parties prior to January 15, 1988.

Therefore, under the authority of the Signal Inspection Act and the Federal Railroad Safety Act of 1970:

1. No later than January 15, 1988, P&W shall execute a contract for acquisition of sufficient numbers of ATC devices to comply with this Order. The initial delivery of ATC devices shall be at the earliest practical date achievable by the device manufacturer. P&W's purchasing program and delivery schedule shall, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2.a. No later than 6 months after delivery to your railroad of the first ATC devices purchased pursuant to this Order, any train operated by or on behalf of P&W, its successors and assigns, that operates on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an operative ATC device.

b. Installation of ATC devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of ATC devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The ATC devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 C.F.R. Part 236, Subpart E.

4. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

5. FRA shall be notified (i) when the contract for acquisition of ATC devices is executed, indicating the date of a the contract

and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. P&W shall furnish FRA with monthly progress reports, which shall include delivery and installation information.

6. Petitions for modification or waiver of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

7. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

John H. Riley,

Administrator.

Report and Final Order

Date:

Affected Party: New Jersey Transit Rail Operations, Incorporated (New Jersey Transit)

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that the party noted above operates passenger service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

Therefore, under the authority of the Signal Inspection Act and the Federal Railroad Safety Act of 1970:

1. No later than March 15, 1988, New Jersey Transit shall execute a contract for acquisition of sufficient numbers of ATC devices to comply with this Order. The initial delivery of ATC devices shall be at the earliest practical date achievable by the device manufacturer. New Jersey Transit's purchasing program and delivery schedule shall, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2.a. No later than 20 months after delivery of the first ATC devices purchased pursuant to this Order, any train operated by or on behalf of New Jersey Transit, its successors and assigns, that operates on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an operative ATC device.

b. Installation of ATC devices shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of ATC devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The ATC devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 C.F.R. Part 236, Subpart E.

4. FRA shall be notified (i) when the contract for acquisition of ATC devices is executed, indicating the date of the contract and the terms of the planned delivery schedule, and (ii) when the installation of the devices commences. New Jersey Transit shall furnish FRA with monthly progress reports, which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. Petitions for modification or waiver of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

7. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administratin within thirty days of the effective date of this Order.

John H. Riley,

Administrator

Report and Final Order

Date:

Affected Party: Southeastern Pennsylvania Transportation Authority (SEPTA)

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that the party noted above operates passenger service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts; the locomotives employed to provide that service are not currently equipped with automatic train control devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

Therefore, under the authority of the Signal Inspection Act and the Federal Railroad Safety Act of 1970:

1. No later than January 15, 1988, SEPTA shall execute a contract for acquisition of sufficient numbers of ATC devices to comply with this Order. The initial delivery of ATC devices shall be at the earliest practical date achievable by the device manufacturer. SEPTA's purchasing program and delivery schedule shall, at a minimum, be at a pace consistent with the installation requirements set forth in Paragraph 2 below.

2.a. No later than 24 months after delivery of the first ATC devices purchased pursuant to this Order, any train operated by or on behalf of SEPTA, its successors and assigns, that operates on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts, shall have as its controlling locomotive a unit equipped with an operative ATC device.

b. Installation of ATC device shall proceed at a pace no slower than one-third of the needed devices installed during the first one-third of the period stated in Paragraph 2.a. above.

c. Installation of ATC devices shall proceed at a pace no slower than two-thirds of the needed devices installed during the first two-thirds of the period stated in Paragraph 2.a. above.

3. The ATC devices installed on locomotives pursuant to this Order shall comply with the minimum standards set forth in 49 CFR Part 236, Subpart E.

4. FRA shall be notified (i) with the contract for acquisition of ATC devices is executed, indicating the date of the contract in terms of the planned delivery schedule, and (ii) when the installation of the devices commences. SEPTA shall furnish FRA with monthly progress reports, which shall include delivery and installation information.

5. Failure to comply with any requirement of this Order subjects the railroad to a civil penalty of not more than $2,500. Each day of violation constitutes a separate violation.

6. Petitions for modification or waiver of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

7. This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

John H. Riley,

Administrator.

Report and Final Order

Date:

Affected Party: National Railroad Passenger Corporation

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that the National Railroad Passenger Corporation operates passenger service and permits other railroads to operate passenger or freight service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston Massachusetts; some of the locomotives employed to provide that service are not currently equipped with automatic train control (ATC) devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

Therefore, under the authority of the Signal Inspection Act and the Federal Railroad Safety Act of 1970:

Effective July 1, 1990, the National Railroad Passenger Corporation, its successors and assigns, shall not permit any train to be operated on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts subject to its operational control, unless that train has as it controlling locomotive a unit equipped with an ATC device in compliance with the minimum standards set forth in 49 CFR Part 236, Subpart E.

Petitions for modification of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

John H. Riley

Administrator.

Report and Final Order

Date:

Affected Party: Metro North Commuter Railroad Company

Findings: Based on investigation and after opportunity for comment, the Federal Railroad Administration has determined that Metro North Commuter Railroad Company operates passenger service and permits other railroads to operate passenger or freight service over portions of the Northeast Corridor main line trackage between Washington, D.C. and Boston Massachusetts; some of the locomotives employed to provide that service are not currently equipped with automatic train control devices; and it is necessary in the public interest that all trains operating on this trackage be equipped with ATC devices.

Therefore, Effective July 1, 1990, Metro North Commuter Railroad Company, its successors and assigns, shall not permit any train to be operated on or over any portion of the Northeast Corridor main line trackage between Washington, D.C. and Boston, Massachusetts subject to its operational control, unless that train has as it controlling locomotive a unit equipped with an ATC device in compliance with the minimum standards set forth in 49 CFR Part 236, Subpart E.

Petitions for modification of any requirement of this Order shall be in writing and shall contain detailed information in support of the requested relief.

This Order is effective thirty days after receipt. Any petition for reconsideration must be filed with the Federal Railroad Administration within thirty days of the effective date of this Order.

John H. Riley,

Administrator.

[FR Doc. 87-26754 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-06-M

[FRA Report and Notice of Proposed Order FRA Docket No. 87-2, Notice No. 3]

Automatic Train Control; Northeast Corridor Carriers; Proposed Amendment to Final Orders and Notice of Public Hearing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Proposed amendment to orders of particular applicability.

SUMMARY: FRA is providing notice of a proposed amendment to orders issued today requiring automatic train control devices on controlling locomotives operating along the Northeast Corridor (NEC) spine between Washington, DC and Boston, Massachusetts. The proposed amendments would extend the requirements to NEC *connecting* corridors. FRA is requesting comments from the public and affected parties and is scheduling a public hearing concerning its contemplated action.

DATES: (1) A public hearing in this proceeding will begin at 10:00 a.m. on Thursday, January 21, 1988. Any persons who desire to make a statement at the hearing should submit their prepared statements to the Docket Clerk at least five days before the hearing date.

(1) Written comments must be received not later than January 22, 1988. Comments received after that date will be considered to the extent possible without incurring additional delay.

ADDRESSES: (1) Hearing location—Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

(2) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: S.H. Stotts Jr., Chief, Standards Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0495), or Mark Tessler, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone (202) 366-0628).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1987, FRA issued a Report of Investigative Findings and Notice of Proposed Orders of Particular Applicability (published May 26, 1987, 52 FR 19620), in which FRA proposed issuing railroad-specific orders requiring that all trains operating on the NEC be controlled by locomotives equipped with functioning ATC receiver devices. FRA is today issuing final orders requiring such ATC devices on controlling locomotives operating on the NEC main line trackage between Washington, DC and Boston, Massachusetts.

Among the issues raised in testimony and written comments was whether the scope of the orders should be expanded beyond the NEC spine to include NEC connecting corridor railroad lines. Because the original May 20, 1987 notice and the orders issued today address only the issue of ATC on the NEC spine between Washington, DC, and Boston, Massachusetts, we are today proposing that the order be amended to include the following rail lines: Philadelphia to Harrisburg, Pennsylvania; New Haven, Connecticut to Springfield, Massachusetts; Philadelphia to Atlantic City, New Jersey; and New York City to Albany, New York.

The proponents of including these lines cite that each already has, or will shortly have, the transmission system in place of ATC, and thus the most expensive component for ATC will already have been installed. However, the cost of equipping locomotives with ATC devices is an expense that should not be borne if unwarranted.

The FRA is thus requesting views and comments from the public and interested parties regarding the proposed amendment. While some data has already been provided by the parties in this proceeding, FRA is specifically requesting that further information be provided regarding traffic mix among freight, commuter, and inter-city passenger trains along the connecting corridors. In addition, we request information regarding the consequences of requiring ATC installation: how many locomotives will have to be equipped under the proposed amendment; operational considerations; the cost of such equipment and installation; and other compliance costs for the various railroads operating on the connecting corridors.

Interested parties are invited to participate in this proceeding by submitting to the Docket Clerk written data, views, and comments on the proposal, which may be changed in light of the comments received. In addition, FRA is scheduling a public hearing to permit all interested parties to furnish FRA with information concerning its proposed action. This hearing is scheduled to begin at 10:00 a.m. on Thursday, January, 21, 1988 in Room 2230 of the Nassif Building in Washington, DC.

Authority: The Signal Inspection Act (49 U.S.C. sec 26), and the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. sec. 431 *et seq.*), delegated to the Federal Railroad Administrator by the Secretary of Transportation (49 CFR 1.49(f), (g), and (m)).

The Proposed Amendment

Accordingly, in consideration of the foregoing, Final Orders of Particular Applicability, FRA Docket No. 87-2, issued on November 16, 1987, are proposed to be amended as follows: after the phrase "Northeast Corridor main line trackage between Washington, DC and Boston, Massachusetts" wherever it appears, add the following: "and connecting corridors between Philadelphia to Harrisburg, Pennsylvania; New Haven, Connecticut to Springfield, Massachusetts; Philadelphia to Atlantic City, New Jersey; and New York City to Albany, New York."

Issued in Washington, DC, on November 16, 1987.

John H. Riley,

Administrator.

[FR Doc. 87-26755 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Noncompliance and Defect Petitions

This notice sets forth the reasons for the denial of two petitions submitted to the National Highway Traffic Safety Administration under section 124 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381, 1410a).

On June 1, 1987, the Center for Auto Safety, Washington, DC, ("CFAS") petitioned the agency to conduct a safety defect investigation of 1978–85 school buses produced by Thomas Built Buses of High Point, NC, for inadequate floor joint strength.

The petition and its file (designated DP87–020) are available to the public through the: National Highway Traffic Safety Administration, Technical Reference Division (NAD–52), 400 Seventh Street SW., Washington, DC 20590, (202) 366–2768.

A search of the agency's computerized complaint file system did not disclose any complaints on this issue. An inquiry to Thomas Built Buses did not reveal any complaints or warranty claims related to this matter. Additionally, with the exception of the three accidents discussed by the National Transportation Safety Board (NTSB), the petitioner CFAS did not furnish any complaint data.

For the time period 1977 through 1987, NHTS examined five potentially catastrophic accidents involving Thomas Built schoolbuses. Three of the five were referred to in the CFAS petition. Agency analysis indicates that accidents involving freight trains or heavy trucks involve tremendous forces due to the speeds and mass of the colliding objects. These forces are of such magnitude at the point of impact that the bus floor and structural members cannot be expected to withstand the crash forces applied.

Concerning the 6 deaths and 45 injuries referred to by CFAS, the available accident reports indicate that 5 of those deaths and most of the injuries were not caused by floor joint separation. In the Snow Hill, North Carolina, accident, the NTSB report states "The occupants of the first three bench seats on the left side of the schoolbus probably were ejected through the opening created in the left sidewall during the crash sequence. The occupants in the fourth bench seat on the left side probably also were ejected, either through the opening in the left sidewall or through the opening in the floor." The report further states "The remaining schoolbus occupants sustained minor or moderate injuries. These injuries probably result from impacts with surrounding structures, such as seatbacks, the sidewalls, and possibly other occupants when crash forces propelled them forward and to the left." The two occupants in the fourth row are the only ones addressed by NTSB as possibly being ejected through the opening in the floor. In the Greenville, North Carolina, accident, 11 of the 12 injuries were unrelated to the floor joint/body separation which occurred near the point of impact. It is not known if the two minor injuries in the Minnesota accident were related to the 6-inch wide floor joint separation. During the analysis NTHSA became aware of an additional accident which occurred in Florida. Reportedly 5 students and the bus driver were fatally injured when the bus ran off the road after it was struck by a heavy truck, at approximately 40 mph. The investigation has not been completed. Therefore NHTSA is unable to comment on the accident at this time except to note that there apparently were floor separations and that the accident also involved catastrophic forces.

Floor joint separations in schoolbuses involved in crashes might be regarded as evidence of a defect only if the separations can be said to pose an unreasonable risk of injury due to these crashes. However, the only crashes in which the buses in question exhibited floor separations were of such a catastrophic nature that the separations cannot be viewed as evidence of defective performance. Although floor joint separation may have contributed to the risk in these accidents, there is no pattern of evidence that would warrant further commitment of resources to determine whether such separations might occur in less catastrophic events. It appears that this issue could be better addressed through the rulemaking process which is currently underway in the agency.

NHTSA determined that there was no reasonable possibility that a defect determination would be reached at the conclusion of an investigation, and on November 3, 1987, the petition was denied.

On June 1, 1987, CFAS also submitted a four-part petition to the agency involving compliance with Federal Motor Vehicle Safety Standards No. 221 *School Bus Body Joint Strength* by school buses produced by Thomas Built Buses of High Point, NC. The agency was asked to reopen three investigations involving floor joints (Files CIRs 2262, 2416, and 2527), to open new investigations of floor joints in buses produced since the earlier investigations, to order the recall of all 1978–85 Thomas buses for failure of body joints to meet the standard as demonstrated by agency testing, and to open new compliance investigations into body joints in school buses produced in model years 1986–87.

The accident data presented in the CFAS petition involved crashes in which Thomas school buses exhibited floor separations. However, the crashes were of such catastrophic destructiveness that they provide no information relative to any possible noncompliances in the school bus floor or other body joints. Standard 221 was not designed to require structural integrity of school bus bodies in such severe crashes. In addition, there were other body integrity failures in these crashes. Further, NHTSA has not been able to find crash data from less severe crashes that would indicate the magnitude of real-world safety benefits from the standard's provisions related to floor joint strength, nor does NHTSA have data to indicate the actual safety impact of the type of noncompliance alleged in the CFAS petition.

In the course of conducting compliance tests against this standard and investigations over the years the school bus industry has raised numerous questions regarding application of FMVSS 221 to various school bus body joints. These questions have related to: curved body panels vis-a-vis the flat test specimens; components that manufacturers have claimed to serve as trim rather than as panels enclosing occupant space; joints underneath maintenance access panels; the extent of the exemption for maintenance access panels; and the representatives of selected test specimens. In the case of Thomas floor joints, the manufacturer has claimed that the floor segments are structural components rather than body panels and that they are not covered by the standard. While the agency has not decided the merits of this argument by Thomas, it has noted that the Thomas floor joints are not readily susceptible to testing for tensile strength in the manner described in the standard as it has been interpreted by the agency. NHTSA has also noted that school bus manufacturers have used a wide range of floor materials and that the joints in a floor of weaker material can meet the requirements of the standard at a lower absolute load level than the level at which a floor of a stronger material might fail the requirements.

In light of these questions and considerations, the agency has terminated the enforcement investigations involving floor joints and

other disputed requirements of the standard and invited comment on the possible revision of the standard to address these concerns.

The agency issued an Advance Notice of Proposed Rulemaking (ANPRM) requesting comments on proposed changes in FMVSS which was published in the **Federal Register**, June 19, 1987. Comments were solicited regarding the standard's test procedures "lack of flexibility and ambiguity." Specific items addressed included the following:

a. Load distribution of complex joints

b. Test sample loading "approximately perpendicular"

c. Recognizing that the compliance test requires the loading strength of the joint to be no less than 60 percent of the tensile strength of the weakest member, the "loophole" of making one joint member out of a weak, but passable material.

Comments were also requested regarding a dynamic test to address floor joints only and the issue of exemptions for bus maintenance access panels.

On July 1, 1987, the agency responded to the recommendations of the National Transportation Safety Board resulting from the Snow Hill accident investigation. In the reply the agency stated it had begun rulemaking to address a number of FMVSS 121 issues, including the floor joint issue.

For these reasons, NHTSA determined that there was no reasonable possibility that the order requested by CFAS will be issued at the conclusion of further investigation of this matter, and on November 3, 1987, its petition was denied.

(Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on November 13, 1987.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 87-26638 Filed 11-18-87; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 223
Thursday, November 19, 1987

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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 24, 1987.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

*Cigarette Safety Report—Outside Party Participation**

The staff and Dr. Richard Gann, Chairman of the Technical Study Group, Cigarette Safety Act of 1984, will brief the Commission on the final report of the Technical Study Group.

*For this meeting, the Commission has voted to waive its policy prohibiting participation by outside parties in Commission meetings.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD, 20207 301-492-6800

Sheldon D. Butts,
Deputy Secretary.
November 17, 1987.

[FR Doc. 87-26820 Filed 11-17-87; 2:09 pm]
BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, November 10, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of the actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Establishment of a new system of records pursuant to the Privacy Act of 1974 concerning records of individuals who had obligations with FDIC-insured institutions that have failed or that were provided open-bank assistance by the Corporation and for which the Corporation is acting in its corporate capacity or in its receivership capacity as liquidator of certain of the institution's assets.

Discussion Agenda:

Memorandum and resolution re: Guidelines for compliance with the Federal bank bribery law.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 – 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: November 3, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-26797 Filed 11-18-87; 11:53 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, November 10, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Investment Management Report for the quarter ending September 30, 1987.

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 – 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: November 3, 1987.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 87-26798 Filed 11-17-87; 11:53 am]
BILLING CODE 6714-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Friday, November 20, 1987, 2:30 p.m.

PLACE: 1776 G Street, NW., Washington, DC, Conference Room 4G.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, DC 20013 (202) 789-5097.

MATTERS TO BE CONSIDERED:

Closed: Minutes of October 6, 1987 Board of Directors' Meeting
Closed: President's Report
Closed: Capitalization of Freddie Mac
Closed: Financing Authorizations
Closed: Reverse Repurchase Agreements
Closed: Financial Report

Date sent to Federal Register: November 17, 1987.

Maud Mater,

Secretary.

[FR Doc. 87-26839 Filed 11-17-87; 3:52 pm]

BILLING CODE 6719-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 2:00 p.m. on Tuesday, November 17, 1987.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To consider Time Inc. Motion to Strike Portions of UPS Witness Nelson's Testimony.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 87-26823 Filed 11-17-87; 2:38 pm]

BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 52, No. 223
Thursday, November 19, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 146

[FRL-3283-6]

Underground Injection Control Program; Dual-Completion Monitoring Mechanical Integrity Test for Dual-Completion Wells; Interim Approval

Correction

In FR Doc. 87-25038 beginning on page 41591 in the issue of Thursday, October 29, 1987, make the following correction:

On page 41591, in the second column, under **DATES**, in the third line, "November 31, 1987" should read "November 30, 1987".

For another correction to this document, see the Rules section in this issue of the Federal Register.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-074]

Towing Safety Advisory Committee; Meeting of Subcommittee

Correction

In notice document 87-25963 appearing on page 43263 in the issue of Tuesday, November 10, 1987, make the following corrections:

1. In the second column, under **SUMMARY**, in the second paragraph, in the third line, "December 18, 1987" should read "December 16, 1987".

2. In the third column, in the sixth line, "Z1" should read "21".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 395

[OMCS Docket No. MC-119]

Hours of Service of Drivers

Correction

In rule document 87-25194 beginning on page 41718 in the issue of Friday, October 30, 1987, make the following correction:

§ 395.1 [Corrected]

On page 41721, in the second column, in § 395.1(a), in the first line, insert "apply" after "part".

BILLING CODE 1505-01-D

federal register

Thursday
November 19, 1987

Part II

Department of Transportation

Office of the Secretary

48 CFR Ch. 12

Acquisition Regulations; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

48 CFR Ch. 12

[Docket 45256; Amdt. 3-1]

Acquisition Regulations

AGENCY: Office of the Secretary, DOT.

ACTION: Interim final rule.

SUMMARY: This interim final rule republishes the Department's Transportation Acquisition Regulation (TAR); it has been revised to incorporate and reflect changes made to the Federal Acquisition Regulation (FAR) through Federal Acquisition Circular #30, dated September 22, 1987, which require Departmental implementation, and to implement changes in Departmental procurement policy.

DATES: This interim final rule is effective November 19, 1987. Comments on the proposal must be received on or before January 19, 1988.

ADDRESS: Submit written comments, preferably in duplicate, to OST Docket Clerk, Docket No. 45256, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9:00 am and 5:00 pm, EST Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Roger Martino, Chief, Procurement Management Division, Office of Acquisition and Grant Management, M-62, 400 Seventh Street SW., Washington, DC 20590; (202) 366-2471. (This is not a toll-free number.) Office hours are from 9:00 am to 5:00 pm, EST Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The uniform regulation for the procurement of supplies and services by government departments and agencies, the Federal Acquisition Regulation (FAR), was promulgated on September 19, 1983 (48 FR 42101). Because of differing statutory authorities among departments and agencies, the FAR authorizes each department and agency to promulgate regulations to implement FAR policies and procedures within its organization, and to include additional policies and procedures, solicitation provisions, or contract clauses to satisfy its specific needs.

DOT promulgated its regulation to implement and supplement the FAR on June 1, 1984 (49 FR 22922). The Transportation Acquisition Regulation (TAR) included: (1) Cancelling the previous DOT procurement regulations from 41 CFR Chapter 12; (2) removing provisions that would duplicate FAR coverage; and (3) inserting necessary Departmental procedures where required to implement and/or supplement the FAR. The regulation was updated on April 15, 1985 (50 FR 14798).

Since the FAR has been promulgated to be the uniform Government-wide acquisition regulation, the lack of coverage of a particular topic in the TAR indicates that the Department accepts the FAR policy and procedure on the topic without need for further elaboration.

The numbering and citation format for the TAR is stated in TAR 1201.104-2. Generally, the following rules apply:

1. When the TAR implements or deviates from a parallel part, subpart, section, subsection or paragraph of the FAR, the implementation or deviation is numbered and captioned where possible to correspond to the FAR part, subpart, section, or subsection.

2. When DOT supplements material contained in the FAR, it is given a unique number containing the numerals "70-89". The rest of the numbering parallels the FAR part, subpart, etc., that it implements.

3. Where material in the FAR requires no elaboration, there is no corresponding numbering in the TAR. Therefore, there may be gaps in the TAR sequence of numbers where the FAR, as written, is applicable.

4. The TAR is cited in accordance with **Federal Register** standards approved for the FAR. Any section of the TAR may be identified formally by its section number. In the TAR, any reference to the FAR is indicated by "FAR" followed by the section number.

The Department of Transportation plans to work with the Office of Management and Budget to propose areas for new or revised FAR coverage where we feel that certain subject areas now covered in the TAR would be more appropriately included in the FAR, since these areas have Government-wide application.

Explanation of Changes

This interim final rule revises the TAR and makes specific changes in the following areas:

(a) Section 1201.105, OMB approval under the Paperwork Reduction Act, is added to set forth internal departmental policy for implementing the requirements of Public Law 96-511 and Federal Acquisition Regulation (FAR) section 1.105, OMB Approval under the Paperwork Reduction Act, and to publish the OMB approval numbers for the TAR 2105-0517 and 2105-0518.)

(b) Subpart 1201.4, Deviations, is changed to require coordination with agency legal counsel of all requests for individual deviations from the FAR and TAR. Section 1201.404, Class Deviations, is changed to require that requests for class deviations to the FAR, as well as the TAR, be subbmitted to the Senior Procurement Executive for approval. Section 1201.470, Deviations to and waivers from the requirements of Departmental orders related to acquisition, is added and stipulates that requests for such deviations and waivers must be submitted to the Senior Procurement Executive for approval, unless specified otherwise by the applicable Departmental order.

(c) Section 1201.670, Ratification of unauthorized commitments, is changed to indicate that the authority to ratify an unauthorized commitment is valid only if the resulting contract would otherwise have been binding on the Government if made by an authorized Contracting Officer.

(d) Section 1202.170, Definitions, paragraphs (d), definition of Head of the Contracting Activity (HCA), is amended to reflect and incorporate recent organization and title changes in the Coast Guard and the Federal Highway Administration.

(e) Subpart 1203.70, Contracts between DOT and former DOT employees, has been renumbered as Subpart 1203.71, and rewritten to clarify Departmental policy on this matter. A new Subpart 1203.70 has been added, titled "Reporting suspected fraud and improper business practices". The new Subpart 1203.70 sets forth Departmental procedure for reporting suspected violations of the gratuities clause, antitrust violations, misrepresentations or violations of the covenant against contingent fees, subcontractor kickbacks, and other suspected fraudlent behavior.

(f) Subpart 1204.2, Contract distribution, is added to set forth Departmental policy for certain internal distribution of contracts and modifications.

(g) Section 1204.602, Federal Procurement Data System, is changed to correct a typo in the second sentence and to permit the use of automated reporting of the information required by this Subsection.

(h) Subsection 1204.804-5, Detailed procedures for closing out contract files, is changed to indicate that quick-

closeout procedures may be used for cost-type contracts not exceeding $500,000 (previously the threshhold was $250,000).

(i) Section 1205.102, Availability of solicitations, is added to emphasize that the Department will provide a copy of any solicitation to all that request a copy.

(j) Section 1205.207, Preparation of synopses, is added to implement Departmental policy regarding Commerce Business Daily Numbered Note 22. The FAR requires Numbered Note 22 in all synopsis for proposed contract actions intended to be awarded on a sole source basis. The Civilian Agency Acquisition Council has granted a class deviation to DOT exempting the Department from this requirement. Numbered Note 22 indicates: (i) That the agency synopsizing intends to solicit and negotiate with only one source; (ii) that interested persons may identify their interest and capability to respond to the requirement or to submit proposals; and (iii) that a determination not to open the requirement to competition based upon responses to the CBD notice is solely within the discretion of the Government. The Department has determined that Numbered Note 22, which essentially is an attempt to combine a market survey with the synopsis of proposed contract action, does not constitute an adequate market survey. The Department contends that by combining the survey and synopsis in this fashion, it may be construed that a selection has already been made and that interested persons should not expend effort on this requirement. To avoid this situation, the use of Numbered Note 22 is prohibited in DOT synopses of proposed contract actions. For those DOT actions requiring a market survey to support a determination to contract using other than full and open competition, the market survey must be conducted separately from and well in advance of the synopsis of proposed contract actions. Prohibiting the use of Numbered Note 22 and requiring adequate market surveys are intended to increase competitive acquisitions in DOT.

(k) Section 1205.270, Use of synopses to perform market surveys, is deleted in its entirety as it has been superseded by section 1205.207, Preparation of synopses.

(l) Part 1206, Competition requirements, is added primarily to implement and supplement the FAR as changed by Federal Acquisition Circular (FAC 84-13), which implemented the Competition in Contracting Act (CICA) of 1984.

(m) Section 1207.305, Solicitation provision and contract clause, is added to prescribe the appropriate usage of TAR clause 1252.207-70, Implementation of right of first refusal.

(n) Subpart 1208.1, Excess Personal Property, is added to require the use of excess government personal property before procuring additional personal property.

(o) Section 1208.470, Ordering from nonmandatory schedules, is deleted in its entirety and replaced with Subsection 1208.401, General, which sets forth Departmental procedures for ordering automatic data processing (ADP) or telecommunications equipment and services under multiple award schedules.

(p) Subpart 1209.1, Repsonsible prospective contractors, is added to indicate that DOT Form DOTF 4220.1, Determination of prospective contractor responsibility, may be used to document the determination of a prospective contractor's responsibility.

(q) Subpart 1213.3, Fast payment procedure, is added to implement the FAR.

(r) The title to Part 1214 is changed from "Formal advertising" to "Sealed Bidding" in accordance with Federal Acquisition Circular (FAC) FAC 84-5.

(s) Section 1214.470, Revalidation of requirements (Sealed Bidding), is added to implement Departmental procedures for revalidating user needs in every case where a procurement action has been in process for more than 1 year from the date of the procurement request.

(t) Subpart 1214.5, Two-step sealed bidding, is added to prohibit the use of two-step sealed bidding procurement method under certain circumstances.

(u) Section 1215.105, Competition, Subpart 1215.2, Negotiation Authorities, and Subpart 1215.3, Determinations and Findings To Justify Negotiations, are deleted as the corresponding sections in the FAR were deleted and "Reserved" by FAC 84-5.

(v) Section 1215.502, Policy, is added to set forth Departmental policy regarding the acceptance of unsolicited proposals. Specifically, acceptance of unsolicited proposals is subject to the requirements of 1206.302-1. Only one responsible source and not other supplies or services will satisfy agency requirements.

(w) Section 1215.70, Revalidation of requirements (negotiated), is added to implement Departmental procedures for revalidating user needs in every case where a procurement action has been in process for more than 1 year from the date of the Procurement Request.

(x) A major portion of section 1215.612, Formal source selection, which references DOT Order 4200.11, Source Selection, has been deleted as this information is contained in DOT Order 4200.11, and it is not necessary to include it in the TAR as well.

(y) Subpart 1216.1, Selecting contract types, is added to incorporate section 1216.170, Special requirements, which stipulates that all delivery orders and contract modifications must be within the scope of work set forth in the basic contract.

(z) Section 1216.603, Letter contracts, has been changed to indicate that additional actions must be taken before awarding or contemplating award of a letter contract.

(aa) Section 1222.305, Contract clauses, is deleted because FAR clause 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation, was updated by FAC 84-14 to reflect the requirements of the Department of Labor Regulations 29 CFR 5.5(c), and thus supersedes TAR clauses 1252.222-73, Contract Work Hours and Safety Standards Act-Overtime Compensation and 1252.222-74, Payrolls and basic records.

(bb) Section 1223.106, Delaying award, sets forth agency procedure for awarding a contract prior to the Environmental Protection Agency (EPA) mandated delay period (per FAR 23.106).

(cc) Subparts 1227.2 and 1227.3, Patents, and Patent rights under government contracts, respectively, are added to set forth Departmental policy on these subjects because the FAR requires each agency to implement regulations in these areas.

(dd) Most of Subpart 1227.4, Rights in data and copyrights, is deleted because it has been superseded by FAR Subpart 27.4, which was added to the FAR through Federal Acquisition Circular 84-27 (June 1, 1987).

(ee) Subsection 1228.106-6(c) is added to set forth procedures for the furnishing of copies of payment bonds in accordance with the Miller Act (40 U.S.C. 270(c) which was added to the FAR by FAC 84-8.

(ff) Paragraph (a) of subsection 1228.106-70, Execution and administration of bonds, is deleted as unnecessary. Also, paragraphs (b) through (e) are renumbered as paragraphs (a) through (d).

(gg) Subpart 1229.70, Filing of IRS Information Returns, is added to implement Internal Revenue Service (IRS) Information Return filing requirements. The addition of this subpart is a direct result of an audit by the Office of the Inspector General

which evaluated the effectiveness of DOT internal controls for ensuring compliance with IRS requirements for filing information returns. The additional subpart will better implement the IRS filing requirements.

(hh) Section 1233.104, Protests to GAO, is amended to stipulate time constraints for submitting information to the Senior Procurement Executive for review and coordination in accordance with this section.

(ii) Section 1233.211, is amended to change "DOT Contract Appeals Board" to "DOT Board of Contract Appeals".

(jj) Section 1233.270, Department of Transportation Contract Appeals Board, is deleted in its entirety.

(kk) [Revised]

(ll) Section 1242.708, Quick-Closeout Procedures, is amended to allow contracting officers to utilize quick-closeout procedures on contracts not exceeding $500,000 (previously the threshold was $250,000).

(mm) TAR clause 1252.207-70, Right of First Refusal, is added to set forth Departmental procedures for implementing FAR clause 52.207-3, Right of First Refusal of Employment.

(nn) TAR clause 1252.222-73, Contract Work Hours and Safety Standards Act-Overtime Compensation and TAR clause 1252.222-74, Payrolls and Basic Records, are deleted in their entirety as they have been superseded by FAR clause 52.222-4, Contract Work Hours and Safety Standards Act-Overtime Compensation, as amended by FAC 84-14.

(oo) TAR clause 1252.222-76, Civil Service Classifications and Rates, is deleted in its entirety as it is redundant to TAR clause 1252.222-75, Service Contract Act of 1965, as amended.

(pp) The title of TAR clause 1252.223-72, Protection of Human Subjects Compliance, is changed to "Protection of Human Subjects." Also, the clause is amended to specify a retention period for certain records and material.

(qq) The following TAR clauses are deleted as they have been superseded by similar FAR clauses which were made effective through Federal Acquisition Circular 84-27 (June 1987): (1) 1252.227-71, Rights in Data General; (2) 1252.227-72, Notification of Limited Rights Data and Restricted Computer Software; (3) 1252.227-73, Additional Data Requirements; (4) 1252.227-74, Rights in Data—Special Works; (5) 1252.227-75, Rights in Data—Existing Works.

(rr) TAR clause 1252.245-70, Government Property Reports, is added for use in contracts under which the Government furnishes property to the contractor for use in performance of the contract; the clause sets forth annual reporting requirements to which the contractor must adhere.

(ss) TAR section 1253.103, Exceptions, is amended to indicate that computer-generated DOT forms are permissible provided that the forms are duplicated in their entirety.

(tt) TAR section 1253.219, Small business and labor surplus area set-asides, is amended to indicate that DD Form 1707, Information to Offerors, may be used by DOT administrations.

(uu) Section 1253.370, Agency forms, is amended to include DD form 1707, Information to Offerors, as an official agency form.

(vv) Section 1213.404, Conditions for Use [of imprest funds], is deleted and replaced with a reference to DOT Order 2770.7A, Imprest Fund Manual. We have decided not to impose limits on the use of imprest funds over and above those limits specified in the FAR.

(ww) Subpart 1215.7, Make-or-buy programs, is deleted in its entirety. We have decided not to set a separate minimum dollar amount for the Department, as the FAR allows at 15.704, for items and work included in a make-or-buy program.

(xx) Section 1215.810, Should-cost analysis, is added to specify that the head of the contracting activity (HCA) has the authority to require a should-cost analysis, and specify the should-cost report format.

Executive Order 12291

Under Bulletin No. 85-7, the Director of the Office of Management and Budget (OMB) withdrew the general exemption from Executive Order 12291 that OMB had created on February 17, 1981, for agency procurement regulations.

This interim final rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291. The rule will not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule is considered as nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.) Since the economic impact of this rule is expected to be minimal, a formal economic analysis has not been prepared. However, we expect that changes to the following areas of the TAR will have minimal impact as explained below:

(a) The changes to subsection 1204.804-5, Detailed procedures for closing out contract files, and section 1242.708, Quick-closeout procedures will allow for a more timely final payment under certain contracts and will also facilitate the administrative functions of contracting offices by shortening the "shelf-life" of these contracts.

(b) Because of the addition of Subpart 1229.70, Filing of IRS Information Returns, more DOT contractors will find that portion of their income earned from DOT business being reported to the IRS for purposes of taxation.

Regulatory Flexibility Act

Consistent with the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, because the rule modifies internal Departmental procurement procedures. To the extent changes are made to current regulations, they are designed to implement the required changes in the FAR.

Paperwork Reduction Act

The collection of information requirements contained in this interim final rule were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504(h)), and were approved February 23, 1987. The OMB approval numbers for the TAR are 2105-0517 and 2105-0518.

National Environmental Policy Act

DOT has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 432 et seq. 1976). Therefore, neither an environmental impact statement nor an environmental assessment will be made pursuant to NEPA.

Administrative Procedure Act

Section 553 of the Administration Procedure Act exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB), has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. In OFPP letter 83-2, OFPP states that an agency must

provide an opportunity for public comment before adopting procurement regulations if the regulations represent a "significant" change to existing regulations. "Significant" is defined generally as something that has an effect beyond the internal operating procedures of the agency or has a cost of administrative impact on contractors.

The Department has determined that this rule does not represent a significant change. As described earlier in the preamble, changes made to the DOT Transportation Acquisition Regulation are principally in the areas of format and internal procedures. The internal procedural changes are necessary primarily to implement new policies established by the Competition in Contracting Act of 1984 and by the FAR amendments.

The Department traditionally has provided for prior notice and comment even when not required by the Administrative Procedure Act. Although this is the general policy of the Department, we have determined in this instance that it is unnecessary to delay the effectiveness of this largely procedural rule pending the receipt of public comments. Nevertheless, because of the possibility of public interest in portions of the rule, the Department is publishing the TAR changes as an interim final rule and is providing for a public comment period of 60 days. The Department will review all comments received and it is possible that further changes will be made in response to comments.

For the reasons set out in the preamble, Chapter 12 of Title 48 of the Code of Federal Regulations is revised as set forth below.

List of Subjects in 48 CFR Ch. 12

Government procurement.

This rule is issued under delegated authority under 49 CFR Part 1.59 (q).

Dated: October 30, 1987.

Jon H. Seymour,

Assistant Secretary for Administration.

Structure of the Transportation Acquisition Regulation

CHAPTER 12—DEPARTMENT OF TRANSPORTATION

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SUBCHAPTER A—GENERAL

PART 1201—FEDERAL ACQUISITION REGULATIONS SYSTEM

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1201.670-5 Nonratifiable commitments.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1201.1—Purpose, Authority, Issuance

§ 1201.101 Purpose.

(a) The Department of Transportation Acquisition Regulation (TAR), is issued as Chapter 12, Title 48, the Federal Acquisition Regulations System, to establish uniform acquisition policies and procedures within the Department.

(b) The purpose of the TAR is to implement and supplement the Federal Acquisition Regulation (FAR).

§ 1201.102 Authority.

The TAR is prescribed by the Assistant Secretary for Administration and the Senior Procurement Executive under a delegation of authority from the Secretary.

1201.103 Applicability.

(a) The FAR and the TAR apply to all acquisitions within the Department of Transportation except where expressly excluded in the FAR or in this Regulation.

(b) The Maritime Administration may depart from the requirements of the FAR and TAR as authorized by 40 U.S.C. 474(16), but shall adhere to those regulations to the maximum extent practicable. Exceptions from the FAR/TAR requirements shall be documented in administration regulations or procedures, or in each contract file.

1201.104 Issuance.

1201.104-1 Publication and code arrangement

(a) The TAR is published in:

(1) The **Federal Register**,

(2) Cumulated form in the Code of Federal Regulations (CFR), and

(3) A separate loose-leaf form.

(b) The TAR is issued as Chapter 12 of Title 48 of the CFR.

1201.104-2 Arrangement of regulations.

(a) *General.* The TAR conforms with the arrangement and numbering system prescribed by FAR 1.104. The numbering illustrations at FAR 1.104-2(b) are equally applicable to the TAR.

(b) *Numbering.* (1) All coverage in the TAR that is unique to DOT will use part, subpart, section and subsection numbers 70-89.

(2) All coverage in the TAR, other than that identified with a 70 or higher number, implements the FAR and will bear the identical number sequence and title of the FAR segment being implemented down to the subsection level with the Department's "12" prefix (e.g., 1215.402 implements FAR 15.402).

1201.104-3 Copies.

Copies of the TAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office (GPO), Washington, DC 20402. Copies of the TAR in loose-leaf form are distributed within DOT and may be obtained from the Chief, Procurement Management Division, Office of the Secretary.

1201.105 OMB Approval under the Paperwork Reduction Act.

Under the regulations implementing the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) must approve, prior to commitments of funds, proposed contract surveys which require the collection of information from ten or more non-federal persons or entities. Prior to committing funds and entering into a contractual agreement for such information collection activities, the contracting officer shall ensure that a clearance and approval has been obtained from OMB. The SF83, Request for OMB Review, will be used to request OMB's review and approval. SF83's must be forwarded to the Information Requirements Division (M-34) of the Office of Information and Resource Management, for processing to OMB. For assistance in preparing the information collection justification for the SF83, contact the administration's Paperwork Clearance Officer or the Information Requirements Division (M-34). Early coordination with M-34, prior to solicitation, should prevent any delays caused by the time required to obtain OMB approval. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The applicable OMB control number is 2105-0517.

Subpart 1201.2—Administration

1201.201 Maintenance of the FAR.

1201.201-1 The two councils.

The Senior Procurement Executive shall appoint the Department of Transportation representative to the CAA Council.

1201.270 Amendment of regulation.

This Regulation will be amended from time to time as determined necessary by the Senior Procurement Executive. Requests for changes to the TAR should be submitted to the Senior Procurement Executive, Office of the Secretary (M-60).

1201.270-1 Revisions.

This Regulation will be amended by issuance of TAR Directives (TDs) containing loose-leaf replacement pages which revise Parts, Subparts, or paragraphs (also see 1201.270-2 below). Each replacement page will bear at the top the TD number, page number and date. A vertical bar at the beginning or end of a line indicates that a change has been made within that line.

1201.270-2 TAR Notices.

(a) TAR Notices (TNs) shall also be published as often as may be necessary or advisable under any of the following circumstances:

(1) To promulgate as rapidly as possible selected material revising this Regulation, in a general or narrative manner, in advance of a specific page replacement to this Regulation.

(2) To disseminate material applicable to the acquisition process which is not suitable for insertion in this Regulation.

(3) When the policy and/or procedure is expected to be effective for a period of 1 year or less.

(b) Unless otherwise indicated, each item in a TN will remain in effect until the effective date of that subsequent revision which incorporates the item or until specifically canceled.

1201.270-3 Effective date.

(a) Statements in TDs and TNs to the effect that the material published therein is "effective upon receipt," upon a specific date, or that changes set forth in the Directive or Notice are "to be used upon receipt," mean that any new or revised provisions, clauses, procedures, or forms included in the Directive or Notice shall be included in solicitations, contracts or modifications issued thereafter, unless a different meaning is expressed in the Directive or Notice.

(b) Compliance with a revision to this Regulation shall be in accordance with the TD or TN which contains the revision.

(c) Unless otherwise stated, solicitations which have been issued and bilateral agreements upon which negotiations have been completed prior to the receipt of new or revised contract clauses need not be amended if the amendment would delay the acquisition action.

1201.270-4 Numbering.

TAR Directives and Notices will be numbered consecutively on a calendar year basis beginning with number 1 prefixed by the last two digits of the calendar year, e.g., 84-1; 84-2; 84-3, etc.

Subpart 1201.3—Agency Acquisition Regulations

1201.303 Publication and codification.

(a) The TAR is codified as Chapter 12 in Title 48, Code of Federal Regulations, Parts 1201-1285.

(b) Public participation in promulgation of the TAR shall be in the same manner as specified for the FAR in FAR 1.501.

1201.303-70 Administration regulations.

Administration regulations implementing or supplementing the TAR will be included as separate appendices to 48 CFR Chapter 12 as follows:

OST—Office of the Secretary
FAA—Federal Aviation Administration
USCG—United States Coast Guard
FHWA—Federal Highway Administration
NHTSA—National Highway Traffic Safety Administration
FRA—Federal Railroad Administration
UMTA—Urban Mass Transportation Administration

SLSDC—Saint Lawrence Seaway Development Corporation
MARAD—Maritime Administration
RSPA—Research and Special Programs Administration

Supplementary material for which there is no counterpart in the TAR shall be identified using chapter, part, subpart, section, or subsection numbers of 90 and up (e.g., for the U.S. Coast Guard, whose assigned acronym is "USCG", an agency-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 1252.246-90").

1201.304 Agency control and compliance procedures.

(a) All administration acquisition regulations, and all TAR Directives and Notices, shall be approved by the Senior Procurement Executive prior to promulgation to assure compliance with FAR Part 1.

(b) Prior to approval submission:

(1) All TAR issuances shall be reviewed by the OST Office of the General Counsel.

(2) Administration aquisition regulations shall be reviewed by appropriate administration counsel.

Subpart 1201.4—Deviations From the FAR

1201.401 Definition.

A deviation to the Transportation Acquisition Regulation (TAR) is defined in the same manner as a deviation to the Federal Acquisition Regulation (FAR).

1201.403 Individual deviations.

Requests for individual deviations from the FAR and the TAR shall be submitted by the head of the contracting activity (HCA) to the agency head for approval (all such requests shall be coordinated with legal counsel). Requests submitted shall cite the specific part of the FAR or TAR from which it is desired to deviate; shall set forth the nature of the deviation(s); and shall give the reasons for the action requested. The agency head shall transmit copies of approved individual FAR and TAR deviations to the Senior Procurement Executive.

1201.404 Class deviations.

Requests for class deviations to the FAR and TAR shall be submitted to the Senior Procurement Executive for approval. Requests submitted shall include the same type of information as required for individual deviations as prescribed in 1201.403.

1201.470 Deviations to and waivers from the requirements of Departmental Orders related to acquisition.

Requests for such deviations and waivers shall be submitted to the Senior Procurement Executive for approval, unless the specific DOT Order specifies procedures for obtaining waivers or deviations.

Subpart 1201.6—Contracting Authority and Responsibilities

1201.601 General.

In accordance with 49 CFR 1.45(a)(2), the authority and responsibility vested in the Secretary to contract for authorized supplies and services is delegated to the agency heads. Provided it is not inconsistent with the FAR, any authority established at or below the agency head level by this regulation may be redelegated, unless authority to redelegate is specifically withheld.

1201.602 Contracting officer.

The head of the contracting activity (HCA) shall maintain information on the limits of contracting officer authority.

1201.603 Selection, appointment, and termination of appointment.

1201.603-1 General.

The agency head shall select and appoint contracting officers and terminate such appointments. This authority may be altered upon establishment of the "DOT Contracting Officer Warrant Program."

1201.670 Ratification of unauthorized commitments.

1201.670-1 Definitions.

"Ratification," as used in this section, means the act of approving an unauthorized commitment, by an official who has the authority to do so, for the purpose of paying for supplies or services provided to the Government as a result of the unauthorized commitment.

"Unauthorized commitment," as used in this section, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

1201.670-2 Authority.

Only contracting officers acting within the scope of their authority (see FAR 1.602) may enter into contracts, and modifications thereto, on behalf of the Government. Subject to the limitations in 1201.670-4 below, the HCA may ratify an unauthorized commitment, provided:

(a) The Government has obtained a benefit resulting from the unauthorized commitment;

(b) The HCA could have granted authority to enter into the commitment at the time it was made and still has the power to do so; and

(c) The resulting contract would otherwise have been binding on the Government if made by an authorized contracting officer.

1201.670-3 Procedures.

Whenever possible, DOT components shall process unauthorized commitments using the ratification authority set forth herein in lieu of referral of such actions to the General Accounting Office for resolution as "quantum meruit/quantum valebant" claims. Approval of ratifications beyond the HCA level is not required except for those unauthorized commitments of a dollar value which require further approval in accordance with DOT Order 4200.12B, Review of Proposed Contract Actions.

1201.670-4 Limitations on exercise of authority.

The authority in 1201.670-1 may be exercised only where—

(a) Supplies or services have been provided to and accepted by the Government;

(b) The contracting officer determines the price to be fair and reasonable;

(c) An opinion has been obtained from legal counsel as to whether the acquisition is ratifiable;

(d) The contracting officer recommends payment;

(e) Funds are available and were available at the time the unauthorized commitment was made;

(f) Administrative settlement of the unauthorized commitment would not involve a claim subject to resolution under the Contract Disputes Act of 1978; and

(g) Ratification action by the HCA is documented, in writing, in the acquisition file.

1201.670-5 Nonratifiable commitments.

Cases that are not ratifiable under this section may be subject to resolution as recommended by the General Accounting Office under its claim procedure (4 GAO 5.1), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

PART 1202—DEFINITIONS OF WORDS AND TERMS

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1202.1—Definitions

1202.170 Definitions.

(a) "Department of Transportation" means all of the administrations, including the Office of the Secretary.

(b) "Administration" means the following:

Office of the Secretary (OST)
Federal Aviation Administration
U.S. Coast Guard
Federal Highway Administration
Federal Railroad Administration
National Highway Traffic Safety Administration
Urban Mass Transportation Administration
St. Lawrence Seaway Development Corporation
Maritime Administration
Research and Special Programs Administration

(c) "Head of the agency" (also called "agency head") means the Assistant Secretary for Administration for OST acquisitions; and for acquisitions within their administrations, the Administrators of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Traffic Safety Administration, Maritime Administration, St. Lawrence Seaway Development Corporation, Research and Special Programs Administration, and the Commandant, U.S. Coast Guard, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, the Assistant Secretary for Administration shall exercise the authority for the administrations.

(d) "Head of the contracting activity" (HCA) means the following:

In the Office of the Secretary:
The Chief, Procurement Division, Washington, DC

In the Federal Aviation Administration:
The Director, Acquisition and Materiel Service, Washington, DC
The Director, Alaskan Region, Anchorage, AL
The Director, Western Pacific Region, Los Angeles, CA
The Director, Southern Region, Atlanta, GA
The Director, Northwest Mountain Region, Seattle, WA
The Director, Central Region, Kansas City, MO
The Director, Eastern Region, Jamaica, NY
The Director, Southwest Region, Fort Worth, TX
The Director, Aeronautical Center, Oklahoma City, OK
The Director, FAA Technical Center, Atlantic City, NJ
The Director, New England Region, Burlington, MA
The Director, Great Lakes Region, Des Plaines, IL

In the Coast Guard:
Chief, Contract Support Division, Commandant (G-ACS), Washington, DC., for Headquarters and Resident Inspection Offices.
Chief, Procurement Management Division, Commandant (G-FPM), Washington, DC., for other designated Headquarters Units and Commandant (G-CAS-4).
Commander, First Coast Guard District, Boston, MA
Commander, Second Coast Guard District, St. Louis, MO
Commander, Third Coast Guard District, New York, NY
Commander, Fifth Coast Guard District, Portsmouth, VA
Commander, Seventh Coast Guard District, Miami, FL
Commander, Eighth Coast Guard District, New Orleans, LA
Commander, Ninth Coast Guard District, Cleveland, OH
Commander, Eleventh Coast Guard District, Long Beach, CA
Commander, Twelfth Coast Guard District, Alameda, CA
Commander, Thirteenth Coast Guard District, Seattle, WA
Commander, Fourteenth Coast Guard District, Honolulu, HI
Commander, Seventeenth Coast Guard District, Juneau, AL
Superintendent, U.S. Coast Guard Academy, New London, CT
Commander, Maintenance and Logistics Command, Atlantic
Commander, Maintenance and Logistics Command, Pacific

In the Federal Highway Administration:
Associate Administrator for Administration, Washington, DC
Federal Lands Highway Program Administrator, Direct Federal Construction Program, Washington, DC

In the Federal Railroad Administration:
Director, Office of Procurement, Washington, DC

In the National Highway Traffic Safety Administration:
Director, Office of Contracts and Procurement, Washington, DC

In the Urban Mass Transportation Administration:
Director, Office of Procurement and Third Party Contract Review, Washington, DC

In the Research and Special Programs Administration:
Chief, Acquisition Division, Transportation Systems Center, Cambridge, MA

In the Maritime Administration:
Associate Administrator for Administration, Washington, DC
Associate Administrator for Shipbuilding, Operations and Research, Washington, DC
Central Region Director, New Orleans, LA
Western Region Director, San Francisco, CA
Assistant Superintendent for Administration, U.S. Merchant Marine Academy

(e) "Senior Procurement Executive" means that individual formally designated by the Secretary, currently the Director of Acquisition and Grant Management, Office of the Secretary.

(f) "Acquisition executive" means the Deputy Secretary for programs defined as major systems in accordance with OMB Circular A-109 and DOT Order 4200.14A, Major Systems Acquisition Review and Approval.

PART 1203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 1203.1—Safeguards

Sec.
1203.101 Standards of conduct.
1203.101-1 General.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

Subpart 1203.70—Reporting Suspected Fraud and Improper Business Practices

1203.7000 Policy.

Subpart 1203.71—Contracts Between DOT and Former DOT Employees

1203.7101 Policy.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1203.1—Safeguards

203.101 Standards of conduct.

1203.101-1 General.

(a) Personnel involved in contracting activities must familiarize themselves with a number of Federal criminal statutes prohibiting certain acts by Government officials or employees and, in varying degrees, special Government employees (as defined in 18 U.S.C. 202), which generally provide, among other things, the following:

(1) 18 U.S.C. 201: Prohibits the asking, demanding, exacting, soliciting, seeking, acceptance, or receipt of or agreement to accept anything of value for him or herself or for any other person of entity in return for being influenced in the performance or non-performance of their official duties or other conduct of their office. (i.e., "bribes").

(2) 18 U.S.C. 203: Prohibits compensation for services rendered by any officer, employee, or another, such as partnership income in an accounting firm in relation to any particular matter in which the United States is a party.

(3) 18 U.S.C. 205: Prohibits acting as an agent or attorney in prosecuting any claim against the United States or

before any United States agency in relation to any matter in which the United States is a party, with or without compensation.

(4) 18 U.S.C. 208: Prohibits personal and substantial participation in any particular matter in which an individual or an individual's spouse, minor child, partner, organization in which the individual serves as an officer, director, trustee, partner, or employee, or potential employer (with whom the individual is negotiating or has an arrangement for future employment) has a financial interest.

(5) 18 U.S.C. 209: Prohibits receipt of any salary or supplementation of salary (anything of value) from a non-Government source as compensation for services as an officer or employee.

(b) Under 18 U.S.C. 218, a conviction under one of these statutes in relation to a contract makes the contract voidable.

(c) In addition to these statutory provisions, personnel involved in contracting activities must familiarize themselves with the Department's Employee Responsibilities and Conduct regulations in 49 CFR Part 99. These regulations, among other things, set forth standards of employee conduct and prohibit an employee's doing anything which could result in, or create the appearance of having, a conflict of interest.

(d) Personnel involved in contracting activities must be particularly aware of the prohibitions against accepting gifts. In general, contracting personnel must not accept a gift from anyone who has, is seeking, or is likely to seek a contract with the Department. Gifts includes meals (lunches, dinners, etc.), entertainment (theater or sporting event tickets, weekends at private retreats, private cocktail parties, hospitality suites, etc.), and travel expenses (airplane tickets, hotel accommodations, etc.), as well as tangible gifts. The only general exception is gifts of unsolicited advertising or promotional material, such as pens, calendars, or desk toys, that are worth $10 or less.

(e) Refer any questions concerning the matters discussed in this subpart to administration legal counsel.

Subpart 1203.5—Other Improper Business Practices

1203.502 Subcontractor kickbacks.

Contracting officers shall report suspected violations of the Anti-Kickback Act through the head of the contracting activity to administration legal counsel.

Subpart 1203.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1203.602 Exceptions.

The agency head has the authority to authorize an exception to the policy in FAR 3.601. This authority may be redelegated to a level not below the head of the contracting activity for contracts under $25,000. Before an exception is granted in any case, consult administration legal counsel as to the effect of the conflict of interest laws.

Subpart 1203.70—Reporting Suspected Fraud and Improper Business Practices

1203.7000 Policy.

Contracting officers shall report suspected violations of the gratuities clause, anti-trust violations, misrepresentations or violations of the covenant against contingent fees, subcontractor kickbacks, and other suspected fraudulent behavior through normal administrative channels to the Office of Inspector General (J-1), with a copy to General Counsel or the appropriate Chief Counsel.

Subpart 1203.71—Contracts Between DOT and Former DOT Employees

1203.7101 Policy.

(a) Agency head approval is required for all contracts with individuals who have been employed by DOT within the two years prior to the expected date of contract award, and with firms in which such a former DOT employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by such former DOT employees.

(b) When current DOT employees are initially contacted by a former DOT official or employee on behalf of him or herself or a contractor in connection with a contract matter, they shall consult with appropriate legal counsel for a determination of impact on the acquisition involved, and to take action, as necessary, regarding violation of post-employment laws.

PART 1204—ADMINISTRATIVE MATTERS

Subpart 1204.2—Contract Distribution

Sec.
1204.202 Agency distribution requirements.

Subpart 1204.6—Contract reporting

1204.602 Federal Procurement Data System.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

Sec.
1204.804-5 Detailed procedures for closing out contract files.

Subpart 1204.70—Procurement Requests

1204.7001 General.
1204.7002 Forms.

Authority: Sec. 205(c), Federal Property and Administrative Services Act; as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1204.2—Contract Distribution

1204.202 Agency distribution requirements.

The contracting officer shall distribute one copy of all contracts which are for the acquisition of personal property (as defined at FAR 45.601) to the property management organization that has responsibility for recordkeeping and control of such property. The contracting officer shall also distribute one copy of all contract modifications which change the basic contract so that it includes the acquisition of personal property, to the applicable property management organization.

Subpart 1204.6—Contract Reporting

1204.602 Federal Procurement Data System.

(a) The DOT Contract Information System (CIS) collects the information required to comply with the reporting required for the Federal Procurement Data System (FPDS). Each contracting officer is responsible for proper reporting of contracts under his/her cognizance.

(b) DOT Order 1340.5, Contract Information System, provides detailed reporting instructions.

(c) The CIS Data Input Form (DOTF.4220.11) shall be used to provide acquisition records and statistics in lieu of the SF 279, Individual Contract Action Report (over $25,000). A copy of each data input form affecting the contract shall be included in the contract file. Those administrations which use automation for reporting the information normally included on the DOTF.4220.11 (vice actual submission of the DOTF.4220.11), shall ensure that this information is also included in the contract file. The FPDS Summary of Contract Actions of $10,000 or Less (SF 281) shall be used to summarize contract actions of $25,000 or less.

Subpart 1204.8—Contract Files

1204.804 Closeout of contract files.

1204.804-5 Detailed procedures for closing out contract files.

(a) In addition to those procedures set forth in FAR 4.804-5, the contracting officer shall, before final payment is

made under a cost-reimbursement type contract, verify the allowability, allocability, and reasonableness of costs claimed. Verification of total costs incurred shall be obtained in the form of a final audit certification, unless the contract is below the threshold for audit certification. Similar verification of actual costs must be made for fixed-price contracts when cost incentives or price redeterminations are involved.

(b) DOT contracting officers may utilize quick-closeout procedures on cost-type contracts not exceeding $500,000, provided the stipulations at FAR 42.708(a) (1) through (3) are met and:

(1) All terms and conditions of the contract have been met satisfactorily;

(2) Invoiced costs are consistent with original cost estimates;

(3) There is no suspected fraud or wrongdoing; and

(4) The Contracting Officer determines that the use of this procedure will be beneficial to the Government.

Subpart 1204.70—Procurement Requests

1204.7001 General.

(a) Procurement requests will be prepared and submitted to the contracting office in accordance with administration procedures.

(b) Except in unusual circumstances, the contracting office will not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract award prior to the receipt of the approved procurement request certifying that funds are available when:

(1) Such action is necessary to meet critical program schedules;

(2) It has been established that program authority has been issued and that funds to cover the acquisition will be available prior to the date set for contract award or contract modification;

(3) A person at a level above the contracting officer authorizes such action prior to the issuance of the solicitation, and the contract file is properly documented; and

(4) The solicitation document clearly indicates that the award is subject to the availability of funds.

(c) The procurement request shall be assigned within the contracting office to an individual who, if not the contracting officer, will be responsible to the contracting officer for conducting the business aspects of the transaction. This individual shall review the request to ensure that it complies with the FAR and this Regulation and that the information contained in the request is in sufficient detail to prepare presolicitation and solicitation documents. The contracting officer, or other designated individual in the contracting office, shall discuss uncertain requirements or inconsistencies in the procurement request with the initiator of the request and obtain clarification prior to taking any further action.

1204.7002 Forms.

Procurement Request Forms DOT F.4200.1 and DOT F.4200.2 (continuation sheet) shall be used to request the acquisition of supplies, services, or construction and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multi-line requisitioning methods.

PART 1205—PUBLICIZING CONTRACT ACTIONS

Subpart 1205.1—Dissemination of Information

Sec.
1205.102 Availability of solicitations.

Subpart 1205.2—Synopses of Proposed Contract Actions

1205.207 Preparation and transmittal of synopses.

Subpart 1205.4—Release of Information

1205.402 General public.
1205.402-70 Furnishing additional contract information to the general public.

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301; 49 CFR 1.59.

Subpart 1205.1—Dissemination of Information

1205.102 Availability of solicitations.

Notwithstanding the limitations of FAR 5.102, Availability of solicitations, it is the Department's policy to provide a copy of any solicitation to all who submit a request for a copy of the solicitation.

Subpart 1205.2—Synopses of Proposed Contract Actions

1205.207 Preparation and transmittal of synopses.

Numbered Notes: The Civilian Agency Acquisition Council has granted a class deviation to DOT exempting the Department from the requirements of FAR 5.207(e)(3). The use of Numbered Note 22 is prohibited in DOT synopses of proposed contract actions. For those actions requiring a market survey to support a justification for other than full and open competition, the survey shall be conducted separately from and well in advance of the synopsis of the proposed contract action. In these instances, the market survey must be performed as part of and in support of the acquisition planning which supports the determination to contract with less than full and open competition. In addition to the requirements of FAR 5.207, and in lieu of Numbered Note 22, the Contracting Officer shall use terminology substantially as follows: "This contract action is for supplies or services for which the Government intends to solicit and negotiate only with (*name of contractor*) under authority of FAR (*insert appropriate authority from FAR 6.302*). A market survey was conducted on (*date*), and the results of this survey support our determination to solicit and negotiate with only one firm.

Subpart 1205.4—Release of Information

1205.402 General public.

1205.402-70 Furnishing additional contract information to the general public.

(a) *Policy.* (1) In addition to publicizing proposed contracts and contract awards in the Commerce Business Daily, it is DOT policy to furnish the general public, upon request, the following information on proposed contracts and contract awards:

(i) The names of firms invited to submit bids or proposals;

(ii) The names of firms which attended pre-proposal briefing conferences when held;

(iii) After the award of contracts, names of firms which submitted proposals; and

(iv) After the date established for receipt of bids, names of firms which submitted bids.

(2) Exceptions to this policy will be permitted only when the head of the contracting activity determines that the disclosure of such information would be prejudicial to the interests of DOT.

(b) *Procedures.* Contracts or modifications requiring either approval by the Assistant Secretary for Administration or release by the Assistant Secretary for Governmental Affairs will not be executed, distributed, or any information given to any source outside of DOT that the contract has been approved until the Director, Office of Public Information, has advised the contract activity that the contract can be released.

Subpart 1205.5—Paid Advertisements

1205.502 Authority.

Authority to approve publication of paid advertisements in newspapers is delegated to the head of the contracting activity.

PART 1206—COMPETITION REQUIREMENTS

Sec.

1206.003 Definitions.

Subpart 1206.1—Full and Open Competition

1206.102 Use of competitive procedures.

Subpart 1206.3—Other Than Full and Open Competition

1206.302 Circumstances permitting other than full and open competition.
1206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.
1206.302-2 Unusual and compelling urgency.
1206.302-7 Public interest.
1206.303 Justifications.
1206.303-1 Requirements.
1206.304 Approval of the justification.
1206.305 Availability of the justification.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

Authority: 41 U.S.C. 253 *et. seq.*, 10 U.S.C. 2301 *et. seq.*, 41 U.S.C. 403 *et. seq.*, as amended by Pub. L. 98-369.

1206.003 Definitions.

"Head of the procuring activity", as used in this part shall be synonymous with "head of the agency" as defined in 1202.170(c).

"Procuring activity", as used in this part, shall be synonymous with "Administration" as defined in 1202.170(b).

Subpart 1206.1—Full and Open Competition

1206.102 Use of competitive procedures.

(a) Contracting officers shall ensure that the special competition requirements for acquiring automatic data processing and telecommunications equipment, software, or services are met. These requirements currently are set forth in the Federal Information Resources Management Regulation (FIRMR), Chapter 201 of Title 41, Code of Federal Regulation.

(b) Prior to proceeding with a contract award, contracting officers shall review all competitive solicitations which produce only one offer from responsible sources. The contracting officer shall attempt to ascertain the reasons for the lack of response and shall place a written statement in the contract file documenting his conclusions regarding the lack of competition under the solicitation. The contracting officer shall provide a copy of the statement to the procuring activity competition advocate and the Senior Competition Advocate. Should the contracting officer conclude that the solicitation was structured or conducted in a manner which did not provide for full and open competition, the contracting officer shall either cancel the solicitation or shall proceed to justify the award under FAR Subpart 6.3.

Subpart 1206.3—Other Than Full and Open Competition

1206.302 Circumstances permitting other than full and open competition.

1206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

No unsolicited proposal, regardless of dollar amount, may be considered for award under this authority until it is reviewed and approved by the Senior Competition Advocate. This approval is in addition to that approval stipulated at 1206.304. For unsolicited proposals with an estimated value in excess of $200,000, this approval may be obtained through the Department's Prenotification Process implemented by DOT Order 4200.16, Prenotification Review of Proposed Acquisition and Assistance Actions and Related Matters.

1206.302-2 Unusual and compelling urgency.

The contracting officer shall ensure that the justification supporting the use of this authority is approved prior to contract award unless immediate loss of life or property, or other equally compelling circumstances, are involved. When such a compelling circumstance exists, the contracting officer should inform the approving official of the action at the earliest opportunity, preferably before award. In cases involving approval after award, the justification required by FAR 6.303 shall contain a summary of facts justifying approval after award, including a statement of the number of days that were available to execute the justification prior to award.

1206.302-7 Public interest.

(a) The operating administrations shall coordinate and process all requests for a Secretarial determination, under this authority, through the Senior Competition Advocate. The Senior Competition Advocate shall review the request and shall prepare a recommendation to the Secretary regarding the merits of the request.

(b) The request must be submitted by the head of the procuring activity.

(c) All supporting documentation and a proposed determination and findings must accompany the request.

1206.303 Justifications.

1206.303-1 Requirements.

The requirements of 1206.302-2 must be met for justifications approved after contract award.

1206.304 Approval of the justification.

(a) The justification for other than full and open competition shall be approved by the following officials:

(1) For proposed acquisitions estimated between $25,000 and $100,000:

(i) *For all Administrations except the Coast Guard:* The individuals cited at 1202.170(d) under the definition of "Head of Contracting Activity."

(ii) *For the Coast Guard:* The individuals cited at 1202.170(d) under the definition of "Head of Contracting Activity," except that for the following units the justification shall be approved by the commanding officer of that unit (redelegable to the individual of that unit with comptroller authority):

(A) Commanding Officer, U.S. Coast Guard Aircraft Repair and Supply Center, Elizabeth City, North Carolina.

(B) Commanding Officer, U.S. Coast Guard Supply Center, Brooklyn, New York.

(C) Commanding Officer, U.S. Coast Guard Training Center, Cape May, New Jersey.

(D) Commanding Officer, U.S. Coast Guard Training Center, Petaluma, California.

(E) Commanding Officer, U.S. Coast Guard Yard, Baltimore, Maryland.

(F) Commanding Officer, Electronics Engineering Center, Wildwood, New Jersey.

(G) Commander, Coast Guard Activities, Europe, London.

(H) Commanding Officer, U.S. Coast Guard Reserve Training Center, Yorktown, Virginia.

(I) Commanding Officer, Facilities Design & Construction Center, (West) Seattle, Washington.

(J) Commanding Officer, Facilities Design & Construction Center, (East) Norfolk, Virginia.

(K) Commanding Officer, U.S. Coast Guard Pay and Personnel Center, Topeka, Kansas.

(L) Office of Resident Inspector, U.S. Coast Guard, Middletown, Rhode Island.

(M) Office of Resident Inspector, U.S. Coast Guard, Bath, Maine.

(N) Office of Resident Inspector, U.S. Coast Guard, Lockport, Louisiana.

(O) Office of Resident Inspector, U.S. Coast Guard, Seattle, Washington.

(P) Commanding Officer, Aircraft Program Office, U.S. Coast Guard, Grand Prairie, Texas.

(Q) Commanding Officer, U.S. Coast Guard Air Station, Washington National Airport, Washington, D.C.

(R) Commanding Officer, U.S. Coast Guard Aviation Training Center, Mobile, Alabama.

(S) Commanding Officer, U.S. Coast Guard Station, Alexandria, Virginia.

(2) For proposed acquisitions over $100,000 but not exceeding $1,000,000: The procuring activity's competition advocate.

(3) For proposed acquisitions over $1,000,000 but not exceeding $10,000,000: The procuring activity's competition advocate and the following:

(i) The Assistant Secretary for Administration for OST Acquisitions;

(ii) The Administrator or Deputy Administrator; the Commandant or Vice Commandant for acquisitions of their administrations.

(4) For proposed acquisitions over $10,000,000: The approval authorities cited in 1206.304(a)(3) and the following:

(i) The Senior Procurement Executive.

(ii) The Assistant Secretary for Administration in the absence of the Senior Procurement Executive.

(b) The approval authorities cited in 1206.304(a) may not be delegated; however, individuals acting in the place of these approving officials do have the authority cited in 1206.304(a).

(c) Legal review shall be obtained when appropriate.

(d) In addition to the approvals stipulated in 1206.304(a), all class justifications for other than full and open competition must be reviewed and approved by the Senior Competition Advocate. This approval should be obtained prior to processing the approvals required under 1206.304(a).

1206.305 Availability of the justification.

The contracting officer shall forward a copy of all approved justifications for other than full and open competition, including supporting documentation, to the Senior Competition Advocate within 10 working days of approval. A copy of the CBD synopsis, or a copy of the synopsis waiver, should be attached to the justification.

Subpart 1206.5—Competition Advocates

1206.501 Requirement.

(a) The Secretary shall appoint a Senior Competition Advocate (SCA) and procuring activity competition advocates.

(b) The SCA shall—

(1) Act as the agency competition advocate;

(2) Oversee and coordinate the activities of the competition advocates in the operating administrations;

(3) Act as the Secretary's principal advisor regarding competition issues.

(c) The head of each operating administration shall recommend to the Secretary, in writing, a procuring activity competition advocate for the administration. The advocate must be a member of the Senior Executive Service or a flag officer. The head of the operating administration shall forward the recommendation letter through the SCA.

(d) The head of the operating administration may appoint competition advocates in headquarters and field contracting offices to assist the procuring activity competition advocate. Such individuals shall not have approval authority under 1206.304.

(e) The head of each operating administration shall make available professional contracting and engineering staff to support the competition advocates.

PART 1207—ACQUISITION PLANNING

Subpart 1207.1—Acquisition Plans

Sec.
1207.102 Policy.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.
1207.305 Solicitation provision and contract clause.
1207.307 Appeals.
1207.370 A-76 preward surveys.

Subpart 1207.4—Equipment Lease or Purchase

1207.401 Acquisition considerations.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (50 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1207.1—Acquisition Plans

1207.102 Policy

The Department has implemented its acquisition planning system in DOT Orders in the 4200 Series, which are available for inspection in DOT contracting offices. This system meets the criteria prescribed in FAR Subpart 7.1 covering major projects. Planning for smaller projects is the responsibility of the agency head.

Subpart 1207.3—Contractor Versus Government Performance

1207.302 General.

The Department's implementation of OMB Circular A-76 and FAR Subpart 7.3 is set forth in DOT Order 4400.2C, Performance of Commercial Activities, which is available for inspection in DOT Contracting Offices.

1207.305 Solicitation provision and contract clause.

(a) The contracting officer shall insert the clause at 1252.207-70, Implementation of Right of First Refusal of Employment, in addition to the FAR clause at 52.207-3, Right of First Refusal of Employment, and in contracts in which required contractor performance causes Federal employees to be adversely affected. This clause is required in solicitations and contracts as stipulated herein, until that time when the FAR specifies contractual provisions for the implementation of right of first refusal.

(b) Contracting officers shall include in all A-76 solicitations for sealed bids a preaward survey clause substantially the same as that specified at 1252.207-71, Financial and Technical Ability. Some negotiated and two-step forms of contracting use technical proposals to determine how well offerors understands the statement of work. The clause stipulated at 1252.207-71, Financial and Technical Ability, may be adapted and included as evaluation factors in negotiated solicitations.

1207.307 Appeals.

The Department's appeals procedures required by OMB Circular A-76 and FAR 7.307 are set forth in DOT Order 4400.2C.

1207.370 A-76 preaward surveys.

When soliciting under sealed bid methodology, contracting officers shall normally conduct a preaward survey, as described in Chapter 6 of the Supplement to A-76, with the contractor with the lowest responsive bid, if the contractor's adjusted cost on the cost comparison form is less than the Government's costs. However, a preaward survey will not be conducted when the contractor alleges a mistake in bid and is allowed to withdraw the bid for obvious reasons in accordance with FAR 14.406. If the contractor which submitted the low bid is not determined to be responsible, the next contractor whose adjusted costs are lower than the Government's costs shall normally be subject to a preaward survey.

Subpart 1207.4—Equipment Lease or Purchase

1207.401 Acquisition considerations.

The evaluation required by FAR 7.401 shall be documented whenever contracting for the lease of equipment

PART 1208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 1208.1—Excess Personal Property

Sec.
1208.102 Policy.

Subpart 1208.4—Ordering From Federal Supply Schedules

1208.401 General.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301, 49 CFR 1.59.

Subpart 1208.1—Excess Personal Property

1208.102 Policy.

DOT Administrations shall use excess personal property as the first source of supply when practicable. The HCA shall ensure that procurement requests to acquire personal property are reviewed by the appropriate property management organization to determine if requirements are available from excess sources.

Subpart 1208.4—Ordering From Federal Supply Schedules

1208.401 General.

Contracting officers shall consult the Federal Information Resources Management Regulation (FIRMR) when ordering automatic data processing (ADP) or telecommunications equipment and services under multiple award schedules. Special procedures for ordering such equipment and services are set forth in the FIRMR, Chapter 201 of Title 41, Code of Federal Regulations.

PART 1209—CONTRACTOR QUALIFICATIONS

Subpart 1209.1—Responsible Prospective Contractors

Sec.
1209.104 Standards.

Subpart 1209.3—First Article Testing and Approval

1209.302 General.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

Subpart 1209.5—Organizational Conflicts of Interest

1209.503 Waiver.
1209.508 Solicitation provision and contract clause.
1209.508-1 Solicitation provisions.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1209.1—Responsible Prospective Contractors

1209.104 Standards.

DOT Form DOTF 4220.1, Determination of Prospective Contractor Responsibility, may be used to document the determination of a prospective contractor's responsibility.

Subpart 1209.3—First Article Testing and Approval

1209.302 General.

The procurement request initiator shall prepare a written statement addressing the factors enumerated in FAR 9.302 whenever first article testing and approval is required. This statement shall be forwarded with the procurement request.

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.402 Policy.

DOT procedures to implement the policy of FAR 9.402 are set forth in DOT Order 4200.5 "Government-Wide Debarment, Suspension and Ineligibility."

Subpart 1209.5—Organizational Conflicts of Interest

1209.503 Waiver.

In the rare instances, when necessary, the agency head is authorized to approve waivers in accordance with FAR 9.503. This authority may not be redelegated below the level of HCA.

1209.508 Solicitation provisions and contract clause.

1209.508-1 Solicitation provisions.

In additon to the provision discussed at FAR 9.508-1 (used where appropriate), the contracting officer may insert the provision at 1252.209-71 "Disclosure of Conflicts of Interest" in solicitations for negotiated acquisitions (see also 1215.407(a)).

PART 1210—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.
1210.004 Selecting specifications or descriptions for use.
1210.004-70 Brand name products or equal.
1210.004-71 Limits on the use of brand name or equal purchase descriptions.
1210.004-72 Solicitations, brand name or equal descriptions.
1210.004-73 Offer evaluation and award, brand name or equal descriptions.
1210.007 Deviations.
1210.011 Solicitation provisions and contract clauses.
1210.011-70 Solicitation provision.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)), 48 CFR 1.301; 49 CFR 1.59.

1210.004 Selecting specifications or descriptions for use.

1210.004-70 Brand name products or equal.

(a) *General.* Consistent with the policy stated in FAR 10.004(b)(2), DOT acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances such an approach may be used as described below.

(b) *Citing brand name products.* Brand name or equal purchase descriptions shall cite all brand name products known to be acceptable and of current manufacture.

(c) *Specifying essential characteristics.* (1) Brand name or equal purchase descriptions shall specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. (See 1210.004-73) Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition. (2) When describing essential characteristics, permissible tolerances should be indicated. Avoid specifying a characteristic (e.g. a specific dimension) of a brand name product unless it is essential to the Government's need. The contracting officer must be able to justify the requirement.

1210.004-71 Limits on the use of brand name or equal purchase descriptions.

(a) *General.* The use of brand name or equal purchase descriptions in solicitations is intended to promote competition by encouraging the offering of products that are equal in all material respects to brand name products cited in such descriptions. Identification by brand name does not indicate a preference for the products mentioned but indicates the quality and characteristics of products that will meet the Government's needs. Where a component of an item is described in the solicitation by a brand name or equal purchase description and the contracting officer determines that application of the provision at 1252.210-71 would be impracticable, the requirement to include the entry described in 1210.004-72(a) shall not apply. If the provision is included in the solicitation for other reasons, there also shall be included in the solicitation a statement to identify

either the component parts (described by brand name or equal descriptions) to which the provision applies or those to which it does not apply. This also applies to accessories related to an end item where a brand name or equal purchase description of the accessories is a part of the description of an end item. Brand name or equal descriptions shall not be used to acquire a particular product under the guise of competitive acquisition to the exclusion of other products that would meet the actual needs.

(b) *Small purchases.* In small purchases within the open market limitations, brand name policies and procedures shall be applicable to the extent practical.

(c) *Approval required.* A statement approved at least one level above the contracting officer shall be included in the contract file to justify use of brand name products or brand name or equal purchase descriptions.

1210.004-72 Solicitations, brand name or equal descriptions.

(a) An entry substantially as follows shall be prominently inserted in the item listing after each item or component part of an end item to which a brands name or equal purchase description applies.

Bidding on: _____
Manufacturer's Name: _____
Brand: _____
No.: _____

(b) Because bidders frequently overlook the requirements of the provision at 1252.210-70 "Brand Name or Equal," the following note shall be inserted in the item listing after each brand name or equal item (or component part), or at the bottom of each page, listing several such items, or in a manner that may otherwise direct the offeror's attention to this clause.

Offerors offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to equality of the product(s) offered (see the provision "brand name or equal" set forth in section 1252.210-70 of the Transportation Acquisition Regulation).

(c) If offeror samples are requested for brand name or equal acquisitions, the above notice shall not be included in the solicitation.

1210.004-73 Offer evaluation and award, brand name or equal descriptions.

An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the solicitation is defective and no award may be made. In such cases, the contracting officer should resolicit the requirement, using a purchase description that sets forth the essential characteristics.

1210.007 Deviations.

The head of the contracting activity is the designated official responsible for ensuring that Federal specifications are used and exceptions and deviations are justified in accordance with FAR 10.007(a).

1210.011 Solicitation provisions and contract clauses.

1210.011-70 Solicitation provision.

The contracting officer shall include the provision at 1252.210-70. "Brand Name or Equal" in solicitations for which a brand name or equal purchase description is used.

PART 1212—CONTRACT DELIVERY OR PERFORMANCE

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1212.70—Delays

1212.7001 Delays

The contracting officer shall insert the clause at 1252.212-71 "Notice of Delay" in all DOT contracts except fixed-price construction solicitations and contracts. The notice requirements may be modified for short-term contracts, as appropriate.

PART 1213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

Subpart 1213.1—General

Sec.
1213.106 Competition and price reasonableness.
1213.106-70 Data to support small purchases over $1,000.
1213.107 Solicitation and evaluation of quotations.

Subpart 1213.2—Blanket Purchase Agreements

1213.2 General.
1213.203 Establishment of blanket purchase agreements.
1213.203-1 General.

Subpart 1213.3—Fast Payment Procedure

113.302 Conditions for use.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.
1213.404 Conditions for use.
1213.405 Procedures.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.
Sec.
1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.
1213.505-3 Standard Form 44, Purchase Order-Invoice-Voucher.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1213.1—General

1213.106 Competition and price reasonableness.

1213.106-70 Data to support small purchases over $1,000.

Form DOT F 4230.1, Small Purchase Summary, may be used to satisfy documentation requirements of FAR 13.106(c).

1213.107 Solicitation and evaluation of quotations.

Standard Form 18, Request For Quotations, shall be used to obtain written quotations as prescribed in FAR 13.107(a) unless an administration equivalent form has been authorized for use by the Senior Procurement Executive. (See FAR 53.103).

Subpart 1213.2—Blanket Purchase Agreements

1213.201 General.

The head of the contracting activity may require that only contracting officers make purchases under a blanket purchase agreement (BPA).

1213.203 Establishment of blanket purchase agreements.

1213.203-1 General.

Optional Form 347, Order for Supplies or Services, shall be used for BPAs unless and administration equivalent form has been authorized for use by the senior procurement executive.

Subpart 1213.3—Fast Payment Procedure

1213.302 Conditions for Use.

The agency head may establish higher dollar limitations than those specified at FAR 13.302(a) for specified activities or items.

Subpart 1213.4—Imprest Fund

1213.403 Agency responsibilities.

(a) Regulations governing the use and administration of Imprest Funds within the Department are contained in DOT Order 2770.7A, Imprest Fund Manual.

(b) Heads of contracting activities (HCAs) shall establish procedures for designation of personnel authorized to approve requisitions and make purchases using imprest funds. HCAs may require that only contracting

officers may approve requisitions using imprest funds.

1213.404-1 Conditions for use.

The Department has implemented its imprest fund procedures and policy in DOT Order 2770.7A, Imprest Fund Manual.

1213.405 Procedures.

(a) The individual making an approved purchase from the imprest fund shall be responsible for compliance with the documentation requirements of FAR 13.405(f) and DOT Order 2770.7A, Chapter 6.

(b) The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements mandated by DOT Order 2770.7A, Chapter 6, Paragraph 2a.

Subpart 1213.5—Purchase Orders

1213.505 Purchase order and related forms.

1213.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

Optional Forms 347 and 348 shall be used as prescribed in FAR 13.505 unless an administration equivalent form has been authorized for use by the agency head. Exceptions may be granted, on a case by case basis, in order to accommodate computer-generated purchase order forms. Exception approval for overprinting (FAR 53.104) is not needed.

1213.505-3 Standard Form 44 Purchase Order-Invoice-Voucher.

(a) In addition to the procedures in FAR 13.505-3; DOT Order 4230.2 Standard Form 44 (SF 44), Purchase Order-Invoice-Voucher contains guidance on the use of Standard Form 44.

(b) Agency heads are responsible for establishing procedures to control the use of Standard Form 44 and accounting for all purchases made using the form, including:

(1) Maintenance of a list of designated individuals authorized to make purchases using the form;

(2) Controls for issuance of the form to authorized individuals; and

(3) Review of purchase transactions using the form to assure compliance with authorized procedures.

PART 1214—SEALED BIDDING

Subpart 1214.2—Solicitation of Bids

Sec.
1214.201 Preparation of invitations for bids.
1214.201-1 Uniform contract format.
1214.202 General rules for solicitation of bids.
1214.202-4 Bid samples.
1214.202-5 Descriptive literature.
1214.205 Solicitation mailing lists.
1214.205-1 Establishment of lists.
1214.208 Amendment of invitations for bids.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.
1214.406-3 Other mistakes disclosed before award.
1214.406-4 Mistakes after award.
1214.408 Information to bidders.
1214.408-2 Award of classified contracts.
1214.470 Revalidation of requirements (sealed bidding).

Subpart 1214.5—Two-Step Sealed Bidding

1214.501 General.

Authority: Section 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1214.2—Solicitation of Bids

1214.201 Preparation of invitations for bids.

1214.201-1 Uniform contract format.

In those cases where the uniform contract format need not be used, the contract still should be structured to conform to the various uniform contract format sections as closely as is practicable.

1214.202 General rules for solicitation of bids.

1214.202-4 Bid samples.

The justification required by FAR 14.202-4(d) shall be prepared by the requiring activity and approved, in writing, by the contracting officer.

1214.202-5 Descriptive literature.

The justification required by FAR 14.202-5(c) shall be prepared by the requiring activity and approved, in writing, by the contracting officer.

1214.205 Solicitation mailing lists.

1214.205-1 Establishment of lists.

Requests for supplemental information shall be attached to the Standard Form 129 and fowarded to potential suppliers for completion.

1214.208 Amendment of invitations for bids.

Amendments which are substantive in nature shall be subject to the same review process as was required for issuance of the solicitation.

Subpart 1214.3—Submission of Bids

1214.302 Bid submission.

As permitted by FAR 14.302(b), a telegraphic bid may be communicated by means of a telephone call to the designated office.

Subpart 1214.4—Opening of Bids and Award of Contract

1214.406 Mistakes in bids.

1214.406-3 Other mistakes disclosed before award.

The head of the contracting activity is authorized to make the determinations under FAR 14.406-3 (a), (b), (c), and (d). This authority may not be redelegated. Any doubtful case under FAR 14.406-3 may be forwarded for advance decision to the Comptroller General, with a copy to the procurement executive.

1214.406-4 Mistakes after award.

The contracting officer shall make the determination required by FAR 14.406-4(b) after coordination with legal counsel.

1214.408 Information to bidders.

1214.408-2 Award of classified contracts.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

1214.470 Revalidation of requirements (sealed bidding).

In every case where a procurement action has been in process for more than 1 year from the date of the Procurement Request, the contracting officer shall revalidate user needs which justify the procurement action prior to contract award. The revalidation must be accomplished within three months of contract award.

Subpart 1214.5—Two-Step Sealed Bidding

1214.501 General

As a matter of policy, two-step sealed bidding procedures shall not be used for those acquisitions which meet the dollar threshold established for formal source selection under DOT Order 4200.11, Source Selection. The Senior Procurement Executive may waive this policy in individual cases.

PART 1215—CONTRACTING BY NEGOTIATION

Subpart 1215.1—General Requirements for Negotiation

Sec.
1215.106 Contract clauses.
1215.106–70 Key personnel and facilities.
1215.170 Pre-contract costs.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.405 Solicitations for information or planning purposes.
1215.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).
1215.406–1 Uniform contract format.
1215.407 Solicitation provisions.
1215.408 Issuing solicitations.
1215.411 Receipt of proposals and quotations.
1215.413 Disclosure and use of information before award.

Subpart 1215.5—Unsolicited Proposals

1215.502 Policy.
1215.506 Agency procedures.

Subpart 1215.6—Source Selection

1215.605 Evaluation factors.
1215.612 Formal source selection.
1215.612–70 Source selection official.

Subpart 1215.8—Price Negotiation

1215.803 General.
1215.804 Cost or pricing data.
1215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.
1215.805 Proposal analysis.
1215.805–4 Technical analysis.
1215.805–5 Field pricing support.
1215.807 Prenegotiation objectives.
1215.807–70 Contents of prenegotiation memorandum.
1215.808 Price negotiation memorandum.
1215.810 Should-cost analysis.

Subpart 1215.9—Profit

1215.902 Policy.
1215.905 Profit-analysis factors.
1215.905–70 Methods.
1215.905–71 Profit/fee objective for non-commercial enterprises.

Subpart 1215.70—Revalidation of Requirements (Negotiated)

1215.7000 Policy.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1215.1—General Requirements for Negotiation

1215.106 Contract clauses.

1215.106-70 Key personnel and facilities.

Whenever contractor selection (either sole source or competitive acquisition) has been substantially predicated on the contractor's possession of special capabilities (i.e. personnel and/or facilities) the contracting officer shall include the clause at 1252.215–71 "Key Personnel and Facilities" in the awarded contract.

1215.170 Pre-contract costs.

(a) Except as authorized in 1215.170(b), no DOT employee shall encourage or authorize any potential contractor to incur costs prior to contract award.

(b) No contract provision for reimbursement of a contractor's precontract costs shall be negotiated or included in any contractual document prior to approval of such provision by the head of the contracting activity. The request for HCA approval shall include the following:

(1) Identification of the requirement;

(2) Name of the proposed contractor;

(3) Brief description of the work for which precontract costs are necessary;

(4) Total amount of pre-contract costs involved and approximate duration of the period over which costs will be incurred;

(5) Reason(s) why use of pre-contract costs are necessary and in the best interest of the Government.

Subpart 1215.4—Solicitation and Receipt of Proposals and Quotations

1215.405 Solicitations for information or planning purposes.

All determinations to issue solicitations for information or planning purposes shall be approved at least one level above the contracting officer.

1215.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

1215.406-1 Uniform contract format.

In those cases where the uniform contract format is optional or does not apply, the solicitation and contract should be structured to conform to the various uniform contract format sections as closely as is practicable.

1215.407 Solicitation provisions.

(a) The contracting officer shall insert the provision at 1252.209-71 "Disclosure of Conflicts of Interest", in accordance with 1209.508-1.

(b) The contracting officer may insert a provision substantially the same as that at 1252.215-72, Cost Proposal Instructions, in requests for proposal when cost or pricing data are to be obtained.

(c) When automatic data processing (ADP) hardware and/or software will be acquired either as part or all of the acquisition, contracting officers may include Form DOT F. 4220.21 in the request for proposal (see 1253.215/70(a)). The form would then be completed by offerors and submitted with SF 1411 and other supporting data.

1215.408 Issuing solicitations.

Each administration having access to classified information during the acquisition process shall comply with appropriate security procedures.

1215.411 Receipt of proposals and quotations.

The requirement set forth in 1215.408 applies.

1215.413 Disclosure and use of information before award.

The alternate procedure at FAR 15.413-2 shall be used in lieu of those prescribed at FAR 15.413-1. Each administration shall establish procedures to implement this section. In so doing, the principles in FAR 15.413-1 (a) and (b) and the stipulations contained in FAR 15.413-2(f) shall be followed.

Subpart 1215.5—Unsolicited Proposals

1215.502 Policy

Acceptance of unsolicited proposals is subject to the requirements of 1206.302-1.

1215.506 Agency procedures.

(a) Each administration shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals.

(b) A central receiving office shall be established to implement these procedures. Each central receiving office shall:

(1) Serve as the point of contact with the submitter;

(2) Maintain records showing the receipt and status of unsolicited proposals; and

(3) Coordinate with other administrations or other Federal agencies when appropriate.

(c) An information copy of central office designations and any implementing instructions will be furnished to the Senior Procurement Executive.

Subpart 1215.6—Source Selection

1215.605 Evaluation factors.

Actual numerical weights, which may be employed in the evaluation of technical proposals, shall not be disclosed in the solicitation.

1215.612 Formal source selection.

DOT's procedures for formal source selection are contained in DOT Order 4200.11, Source Selection, which is available in DOT contracting offices. The procedures described in this DOT

Order are consistent with requirements of the FAR.

1215.612-70 Source selection official.

(a) The Secretary or Deputy Secretary normally shall serve as the Source Selection Official (SSO) for acquisitions, when:

(1) The estimated cost exceeds $5,000,000; or

(2) The estimated cost does not exceed $5,000,000, but the selected source is likely to receive funding for a future phase or phases of the same project and the aggregate amount for such funding (including the current acquisition) is estimated to exceed $5,000,000.

(b) The Assistant Secretary for Administration normally shall serve us SSO for all other formal source selections.

(c) The authorities in 1215.612-71(a) and 1215.612-71(b) may be delegated for individual acquisitions.

Subpart 1215.8—Price Negotiation

1215.803 General.

(a) The procurement request initiator shall provide, as part of the procurement request, an independent Government estimate for all acquisitions in excess of $25,000. This estimate shall include, to the extent applicable, the major cost areas of labor (by category), materials, travel, consultant, computer usage, etc. The level of detail and rationale for the estimate shall be commensurate with the complexity and value of the acquisition. Any prior cost experience the Government has had in buying the same, or like items, should be referenced. The contracting officer may require, at his/her discretion, an estimate where the anticipated cost is less than $25,000. Under no circumstances should the estimate be based on information furnished solely by a potential contractor who may be considered for award.

(b) Unreasonable profit or fee demands made by an offeror, if not resolved by the contracting officer, shall be referred to the HCA.

1215.804 Cost or pricing data.

1215.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Administrations shall establish monitoring procedures to ensure that the exemptions from the requirement to submit certified cost or pricing data (as specified in the FAR) are properly applied.

(b) Waivers should rarely be granted and utmost discretion must be exercised.

1215.805 Proposal analysis.

1215.805-4 Technical analysis.

(a) The head of the agency shall ensure that contracting activities are properly supported by agency technical personnel in the proposal evaluation process.

(b) A copy of the technical evaluation should be provided to the auditor for incorporation into the audit report whenever feasible.

1214.804-5 Field pricing support.

(a) Contracting officers normally shall allow a minimum of 30 days for receipt of an audit report. Exceptions to this 30-day minimum period may be made only when unusually urgent program considerations require a shorter time. Urgency caused by end of year funding considerations shall not be used as a justification for requiring a shorter period for advisory audit review.

(b) Administrations shall establish procedures for monitoring audit waivers. Urgency caused by end of year funding considerations shall not be used as justification for waiving audit.

(c) Administrations shall establish procedures for requesting and handling audit or other field pricing reports.

1215.807 Prenegotiation objectives.

(a) Administrations shall establish procedures for review and approval of prenegotiation objectives. These procedures shall require Prenegotiation Memoranda (see 1215.807-70 below) for each administration's high dollar and/or complex acquisitions. The approval levels established should be commensurate with the value and complexity of the proposed acquisition. Under no circumstances shall the procedures undermine the contracting officer's responsibility for determining a fair and reasonable price.

(b) Written documentation of all prenegotiation objectives is required and shall be made a part of the permanent contract file. (See also 1215.808(c) below).

1215.807-70 Content of prenegotiation memorandum.

The Prenegotiation Memorandum (PM) shall fully explain the Government's position as well as identify and justify the elements that are acceptable as proposed. Since the PM will ultimately become the basis for negotiation, it should be structured to provide an audit trail to the Price Negotiation Memorandum (see FAR 15.808 and 1215.808). Generally, the PM should address the following subjects in the order presented.

(a) *Introduction.* Include a brief description of the acquisition and a brief history indicating the extent of competition and results thereof. Indentify the prospective contractor(s) and the place(s) of performance (if not evident from the description of the acquisition), summarize the negotiation schedule, and identify the Government negotiating team members by name and position.

(b) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the acquisition including such items as:

(1) Letter contract or pre-contract cost requirements;

(2) Government property to be furnished;

(3) Contract option requirements;

(4) Contractor/Government investment in facilities and equipment (and any modernization thereof to be provided by the contractor/Government); and

(5) Any deviations, special clauses or conditions anticipated.

(c) *Cost and profit/fee analysis.* Include a parallel tabulation by element of cost and profit/fee of the offeror's proposal, the Government's negotiation objective, the auditor/field pricing position, and the Government's maximum position. For each element of cost, compare the offeror and Government estimates and explain how the latter was developed, including the estimating assumptions and projection techniques employed. Further, explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective. Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or offeror's proposal should be highlighted and explained. Also, technical evaluation results which caused the Government's cost negotiation objectives to significantly differ from the offeror's proposed costs, such as differences in staffing, should be highlighted and explained. Further, there should be an identification and brief discussion of each major subcontract involved, citing the type of subcontract and stating the degree of analysis performed on the subcontract cost estimate. In addition, the rationale for the Government's profit/fee objectives, and a completed copy of the DOT "Weighted Guidelines, Profit/Fee Objective" (DOT Form 4220.32), shall be included.

(d) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability. For an incentive contract, including award fee contracts, describe

the planned profit/fee patterns, share lines, ceilings, and so forth.

(e) *Negotiation approval sought.* Indicate the specific approvals sought, e.g. total dollar amount, special clauses/conditions not constituting deviations, type of contract, fee/profit objectives, and so forth.

1215.808 Price negotiation memorandum.

(a) A price negotiation memorandum is required for all negotiated acquisitions and modifications, regardless of dollar value. The extent and complexity of the memorandum shall depend upon the nature of the individual contract. The contracting officer shall include an affirmative statement in the memorandum that the price is fair and reasonable and give the basis for the determination. For those unusual circumstances where a fair and reasonable price is not readily achievable by the contracting officer, and the matter is referred to a higher level in the administration, the manager who makes the final decision on the matter shall sign an affirmative statement that the price finally established is acceptable.

(b) The price negotiation memorandum serves as a detailed summary of:

(1) The technical, business, contractual, pricing, and other aspects of the contract negotiated, and

(2) the methodology and rationale used in arriving at the final negotiated agreement.

(c) Normally, the price negotiation memorandum is a "stand alone" document. However, when a prenegotiation memorandum (see 1215.807-70) has been prepared, the subsequent price negotiation memorandum need explain:

(1) Only the differences between the prenegotiation position and the final negotiated settlement, and the basis for those differences; and

(2) The areas identified in FAR 15.808(a).

(d) The contracting officer shall sign and date the memorandum.

1215.810 Should-cost analysis.

A should-cost analysis will be conducted when required by the head of the contracting activity. The format for the should-cost team report may be that used by DOD or in a format required by the head of the contracting activity.

Subpart 1215.9—Profit

1215.902 Policy.

(a) Use of a structured approach for determining profit or fee is required as specified at FAR 15.902(a) except for:

(1) Architect-engineering contracts;

(2) Management contracts for operation and/or maintenance of Government facilities;

(3) Construction contracts;

(4) Contracts primarily requiring delivery of material supplied by subcontractors;

(5) Termination settlements;

(6) Cost-plus-award-fee-contracts;

(7) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be authorized by the head of the contracting activity.

(b) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth in 1215.902(a) other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. (See also FAR 15.905-1.) It is intended that the methods will result in profit objectives for non-capital-intensive contracts that are below those generally developed for capital-intensive contracts.

1215.905 Profit-analysis factors.

1215.905-70 Methods.

(a) DOT Form 4220.32, "Weighted Guidelines Profit/Fee Objective", shall be used to compute profit or fee for actions covered under 1215.902.

(b) Profit/fee objectives shall be computed according to the following criteria:

(1) The profit/fee objective for manufacturing contracts shall be computed, except as provided in the following sentence, using the manufacturing weighted guidelines method which provides profit opportunity based on facilities capital investment. Certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities; in such cases, the research and development weighted guidelines method shall be used.

(2) The profit/fee objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(3) The profit/fee objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgment of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

(4) In determining whether a particular contract shall be classsified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed.

(5) Generally, assignment of specific percentages from within the "profit weight ranges" shown in columns 6 (c), (d) or (e) of DOT Form 4220.32 can be established after appropriate analysis of the elements of cost (i.e. items 7 through 12 of DOT Form 4220.32). However, to ensure consistency of contract risk assessment for DOT acquisitions, the assigned weight (%) shall generally be selected as follows:

(i) Type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

	Percent
Cost-plus-fixed-fee	0 to 0.5
Cost-plus-fixed-fee:	
With cost incentives only	1 to 2
With multiple incentives	1.5 to 3
Fixed-price-incentives:	
With cost incentives	3 to 5
With multiple incentives	4 to 6
Prospective price redetermination.	4 to 6
Firm fixed-price	6 to 8

(ii) Type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

	Percent
Cost-plus-fixed-fee	0 to 0.5
Cost-plus-fixed-fee:	
With cost incentives only	1 to 2
With multiple incentives	1.5 to 3
Fixed-price-incentives:	
With cost incentives	2 to 4
With multiple incentives	3 to 5
Prospective price redetermination.	3 to 5
Firm fixed-price	5 to 7

(iii) Type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

	Percent
Cost-plus-fixed-fee	0 to 0.5
Cost-plus-incentive	1 to 2
Fixed-price-incentive	2 to 3
Firm fixed-price	3 to 4

(iv) Time and material and labor-hour contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

(6) For "manufacturing" contracts where contractor facilities are required and will benefit the fulfillment of contract requirements, DD Form 1861 "Contract Facilities Capital Cost of Money" shall be completed in accordance with the instructions on the reverse thereof, and the dollar amount of "Contract Facilities Capital Employed" (line 8 of DD Form 1861) shall be inserted in column 6(b), item 6 of DOT Form 4220.32.

1215.905-71 Profit/fee objective for non-commercial enterprises.

(a) In determining the fee or profit, consideration must be given to the tax posture of the organization. A fair and reasonable profit to a non-profit or not-for-profit organization with tax exempt status should be considerably lower than a fee to a commercial enterprise with no tax exempt status.

(b) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and non-profit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for non-profit organizations. Therefore, the policy of the Department is to use the weighted guidelines method, as modified in paragraph (b)(2), of this section, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to Government oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract as calculated under the weighted guidelines method.

(1) As used in this Subpart, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings accrue to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method:

(i) An adjustment of minus one percent of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of minus three percent of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

(ii) The weight range under "Contractor Cost Risk" shall be minus one percent to zero in lieu of zero percent to eight percent for contracts with those nonprofit organizations.

Subpart 1215.70—Revalidation of Requirements (Negotiated)

1215.7000 Policy.

In every case where a procurement action has been in process for more than 1 year from the date of the Procurement Request, the contracting officer shall revalidate user needs which justify the procurement action. The revalidation may not be accomplished earlier than three months prior to contract award.

PART 1216—TYPES OF CONTRACTS

Subpart 1216.1—Selecting Contract Types

Sec.
1216.170 Special Requirements

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203-4 Contract clauses.

1216.203-470 Adjustment based on cost indices of labor or material.
1216.230-471 Solicitation provision.
1216.206 Fixed-ceiling-price contracts with retroactive price determination.
1216.206-3 Limitations.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.
1216.301-3 Limitations.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.
1216.404 Cost-reimbursement incentive contracts.
1216.404-2 Cost-plus-award-fee contracts.
1216.404-270 Contract clauses.

Subpart 1216.5—Indefinite Delivery Contracts

1216.503 Requirements contracts.
1216.504 Indefinite-quantity contracts.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

Sec.
1216.603 Letter contracts.
1216.603-70 Procedures.

Subpart 1216.70—Reporting of Status of Undefinitized Letter Contracts and Other Unprices Contractual Instruments by DOT Administration

1216.7001 Definition.
1216.7002 Policy.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1216.1—Selecting Contract Types.

1216.170 Special requirements.

(a) The contracting officer shall review all delivery orders and contract modifications which order, add, define, or change work to be performed under an existing contract. For all such delivery orders and contract modifications, the contracting officer shall ensure that the items or services being ordered are within the scope of work set forth in the basic contract.

(b) The contracting officer shall ensure that the scope of work under an undefinite delivery, cost reimbursement, or time and materials contract is reasonably homogenous in terms of contractor capability and specific mission needs. Unrelated work, which is appropriate for separate contracts, shall not be combined with the primary requirement for administrative convenience unless urgency and/or cost effectiveness can be clearly demonstrated.

Subpart 1216.2—Fixed-Price Contracts

1216.203 Fixed-price contracts with economic price adjustment.

1216.203-4 Contract clauses.

When none of the clauses prescribed in FAR 16.203-4 is appropriate, the contracting officer may use an alternate clause approved by the head of the contracting activity.

1216.203-470 Adjustment based on cost indices of labor or material.

(a) All economic price adjustment clauses utilizing indices must be approved by the head of the contracting activity.

(b) The contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should

be included in the price adjustment provision of the prime contract.

1216.203-471 Solicitation provision.

The contracting officer shall insert the provision at 1252.216-71, "Evaluation of Proposals Subject to Economic Price Adjustment" in all solicitations that contain an economic price adjustment clause.

1216.206 Fixed-ceiling-price contracts with retroactive price redetermination.

1216.206-3 Limitations.

The head of the contracting activity may approve the use of a fixed-ceiling-price contract with retroactive price redetermination.

Subpart 1216.3—Cost Reimbursement Contracts

1216.301 General.

1216.301-3 Limitations.

Each administration shall establish a format for the determination and findings (D&F) required by FAR 16.301-3(c). The D&F shall cover all the elements set forth in FAR 16.301-3 and shall be executed by the contracting officer.

Subpart 1216.4—Incentive Contracts

1216.403 Fixed-price incentive contracts.

The determination and findings required by FAR 16.403(c) shall be executed by the contracting officer.

1216.404 Cost-reimbursing incentive contract.

1216.404-2 Cost-plus-fee contracts.

1216.404-270 Contract clauses.

The contracting officer shall insert the following clauses in award fee contracts. Each clause may be modified to meet individual situations.

(a) 1252.216-72, Estimated Cost, Base Fee, and Award Fee;

(b) 1252.216-73, Payment of Base and Award Fee;

(c) 1252.216-74, Determination of Award Fee;

(d) 1252.216-75, Performance Evaluation Plan;

(e) 1252.216-76, Distribution of Award Fee.

Subpart 1216.5—Indefinite-Delivery Contracts.

1216.503 Requirements contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under a requirements contract. This statement shall be fowarded with the procurement request.

1216.504 Indefinite-quantity contracts.

The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the specified minimum and estimated maximum quantity. This statement shall be fowarded with the procurement request.

Subpart 1216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

1216.603 Letter contracts.

1216.603-70 Procedures.

(a) Requests for authority to issue letter contracts shall be approved by the head of the contracting activity. The requirements of FAR Part 6 and Part 1206 shall be followed when awarding or contemplating award of a letter contract. The request for authority to issue a letter contract shall include the following:

(1) Name and address of proposed contractor.

(2) Location were contract is to be performed.

(3) Contract number, including modification number if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule.

(6) Amount of letter contract.

(7) Performance period of letter contract.

(8) Estimated total amount of definitive contract.

(9) Type of definitive contract to be executed (fixed price, cost-plus-award-fee, etc.).

(10) Statement that definitive contract will contain all required clauses or that deviations therefrom have been approved.

(11) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract, and that no other contract type is suitable.

(12) If a modification, date of letter contract approval and of execution.

(13) Statement as to the extent or degree of competition obtained during the preaward process leading up to the request for authority to issue subject letter contract. A statement shall also be included indicating the status of the "Justification for Other Than Full and Open Competition", in those instances when it is required under FAR Part 6 and award is contemplated prior to approval of the justification for other than full and open competition.

(b) Profit or fee under letter contracts, shall not be paid until the contract has been definitized.

(c) In addition to the requirements set forth at FAR 16.603-2 (c) through (e) and FAR 16.603.4, the letter contract shall include:

(1) Signature of the contracting officer.

(2) Provision for written acceptance by the contractor.

(3) Statement of work.

(4) Provision for delivery or performance schedule and balance of inspection and acceptance.

(5) Statement that no profit or fee shall be paid under the letter contract.

(6) List of Government property and value, if the property is being provided prior to the scheduled date of definitization.

Subpart 1216.70—Reporting of Status of Undefinitized Letter Contracts and Other Unpriced Contractual Instruments by DOT Administrations

1216.7001 Definitions.

Unpriced (not definitively priced) contractual instruments include letter contracts, unpriced orders, unilateral change orders, and undefinitized modifications to contracts.

1216.7002 Policy.

(a) Each DOT Administration shall report monthly to the Senior Procurement Executive on the status of all unpriced contractual instruments. This report shall be submitted to the Office of Acquisition and Grant Management (M-60) by the 15th day of the month; negative reports are not required.

(b) The monthly report shall include the following information for each unpriced contractual instrument:

(1) Contract number and dollar value (Government obligation) of unpriced option instrument;

(2) Estimated value of definitized contractural instrument;

(3) Date the instrument was issued;

(4) Original schedules;

(5) Reasons for definitization schedule slippage, if applicable, and new schedule for definitization;

(6) Remedies and actions taken to speed the definitization process.

PART 1217—SPECIAL CONTRACTING METHODS

Subpart—1217.1 Multi-year Contracting

Sec.
1217.102 Policy.
1217.102-3 Objectives.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

Sec.
1217.7001 Clauses.

Subpart 1217.71—Shared Energy Savings Contracting

1217.7100 Policy.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)) 48 CFR 1.301; 49 CFR 1.59.

Subpart 1217.1—Multi-year Contracting

1217.102 Policy.

1217.102-3 Objectives.

The head of the contracting activity is designated as the approval authority for all clause modifications described in FAR 17.102-3(d). This authority may not be redelegated.

Subpart 1217.4—Leader Company Contracting

1217.402 Limitations.

Leader company contracting shall not be used without the written authorization of the Senior Procurement Executive.

Subpart 1217.70—Fixed Price Contracts for Vessel Repair, Alteration or Conversion

1217.7001 Clauses.

(a) Clauses set forth in 1252.217-71 through 1252.217-80 shall be included in formally advertised fixed-price contracts for vessel repair, alteration or conversion, and which are to be performed within the United States, its possessions, or Puerto Rico. Unless inappropriate, the clauses should also be included in negotiated contracts and contracts to be performed outside the United States. The Maritime Administration may deviate from these requirements, as appropriate, in accordance with 1201.103(b).

(b) The clause at 1252.217-81, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer. When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract. The customary guarantee period, to be inserted in the first sentence of the clause at 1252.217-81, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances, and where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted for the usual 60 days. Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such fact and the reason for the need for such longer period shall be set forth in letter form to the head of the contracting activity, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted in the first sentence of the clause at 1252.217-81, Guarantee.

(c) The clause at 1252.217-70, Index for Specifications, shall be used when appropriate.

Subpart 1217-71—Shared Energy Savings Contracting

1217.7100 Policy.

Contracts for shared energy savings of up to 25 years in length are permitted under Title VIII of the National Energy Conservation Policy Act, as amended. Shared energy savings arrangements are appropriate where a contractor makes improvements and/or operating changes to Federally-owned buildings and facilities to improve energy efficiency, at no cost to the Federal Government. Proposed actions under this section should be coordinated with the Office of Acquisition and Grant Management (M-60).

PART 1219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 1219.2—Policies

Sec.
1219.201 General policy.
1219.201-70 Director, Officer of Small and Disadvantaged Business Utilization.
1219.201-71 Small and Disadvantaged Business Utilization Specialists.

Subpart 1219.5—Set-Asides for Small Business

1219.501 General.
1219.503 Setting aside a class of acquisitions.
1219.503-70 Class set-aside for construction.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.
1219.602-1 Referral.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.
1219.705-2 Determining the need for a subcontracting plan.
1219.705-6 Postaward responsibilities of the contracting officer.
1219.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

Authority: Sec. 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1219.2—Policies

1219.201 General policy.

The heads of the agencies shall be responsible for recommending goals for small, and small disadvantaged business utilization for programs under their cognizance. The recommended goals shall be developed in collaboration with the supporting head of the contracting activity, program officials, the Small and Disadvantaged Business Utilization Specialists (SDBUS) and shall take into account both past performance relative to such goals and the number, type, and dollar value of acquisitions projected for the ensuing fiscal year.

1219.201-70 Director, Office of Small and Disadvantaged Business Utilization.

The Director, OSDBU, is responsible for the implementation and execution of the small, and small disadvantaged business programs required by sections 8 and 15 of the Small Business Act, as amended, and provides guidance and advice, as appropriate, to agency program and contracts officials. The Director, OSDBU, is the central point of contact for general inquiries concerning the small and disadvantaged business programs from industry, the Small Business Administration (SBA), and from the Congress. The Director, OSDBU, shall represent the Department in discussions with other Government agencies on small and small disadvantaged business matters.

1219.201-71 Small and Disadvantaged Business Utilization Specialist.

(a) SDBUSs shall be appointed by the heads of contracting activities.

(b) The SDBUS shall perform the following duties, as appropriate:

(1) Maintain a program designed to locate capable small and small disadvantaged business sources for current and future acquisitions;

(2) Coordinate inquiries and requests for advice from small and small disadvantaged business concerns on acquisition matters;

(3) Review procurement requests to:

(i) Assure that small business concerns will be afforded an equitable opportunity to compete;

(ii) As appropriate, initiate recommendations for small business set-

asides, (individual and class) or offers of requirements to the SBA for the 8(a) program;

(iii) Identify possible breakout of items or services suitable for acquisition from small business and small disadvantaged business concerns;

(4) Take action to assure the availability of adequate specifications and drawings, when necessary, to obtain small business participation in an acquisition. When small business concerns cannot be given an opportunity on a current acquisition, initiate action, in writing, with appropriate technical and contracting personnel to ensure that necessary specifications and/or drawings for future acquisitions are available.

(5) Advise small business with respect to the financial assistance available under existing laws and regulations and assist such concerns in applying for financial assistance;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that adequate records are maintained, and accurate reports prepared, concerning small business participation in acquisition programs;

(8) Make available to SBA copies of solicitations when so requested;

(9) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small and small, disadvantaged business programs; and

(10) May participate, if required, in Business Opportunity/Federal Procurement Conference, and other Government-industry conferences and meetings.

Subpart 1219.5—Set-Asides for Small Business

1219.501 General.

The SDBUS shall initiate recommendations to the contracting officer for small business set-asides with respect to individual acquisitions or classes of acquisitions or portions thereof.

1219.503 Setting aside a class of acquisitions.

1219.503-70 Class set-aside for construction.

(a) Each proposed acquisition for construction estimated to cost $2,000,000 or less shall be set-aside for exclusive small business participation. Such set-asides shall be considered to be unilateral small business set-asides, and shall be withdrawn in accordance with the procedure of FAR 19.506 only if found not to serve the best interest of the Government.

(b) Small business set-aside perferences for construction acquisition in excess of $2,000,000 shall be considered on a case-by-case basis.

Subpart 1219.6—Certificates of Competency and Determinations of Eligibility

1219.602 Procedures.

1219.602-1 Referral.

A copy of the documentation supporting the determination that a small business concern is not responsible, as required by FAR 19.602-1(a), shall be transmitted to the Director, OSDBU, concurrently with the submission of a copy of the documentation to the appropriate SBA Regional Office.

Subpart 1219.7—Subcontracting With Small Business and Small Disadvantaged Business Concerns

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1219.705-2 Determining the need for a subcontracting plan.

A copy of all determinations that there are no subcontracting opportunities (see FAR 19.705-2(c)) shall be provided to the Director, OSDBU.

1219.705-6 Postaward responsibilities of the contracting officer.

A copy of each approved small business subcontracting plan, shall be provided to the Director, OSDBU.

1219.705-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Pub. L. 95-507 subconstracting plans and goals.

PART 1222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 1222.1—Basic Labor Policies

Sec.
1222.101 Labor relations.
1222.101-3 Reporting labor disputes.
1222.101-70 Admittance of union representatives to DOT installations.
1222.101-71 Contract clauses.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.
Sec.
1222.608-2 Determination of eligibility.
1222.608-3 Protests against eligibility.
1222.608-4 Award pending final determination.
1222.608-6 Postaward.

Subpart 1222.70—Service Contract Act of 1965

1222.7001 General.
1222.7002 Contract clauses.

Subpart 1222.71—Administration Labor Advisor

222.7101 Administration labor procedures.

Subpart 1222.72—Fair Labor Standards Act of 1938

1222.7201 General.

Subpart 1222.73—Notification to 8(a) Subcontractors

1222.7301 Requirements.

Authority: Section 205(C), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1222.1—Basic Labor Policies

1222.101 Labor relations.

1222.101-3 Reporting labor disputes.

(a) When a strike or labor dispute occurs or is anticipated which has, or is expected to have, a serious impact on DOT operations or when for any other reason notification of the administrator's headquarters is warranted, the contracting officer shall report the following information to the administration labor advisor, if appointed or designated official, in accordance with administration procedures (see Subpart 1222.71):

(1) Identification and location of strike, contract number, contractor's name, and name of contractor's representative at the plant or construction site.

(2) Urgency or criticality of affected contract.

(3) Date strike began or may begin.

(4) Main issues involved.

(5) Name and number of local union and name and address of cognizant local union official.

(6) Evaluation of strike situation with regard to possibilities of settlement.

(7) Current apparent temper of the work site situation with regard to ingress and egress.

(8) Number of employees affected.

(9) Participation, if any, by the Federal Mediation and Conciliation Service or by a state mediation agency.

(10) If the acquisition is urgent and the strike appears likely to be one of extended duration, include comment on the feasibility of acquisition from an alternate source.

(b) When a strike or labor dispute at the plant of a subcontractor is an actual

or potential threat to timely completion of the DOT contract and when such delay will be a serious handicap to operations, the above report shall contain the following in lieu of the information indicated above.

(1) Urgency or criticality of affected contract.

(2) Description and quantity of the material tied up by strike.

(3) Percent completion of contractor's order in supplier's plant.

(4) Evaluation of strike situation with regard to possibilities of settlement. (This may be obtained from the DOT contractor or from the subcontractor.)

(5) Contractor's position as to use of alternate supply sources.

(c) Upon settlement of a strike or labor dispute reported under paragraph (a) or (b) of this section, the administration labor advisor, or designated official, shall be informed as to the date on which work was resumed.

1222.101-70 Admittance of union representatives to DOT installations.

It is the Department's policy to admit accredited labor union representatives of contractor employees to DOT installations to visit work sites for the purpose of transacting business with contractors, their employees, or union stewards pursuant to existing collective bargaining agreements; provided that their presence and activities will not interfere with the work progress or violate the safety or security regulations applicable to installation visitors. Restrictions in excess of those imposed on other visitors transacting business at the installation should not be imposed on such employee representatives. Permission to visit an installation shall not include the right to hold meetings, collect dues, or make speeches. In the event employee representatives are denied entry to a work site for any reason, a report of such denial will immediately be sent to the administration labor advisor, or designated official. Such report shall include the reasons for denial, including names of representatives denied entry and their union affiliation, including local union number.

1222.101-71 Contract clauses.

(a) The contracting officer shall insert the clause at 1252.222-71, "Strikes or Picketing Affecting Timely Completion of the Contract Work", in all FAA construction contracts. The clause may also be used in construction contracts awarded by other administrations.

(b) The contracting officer shall insert the clause at 1252.222-72, "Strikes or Picketing Affecting Access to FAA Facility", in all contracts requiring work at an FAA facility. The clause, appropriately modified, may also be used by other administrations.

Subpart 1222.3—Contract Work Hours and Safety Standards Act

1222.303 Administration and enforcement.

The contracting agency has primary responsibility for administration and enforcement of the overtime provisions of the Contract Work Hours and Safety Standards Act. While the contractor is not required to submit payrolls to the contracting officer unless the Davis-Bacon Act applies, the contracting officer is responsible for assuring by other means that laborers and mechanics are paid any overtime premium due them under the Contract Work Hours and Safety Standards Act. This may be done by reviewing payroll records at the contractor's office and by interviewing employees.

Subpart 1222.6—Walsh-Healey Public Contracts Act

1222.608 Procedures.

1222.608-2 Determination of eligibility.

The contracting officer shall transmit the information described in FAR 22.608-2 (f)(1)(ii) and (f)(2). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, or designated official (see Subpart 1222.70).

1222.608-3 Protests against eligibility.

The contracting officer shall transmit the information described in FAR 22.608-3(b). The contracting officer shall furnish a copy of such transmittals to the administration labor advisor, or designated official.

1222.608-4 Award pending final determination.

Award may be made immediately, as provided in FAR 22.608-4(a), if the contracting officer's certification is approved in writing by the head of the contracting activity. The contract file documentation addressed at FAR 22.608-4(b) is the approved certification required by FAR 22.608-4(a). A copy of the written notice shall be furnished to the administration's labor advisor, or designated official.

1222.608-6 Postaward.

(a) See 1249.1 for procedures regarding contract termination.

(b) A copy of notification furnished the Department of Labor as required by FAR 22.608-6(c) shall be furnished the administration's labor advisor, or designated official.

Subpart 1222.70—Service Contract Act of 1965

1222.7001 General.

Pending future coverage in the FAR, administrations shall continue to follow policies and procedures in FPR Temporary Regulation 76, Revision of Labor Standards for Federal Service Contracts, February 23, 1984, and administration procedures instituted thereunder.

1222.7002 Contract clauses.

(a) Clause for contracts of $2,500 or less. The contracting officer shall insert the clause at 1252.222-70, Service Contract Act of 1965 Contracts of $2,500 or Less, in solicitations and contracts when the contract amount is expected to be $2,500 or less and the Service Contract Act of 1965 is applicable. With respect to Blanket Purchase Agreements, the amount to be compared to the dollar threshold is the total dollar amount of orders reasonably anticipated to be placed in a 12-month period.

(b) Clauses for contracts over $2,500.

(1) The contracting officer shall insert the clause at 1252.222-75, Service Contract Act of 1965, as amended, when the contract is:

(i) For over $2,500 or

(ii) For an indefinite dollar amount and the contracting officer expects the contract amount will exceed $2,500 during any 12-month period.

(2) The clause at 1252.222-77, Fair Labor Standards Act and Service Contract Act-Price Adjustment (Multi-year and Option Contracts), when the contract is expected to be a fixed-price service contract and is a multi-year contract or is a contract with options to renew.

(3) The clause at 1252.222-78, Fair Labor Standards Act and Service Contract Act-Price Adjustment, when the contract is expected to be a fixed-price service contract and is not a multi-year contract or is not a contract with options to renew.

(4) The clause at 1252.222-79, Service Contract Act Requirements as to Vacation Pay.

(5) The clause at 1252.222-73, Contract Work Hours and Safety Standards Act-Overtime Compensation.

(6) The clause at 1252.222-74, Payrolls and Basic Records.

Subpart 1222.71—Administration Labor Advisor

1222.7101 Administration labor procedures.

Each administration shall establish procedures to assure compliance with this part. Each administration may

appoint a labor advisor or designate an official responsible for coordinating labor policy and procedures as they pertain to the acquisition process. The individual so designated shall be located in its headquarters and the appointment shall be made by memorandum, with a copy sent to each of the administration's contracting offices.

Subpart 1222.72—Fair Labor Standards Act of 1938

1222.7201 General.

The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219), establishes minimum wage and maximum hour standards applicable to employees, unless otherwise exempted, engaged in interstate or foreign commerce or in the production of goods for such commerce. Thus, the statute may or may not cover employees on a Government contract, depending upon the nature of the contract work. The Department of Labor has responsibility for administering and enforcing this statute. A Labor Department investigation in connection therewith may be of vital concern to DOT because it may divulge violations of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-kickback) Act for which DOT has enforcement responsibility. When access to a contractor's submitted records is requested by the Department of Labor in connection with its investigation under the Fair Labor Standards Act, the contracting officer shall cooperate fully, and shall immediately request the Labor Department representative to furnish promptly any information developed indicating violation of the above statutes for which DOT has enforcement responsibility.

Subpart 1222.73—Notification to 8(a) Subcontractors

1222.7301 Requirements.

Contracting officers shall assure that firms receiving 8(a) subcontracts subject to the Davis-Bacon Act, Service Contract Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback) Act and Walsh-Healy Act are made aware during contract negotiation of the requirements of these Acts.

PART 1223—ENVIRONMENT, CONSERVATION, AND OCCUPATIONAL SAFETY

Subpart 1223.1—Pollution Control and Clean Air and Water

Sec.
1223.106 Delaying award.
1223.107 Compliance responsibilities.

Subpart 1223.70—Safety Requirements for Selected DOT Contractors

1223.7001 Contract clauses.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1223.1—Pollution Control and Clean Air and Water

1223.106 Delaying award.

The contracting officer shall submit all notifications initiated under FAR 23.106 to the Environmental Protection Agency through the Senior Procurement Executive.

1223.107 Compliance responsibilities.

Notification required by FAR 23.107 shall be submitted in the same manner as required by 1223.106.

Subpart 1223.70—Safety Requirements for Selected DOT Contracts

1223.7001 Contract clauses.

(a) Where all or part of a contract will be performed on Government owned or leased property, the contracting officer shall insert the clause at 1252.223-71 "Accident and Fire Reporting."

(b) For all NHTSA solicitations and contracts under which human test subjects will be utilized, the contracting officer shall insert the clause at 1252.223-72 "Protection of Human Subjects Compliance." Copies of the NHTSA directives shall be made available to the successful contractor.

PART 1224—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 1224.1—Protection of Individual Privacy

Sec.
1224.102 General.
1224.102-70 Applicability.

Subpart 1224.2—Freedom of Information Act

1224.202 Policy.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1224.1—Protection of Individual Privacy

1224.102 General.

DOT rules and regulations implementing the Privacy Act are located at 49 CFR Part 10.

1224.102-70 Applicability.

(a) Illustrations of systems of records to which the Privacy Act applies include the following:

(1) Records which are maintained for administrative functions of a Federal agency, such as personnel and payroll records.

(2) Health records which are maintained by a contractor engaged to provide health services to agency personnel.

(b) Illustrations of systems of records to which the Act does not apply include the following:

(1) Records which are maintained by a contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government.

(2) Under contracts with a State or private educational organization to provide training, the records generated on contract students pursuant to their attendance (admission forms, grade reports), provided that they are similar to those maintained on other students are commingled with records on other students.

(3) A system used by a contractor as a result of management discretion, for example, systems of personnel records maintained by contractors on their own behalf.

Subpart 1224.2—Freedom on Information Act

1224.202 Policy.

DOT rules and regulations implementing the Freedom of Information Act (FOIA) are located in 49 CFR Part 7.

PART 1225—FOREIGN ACQUISITION

Subpart 1225.1—Buy American Act-Supplies

Sec.
1225.102 Policy.

Subpart 1225.2—Buy American Act-Construction Materials

1225.202 Policy.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.

1225.304 Excess and near-excess foreign currencies.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1225.1—Buy American Act-Supplies

1225.102 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.102(b) for contracts exceeding $1 million.

Subpart 1225.2—Buy American Act-Construction Materials

1225.202 Policy.

The head of the contracting activity shall approve the determination required by FAR 25.202(b) for cost of construction materials exceeding $100,000.

Subpart 1225.3—Balance of Payments Program

1225.302 Policy.

The head of the contracting activity shall make the determinations/provide the authorization required by FAR 25.302 (b)(2), (b)(3) and (c).

1225.304 Excess and near-excess foreign currencies.

The head of the contracting activity shall make the determination required by FAR 25.304(c).

PART 1227—PATENTS, DATA AND COPYRIGHTS

Subpart 1227.2—Patents

Sec.
1227.201-1 General.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.302 Policy.

1227.305 Administration of Patent Right Clauses

1227.305-4 Conveyance of invention rights acquired by the Government.

Subpart 1227.4—Rights in Data and Copyrights

1227.401-73 Solicitation provisions and contract clauses.

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1227.2—Patents

1227.201-1 General.

For the Department of Transportation, the office having cognizance of patent matters shall be the DOT Patent Counsel, Office of General Counsel.

Subpart 1227.3—Patent Rights Under Government Contracts

1227.302 Policy.

The DOT Senior Procurement Executive shall be the official that approves all determinations to require the contractor, or assignee, or exclusive licensee to grant such licenses as specified at FAR 27.302(f). The head of the contracting activity shall have the responsibility and authority for making findings and determination with respect to the granting of such a license and submitting such findings and determination to the Senior Procurement Executive for approval. When necessary, the contracting officer or the HCA should seek advice from the OST Patent Counsel.

1227.305 Administration of patent right clauses.

1227.305-4 Conveyance of invention rights acquired by the Government.

(a) The contracting officer shall ensure that solicitations and contracts which include either of the clauses at FAR 52.227-11 and 52.227-13, include a mechanism by which the contractor is required to report inventions made in the course of contract performance. Contracting officers may fulfill this requirement by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontracts, at contract completion, and when required to disclose inventions in accordance with the FAR clauses cited above. Contracting officers shall ensure that the contractor submits all of the disclosure information required by the specific FAR clause included in the contract.

(b) When a contractor discloses an invention under a contract including one of the clauses cited above, the contracting officer shall take the following action(s), as appropriate:

(1) For contracts which include the FAR clause 52.227-11:

(i) Ensure that the Government receives a license pursuant to paragraph (b) of the clause.

(ii) Ensure that title to any subject invention is transferred to the Government when required pursuant to paragraph (d) of the clause.

(2) For contracts which include the FAR clause 52.227-13:

(i) Ensure that the contractor assigns the entire right, title, and interest to the subject invention to the Government pursuant to paragraph (b) of the clause.

(ii) Ensure that the Government retains the minimum rights specified in paragraph (c) of the clause when the contractor retains principal or exclusive rights.

Subpart 1227.4—Rights in Data and Copyrights

1227.409 Solicitation provisions and contract clauses.

(a) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of FAR 27.401 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(b) The contracting officer may prescribe, as appropriate, clauses consistent with the policy in FAR 27.401 in contracts for architect-engineer services and construction work.

(c) The contracting officer shall prescribe clauses consistent with the requirements of Pub. L. 97-219 (the Small Business Administration Development Act of 1982) and the Small Business Innovation Policy Directive No. 65-01 in Small Business Innovative Research (SBIR) contracts.

(d) The contracting officer may prescribe, as appropriate, clauses consistent with the policy of FAR 27.401 in contracts for the operation of Government-owned research, development, or production facilities.

PART 1228—BONDS AND INSURANCE

Subpart 1228.1—Bonds

Sec.
1228.106 Administration.
1228.106-6 Furnishing of information.
1228.106-7 Withholding contract payments.
1228.106-70 Execution and administration of bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.
1228.306-70 Contracts for lease of aircraft.
1228.306-70-1 Clauses.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1228.1—Bonds

1228.106 Administration.

1228.106-6 Furnishing of information.

(a) The contracting officer shall upon request furnish the name and address of the prime contractor's surety to employees, suppliers, and

subcontractors having a contractual or employment relationship with the prime contractor or a first-tier subcontractor. When furnishing such information, the inquirer may also be informed that:

(1) An employee, supplier, or subcontractor having a contractual or employment relationship with a prime contractor or first-tier subcontractor has the right to sue the prime contractor's surety under the Miller Act for amounts owed for work performed or materials delivered; and

(2) In order to avail themself of legal remedies provided by the Miller Act, an employee, supplier, or subcontractor having a contractual or employment relationship with a first-tier subcontractor must act within the following time frames:

(i) Inform the prime contractor within 90 days after the day on which the last of the work was performed or the day on which the last of the material was delivered, that such work or material has not been fully paid for; and

(ii) File against the surety within one year after the day on which the last of the work was performed or the day on which the last of the material was delivered, any required court action for collection of amounts due. "Employees" as used in this paragraph means both supervisory and nonsupervisory employees who have furnished or have been requested to furnish labor in prosecution of the work required by the contract in question. See 1228.106–6(b) below for the contracting officer's responsibility with respect to laborers, mechanics, appentices, trainees, watchmen and guards.

(b) On construction contracts exceeding $2,000, if the contracting officer is informed, either through routine compliance checking, a complaint, or a request for information, that a laborer, mechanic, apprentice, trainee, watchman or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with FAR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-kickback) Act for assuring proper payment to such employees. Claims of such employees, along with claims of the United States referred to in 1228.106–7 take precedence over claims of sureties.

(c) When furnishing a copy of a payment bond and contract in accordance with FAR 28.106–6(c), the requirement for a copy of the contract may be satisfied by furnishing a machine copy of the contract's first pages, which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by his or her signature and title and name of the operating administration. The fee for furnishing the requested certified copies shall be determined in accordance with the Departmental Freedom of Information Act regulation (49 CFR Part 7). Payment for requested records shall be made by check or money order drawn to the order of the operating administration providing the certified copies, or by cash.

1228.106–7 Withholding contract payments.

A surety which, pursuant to a Miller Act payment bond, has satisfied debts owed by the contractor to an employee of the contractor, a first-tier subcontractor, or a material man supplying the contractor, obtains a right of subrogation to contract funds due the contractor and held by the Government. However, the surety's subrogation rights are subject to any claims of the United States based on the contractor's debts to it and the Government's right to make payment to the contractor from withheld funds if necessary to achieve timely completion of the contracts.

1228.106–70 Execution and administration of bonds.

(a) The surety shall be notified, as soon as feasible, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation must appear.

(c) Performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(d) Bonds shall be filed with the original contract to which they apply, or all bonds shall be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross reference the applicable bonds.

Subpart 1228.3—Insurance

1228.306 Insurance under fixed-price contracts.

1228.306–70 Contracts for lease of aircraft.

1228.306–70–1 Clauses.

(a) The clauses at 1252.228–71 through 1252.228–73 shall, unless otherwise indicated by the specific instructions for their use, be inserted in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) Insert the clause in 1252.228–71 except in the following circumstances:

(1) When the hourly rental rate does not exceed $250.00 and the total rental cost for any single transaction is not in excess of $2,500 or

(2) Where the cost of hull insurance does not exceed 10% of the contract rate, or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) When fair market value of the aircraft can be determined, insert the clause at 1252.228–72.

(d) Section 504 of the Federal Aviation Act of 1958, as amended, provides that no lessor of an aircraft under a bona fide lease of thirty days or more, shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause prescribed in paragraph (d)(1) below shall be used.

(1) Insert the clause in 1052.228–73 in any contract for out-service flight training or for the lease of aircraft where the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) Any contract for out-service flight training shall include a clause in the contract Schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft, and that at no time shall other personnel

be permitted to take command of the aircraft.

PART 1229—TAXES

Subpart 1229.1—General.

Sec.
1229.101 Resolving tax problems.

Subpart 1229.70—Filing of Internal Revenue Service Information Returns.

1229.7001 General.
1229.7002 Responsibilities.
1229.7003 Procedures.

Authority (Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59).

Subpart 1229.1—General

1229.101 Resolving tax problems.

(a) The Office of General Counsel will represent the Department in all negotiations under FAR Part 29.

(b) Communications with the Department of Justice for representation or intervention in proceedings concerning taxes shall be made only by the General Counsel.

(c) Matters involving foreign taxes requiring the assistance of other executive departments shall be forwarded to the General Counsel for appropriate action.

(d) Tax problems which cannot be solved readily by reference to FAR Part 29 shall be forwarded to the General Counsel through the administration legal counsel. The forwarding of tax problems to the General Counsel is particularly important where:

(1) The amount of tax actually or potentially involved is substantial;

(2) The legal incidence of a tax appears to be upon the United States or its property, a specific exemption pertinent to the transaction appears to exist, or a State or local tax appears to have a direct effect upon a transaction in interstate commerce;

(3) Judicial or administrative action against a contractor is threatened;

(4) The imposition or potential imposition of a tax is the result of an amendment of a tax law or a change of position by the tax authorities; or

(5) The possibility exists of obtaining refunds of taxes previously paid.

(e) Tax problems forwarded to the General Counsel shall be accompanied by the following material, which shall be furnished by the initiating office or by intervening offices:

(1) A comprehensive statement of pertinent facts, including documents and correspondence.

(2) A copy of the contract.

(3) A thorough review of the legal issues involved and recommended action to be taken.

(4) If appropriate, a statement of the problem's effect(s) on procurement policies and procedures with recommendations.

(f) Information copies of tax-related correspondence shall be sent to the procurement executive.

Subpart 1229.70—Filing of IRS Information Returns

1229.7001 General

The Department is required to file Information Tax returns for all payments made to individuals and partnerships totaling $600 or more in a calendar year. However, reporting generally is not required by Federal agencies for payments made to corporations except in the case of medical payments. Returns must be filed for payments totaling $600 or more for:

(a) Salaries, wages, commissions, fees and other forms of compensation for services rendered by individuals not Department of Transportation employees.

(b) Rents (paid to individuals vice real estate agents).

(c) Interest penalties incurred under the Prompt Payments Act and the Contract Disputes Act.

(d) Any amount in excess of $600 that was owed to DOT and that has been declared uncollectable as a result of a defaulted obligation, not in dispute, and either:

(1) A Federal statute expiration for collection of the debt has occurred, or

(2) A formal compromise agreement has been entered into.

(e) If an amount less than the amount owed is accepted as payment in full, the difference between the amount of the debt and the settlement amount must be reported.

(f) Returns must also be prepared for payments and any related interest penalties made to corporations engaged in providing medical and health care services or in billings and collections for such services.

1229.7002 Responsibilities.

(a) *Procurement Office.* The procurement office in each operating administration is responsible for:

(1) Identifying the recipients subject to reporting,

(2) Obtaining the appropriate informational data i.e., the taxpayer identification number or social security number, and

(3) Providing this data to the accounting office.

(b) *Accounting Office.* The accounting office in each operating administration that processes the payments is responsible for preparing the related IRS information returns.

1229.7003 Procedures.

(a) The procurement office will identify the recipients subject to reporting as indicated at 1229.7001, as they occur during the year. For contracts exceeding $25,000, representations and Certifications statements filled out by vendors in accordance with Federal Acquisition Regulations (52.215–6 or 52.214–2) may be used to assist in identifying the recipients. For those acquisitions not expected to exceed $25,000, the procurement office shall identify recipients at some point within the small purchase acquisition cycle. The procurement office will obtain the tax payer identification number or social security number when the contract is negotiated (immediately after contract award if awarding under small purchase or sealed bid procedures) or when the lease agreement is executed and provide the data to the accounting office.

(b) The accounting office will accumulate the payments for the calendar year for each of the identified recipients and prepare the returns.

PART 1230—COST ACCOUNTING STANDARDS

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1230.3—CAS Contract Requirements

1230.304 Waiver.

The head of the contracting activity is authorized to waive CAS requirements for nondefense contracts.

PART 1231—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1231.1—Applicability

1231.101 Objectives.

Requests for individual deviations to the cost principles shall be submitted to the agency head. Requests for administration supplements and class deviations shall be submitted through the Senior Procurement Executive who will coordinate the request with the Civilian Agency Acquisition Council.

PART 1232—CONTRACT FINANCING

Subpart 1232.1—General

Sec.
1232.102 Description of contract financing methods.

Subpart 1232.4—Advance Payments

1232.402 General.

Subpart 1232.5—Progress Payments Based on Costs

1232.501 General.
1232.501-2 Unusual progress payments.
1232.502 Preaward matters.
1232.501-2 Contract finance office clearance.
1232.504-2 Subcontracts.

Subpart 1232.7—Contract Funding

1232.702 Policy.
1232.703 Contract funding requirements.
1232.703-1 General.

Subpart 1232.70—Prompt Payments

1232.7001 Prompt payments.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1232.1—General

1232.102 Description of contract financing methods.

Progress payments based on a percentage or stage of completion are authorized for use as a payment method under DOT contracts or subcontracts for construction, alteration or repair, and shipbuilding and conversation. For all other contracts, progress payment provisions shall be based on costs, as provided in FAR Subpart 32.5, and Subpart 1232.5, of this chapter, except that progress payments based on a percentage or stage of completion may be authorized by the head of the contracting activity when a determination is made that progress payments based on costs cannot be practically employed and that it is feasible to administer progress payments based on a percentage or stage of completion.

Subpart 1232.4—Advance Payments

1232.402 General.

(a) The head of the contracting activity shall have the responsibility and authority for making findings and determinations concerning advance payments, except advance payments in excess of $50,000 pursuant to Pub. L. 85-804, as amended, must be approved by the Secretary of Transportation. This authority may not be redelegated.

(b) Before requesting authorization for any advance payment arrangements, the proposed advance payments shall be coordinated with the finance office.

Subpart 1232.5—Progress Payments Based on Costs

1232.501 General.

1232.501-2 Unusual progress payments.

Requests for unusual progress payments will not be considered as a handicap or adverse factor in the award of a contract, provided the bid or proposal is not conditioned on approval of such request.

1232.502 Preaward matters.

1232.502-2 Contract finance office clearance.

The approving authority for actions specified in FAR 32.502-2 is the head of the contracting activity.

1232.504 Subcontracts.

The head of the contracting activity is the approving official for unusual progress payments to subcontractors.

Subpart 1232.7—Contract Funding

1232.702 Policy.

In addition to the requirements of (a) in the second sentence of FAR 32.702, and for fixed price incentive or redeterminable contracts, the contracting officer shall prior to award ensure that sufficient funds are available to cover the ceiling price thereof.

1232.703 Contract funding requirements.

1232.703-1 General.

Incrementally funded cost reimbursement contracts shall state:

(a) The limit of the Government's liability (i.e., amount of funds available);

(b) The portion of the contract scope (i.e., specific property or services, or period of time) for which funds are available;

(c) The proportionate cost and fee for the property, services or period identified per paragraph (b) of this section; and

(d) For contracts containing separately priced portions (e.g. Task Order contracts), the individual cost and fee for each incrementally funded portion.

Subpart 1232.70—Prompt Payments

1232.7001 Prompt payments.

Pending future coverage in the FAR, administrations shall implement Pub. L. 97-177 (the Prompt Payment Act) and Office of Management and Budget (OMB) Circular A-125, by continuing to follow the policies and procedures in FPR Temporary Regulation 66, Prompt Payment Procedures (dated October 5, 1982) and Supplement 1 thereto (dated September 29, 1983), and administration procedures instituted thereunder.

PART 1233—PROTESTS, DISPUTES, AND APPEALS

Subpart 1233.1—Protests

Sec.
1233.103 Protests to the agency.
1233.104 Protests to GAO.
1233.105 Protests to GSBCA.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.
1233.212 Contracting officer's duties upon appeal.
1233.213 Obligation to continue performance.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1233.1—Protests

1233.103 Protests to the agency.

The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the Senior Procurement Executive.

1233.104 Protests to GAO.

(a) *General.* Prior to submitting a protest response to GAO, the completed response shall be submitted to the Senior Procurement Executive for review and coordination at least two days prior to date due to GAO. (In those instances when the contractor elects to use express procedures, the completed response shall be submitted to the Senior Procurement Executive for review and coordination at least one day prior to date due to GAO.) The head of the contracting activity has the responsibility to provide GAO with the information required by FAR 33.104(a)(6).

(b) *Protests before award.* The Assistant Secretary for Administration is responsible for the determination authorizing award of a contract prior to resolution of a protest. Requests should be submitted for approval through the Senior Procurement Executive.

(c) *Protests after award.* All notices to GAO of the intent to continue contract performance in the face of such a protest shall be submitted to the Senior Procurement Executive for review and coordination. All such notices shall be submitted to the Senior Procurement Executive for review and approval within ten days of receipt of the notification of receipt of protest from GAO, unless GAO specifies an earlier due date for such notification.

(d) *Notice to GAO.* All notices to GAO submitted in accordance with FAR 33.104(f) shall be submitted through the Senior Procurement Executive for review and approval at least two days prior to the date due to GAO.

1233.105 Protests to GSBCA.

Prior to submitting an answer to GSBCA, in accordance with FAR 33.105(c), the completed answer shall be submitted to the Senior Procurement Executive for review and coordination.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting Officer's decision.

For Department of Transportation contracts, the Board of Contract Appeals referenced at FAR 33.211 is Department of Transportation Board of Contract Appeals (S-20), 400 7th Street, SW., Washington, DC 20590.

1233.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify administration legal counsel who will appoint an attorney to represent the Government before the DOT Board of Contract Appeals.

1233.213 Obligation to continue performance.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performance is vital to national security, the public health and welfare, critical/major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.

PART 1234—MAJOR SYSTEM ACQUISITION

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1234.002 Policy.

DOT's implementation of OMB Circular No. A-109 and FAR Part 34 is contained in DOT Orders 4200.9A Acquisition of Major Systems, and 4200.14B Major Systems Acquisition Review and Approval.

PART 1235—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
1235.003 Policy.
1235.010 Scientific and technical reports.
1235.070 Contract clause.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

1235.003 Policy.

Recoupment. It is DOT policy in negotiating contracts under which the Government pays a part or all of the costs of research or development to recover a fair share of its investment when the product(s) thus developed or their related technology is sold or licensed to a foreign government, international organization, foreign commercial firm or domestic organization (all of which are collectively termed "customers"). (See 1235.70 below for instructions on use of the recoupment clause).

1235.010 Scientific and technical reports.

When the statement of work calls for a scientific and technical report which presents interim and final results of R&D work, the contracting officer shall insure that DOT document DOT-TST-75-97 (Appendix 1 to DOT Order 1700.18 Acquisition, Publication and Dissemination of DOT Scientific and Technical Reports) is included in the contract.

1235.070 Contract clause.

Contracting officers shall insert the clause at 1252.235-71 "Recoupment of Development Costs" in contracts which:

(a) Totally or partly require design, research, development, test or experimental (D, R, D, T or E) work;

(b) Call for a product (e.g., equipment, hardware, software or a combination thereof) to be delivered as an end item; and

(c) Involve D, R, D, T or E valued at $1,000,000 or more.

PART 1236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 1236.2—Special Aspects of Contracting for Construction

Sec.
1236.203 Government estimate of construction costs.
1236.206 Liquidated damages.
1236.209 Construction contracts with architect-engineer firms.

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.
1236.602-1 Selection criteria.
1236.602-2 Evaluation boards.
1236.603-3 Evaluation board functions.
1236.602-4 Selection authority.
1236.602-5 Short selection processes for contracts not to exceed $10,000.
1236.603 Collecting data on and appraising firms' qualifications.
1236.606 Negotiations.
1236.606-70 General.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1236.2—Special Aspects of Contracting for Construction

1236.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

(1) The overall amount of the Government's estimate shall not be disclosed prior to award;

(2) At the time of award the "For Official Use Only" designation on the Government's estimate shall be removed; and

(3) After award, the Government's estimate may be revealed, upon request.

1236.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FAR Subpart 12.2. However, inclusion of liquidated damages provisions may be inappropriate in situations such as a construction contract consisting of repairs, alterations, or improvements where any delay in the completion would still permit the user to continue its normal function in an uninterrupted manner, without resulting in added expense to the Government.

1236.209 Construction contracts with architect-engineer firms.

(a) As provided in FAR 36.209, no contract for construction shall be awarded (as the result of either a solicited or unsolicited proposal) to the architect-engineer (A-E) firm responsible for the design of the facility to be constructed, or to any subsidiary or affiliate of that firm, without the

approval of the agency head. This approval authority may not be redelegated.

(b) Unless a construction award to an A-E design firm is approved per paragraph (a) of this section, an A-E firm selected for negotiation of an architect-engineer services contract which, together with its subsidiaries or affiliates, possesses construction capabilities, shall be advised of the policy set forth in paragraph (a) of this section prior to the initiation of negotiations. The firm shall have the option of either:

(1) Declining to enter into contract negotiations in order to be eligible to compete for the related construction contract; or

(2) Entering into contract negotiations with the clear understanding that, if such negotiations are successful, the firm (including its subsidiaries or affiliates) will be ineligible to compete for the related construction contract. This understanding shall be certified by the architect-engineer firm upon the completion of negotiation, and the certification shall be entered into the official contract file.

(c) Architect-Engineer firms awarded a construction contract under 1236.209(a) shall not be engaged to supervise and inspect, on behalf of the Government, the construction of the facility under the contract.

Subpart 1236.3—Special Aspects of Sealed Bidding in Construction Contracting

1236.305 Preconstruction conference.

(a) When the contracting officer considers such action warranted, he/she shall arrange a preconstruction conference with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

(b) DOT Form F 4220.3 titled "Preconstruction Conference Agenda and Checklist", or a similar checklist, shall be used as the agenda of, or checklist for, the preconstruction conference.

Subpart 1236.5—Contract Clauses

1236.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at 1252.236-71 in the solicitation and contract.

Subpart 1236.6—Architect-Engineer Services

1236.602 Selection of firms for architect-engineer contracts.

1236.602-1 Selection criteria.

(a) Appropriate criteria in addition to those under FAR 36.602-1(a) may include, but are not limited to, the criteria listed below. The extent to which these criteria are used will depend on the size and the complexity of the project. For instance, for small and straightforward projects, particularly those under $10,000, the data provided by the Standard Forms 254 and 255 may provide an adequate measure of the firm's experience and qualifications required for the project. However, on larger and more complex projects, the evaluation criteria should be extended to consider such factors as the firm's suggested design approach, plus methods, design ability, such as:

(1) Specialized Experience of the Firm-Relevant recent experience of the firm (including joint venture or association) in projects similar to the one being solicited.

(2) Capability and Capacity of Firm to Accomplish the Work.

(i) Relevant recent experience and technical knowledge of key project personnel, and key outside consultants.

(ii) Total number of personnel the A-E firm employs in the technical disciplines required for the proposed work.

(iii) Firm's current workload. Total number of ongoing projects, their construction value or A-E fee, and percentage of completion.

(3) Design Ability and Understanding of the Requirements.

(i) Technical approach (planning and design process, overall planning and design philosophy), possible concepts (narrative), special design opportunities, innovative design possibilities (including environmental), and provisions for the handicapped.

(ii) Understanding of, and Experience in, Energy Conservation Design.

(A) Approach to maximizing energy conservation.

(B) Project building and equipment systems that would significantly impact energy consumption.

(C) Criteria and engineering considerations to be used in building and equipment design.

(D) Examples of previously used design techniques and measure of results (in Btus consumed per square foot or energy costs).

(iii) Proposed project schedule and man-loading plan.

(iv) Quality of examples of previous work.

(v) Design Recognition. Major awards and other major recognition the firm or members of the firm have received for design excellence.

(4) Organization and Management:

(i) Project team organization and key personnel roles and responsibilities.

(ii) Project management procedures such as coordination of design effort among technical disciplines.

(iii) Methods used to control project schedule and construction cost estimates.

(iv) Quality control procedures.

(v) A-E client relationship.

(5) Past Record of Performance:

(i) DOT and other Government contracts.

(ii) Contracts with private industry.

(iii) Quality of work.

(iv) Ability to meet contractual performance/delivery schedules.

(v) Accuracy of construction cost estimates (compared to construction bids received and value of awarded construction contract).

(vi) Number, dollar amount and reason for construction change orders.

(vii) A-E/client relationship. (For Government contracts, the above information is available from SF 1421—Performance Evaluation (A-E)).

(b) If design competition is to be used (see FAR 36.602-1(b)), written approval by the agency head shall be obtained prior to soliciting proposals.

(c)(1) The following evaluation criterion reflects Department policy and shall be used in the A-E evaluation process for A-E acquisitions above $10,000. It shall be used separately from the other criteria in terms of bonus or penalty points to the basic numerical evaluation rating.

(2) Minority/Women Employment-Percentage of minority employees in all job classifications and pay scales, noting the percentage of minorities in the immediate locality and general surrounding area. In addition, the number of women in all job classifications and pay scales shall also be considered.

1236.602-2 Evaluation boards.

Heads of contracting activities shall establish an ad-hoc architect-engineer evaluation board for each acquisition of architect-engineer (A-E) services. This authority may be redelegated not lower than one level above the contracting officer. For acquisitions where the estimated A-E fee is $200,000 or more, the HCA shall notify the Director of Administrative Services and Property Management, M-40, prior to establishing the A-E evaluation board. For A-E acquisitions above $10,000, the following

requirements apply in addition to those set forth in FAR 36.602-2:

(a) The A-E evaluation board shall be composed of the following members:

(1) One member with experience in acquisition of A-E services. This member will normally be the contracting officer or the contract negotiator.

(2) One or more members with technical experience in the fields of architecture, engineering or construction. These members will normally be from the organization responsible for establishing the A-E work requirements.

(3) One member with technical knowledge of the functional (user) requirements of the project.

(4) One member from OST if appointed by the Director of Administrative Services and Property Management, M-40, where the A-E fee is $200,000 or more.

(5) Other special members are as deemed necessary.

(b) A-E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction or related professions. When a proposed architect-engineer evaluation board includes a member from the private sector, the Director of Administrative Services and Property Management, M-40, shall be notified before the board is established.

(c) Administrations that do not have:

(1) Personnel experienced in A-E selection procedures; or

(2) Personnel with the necessary technical disciplines to evaluate A-E firms for a particular project, may request the assistance of the Director of Administrative Services and Property Management, M-40, in establishing the A-E evaluation board.

1236.602-3 Evaluation board functions.

For A-E acquisitions above $10,000, the A-E evaluation board shall perform the following functions in addition to, or in combination with, those of FAR 36.602-3, and in the sequence indicated:

(a) Analyze the nature and scope of the project work requirements.

(b) Develop the evaluation criteria and rating systems to be used in screening firms for the preselection list and in the final selection. The screening criteria should be based only on information provided by the Standard Forms 254 and 255.

(c) Prepare the public announcement for the project and provide it to the contracting office for publication.

(d) Screen the Standard Forms 254 and 255 and any other qualification data received in response to the public announcement of the project and prepare a preselection list of the best qualified firms for further consideration. The preselection list must consist of at least three firms.

(e) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see 1236.602-1(a)) not provided by the Standard Forms 254 and 255 which are needed to evaluate the firms using the criteria established for final selection. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist the firm in its response. The A-E firms shall be advised not to submit price proposals, design sketches, drawing or design data at the time the qualification and past performance information is due.

(f) Conduct interviews with the firms on the preselection list. As part of the interview, the architect-engineer firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(g) Whenever it is practical and advantageous, the A-E evaluation board should visit the offices of the A-E firms on the preselection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(h) Review of Standard Forms 254 and 255 and other experience and qualification data for each firm on the preselection list, and perform a systematic numerical evaluation rating of the firms.

(i) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the preselection list.

(j) Prepare a report to the HCA, or the official holding authority to establish A-E boards, which shall include in sufficient detail:

(1) The extent of the board's review and evaluation;

(2) The list described in paragraph (i) of this section;

(3) Recommendations; and

(4) Considerations on which the recommendations are based.

1236.602-4 Selection authority.

(a) The HCA or the official holding authority to establish A-E boards shall review the recommendations of the A-E evaluation board. The recommendations of the A-E evaluation board will normally be approved, unless the report does not adequately support the recommendations. If the recommendations are not approved, the A-E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon.

(b) The approved report shall serve as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

1236.602-5 Short selection processes for contracts not to exceed $10,000.

Administrations are authorized to use either of the short selection processes of FAR 36.6025-5.

1236.603 Collecting data on and appraising firms' qualifications.

Because it is the Department's policy to establish ad hoc evaluation boards instead of permanent boards to select architect-engineers, each administration shall establish, or designate, an office or offices to meet the requirements of FAR 36.603(a). Administrations may choose not to maintain A-E qualification data files and arrange to use existing data files of other DOT organizations including the files available in the Office of Installations and Logistics, OST (M-60). If any organization chooses this option, it should foward all A-E qualification data it receives from interested firms to the organization maintaining the data file.

1236.606 Negotiations.

1236.606-70 General.

The limitation on architect-engineer fees of 6% of the estimated construction cost applies to all services that are an integral part of the production and delivery plans, designs, drawings and specifications of a construction project. (See FAR 15.903(d).) The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

(a) Development of program requirements (scope of work).

(b) Determination of project feasibility.

(c) Preparation of drawings of an existing facility, where current drawings are not available.

(d) Subsurface investigations (soil borings).

(e) Structural, electrical and mechanical investigations of an existing building, where current information is not available.

(f) Surveys: topographic, boundary, utility.

(g) Preparation of models, color renderings, photographs or other presentation materials.

(h) Travel and per diem for special presentations.

(i) Supervision and inspection of construction.

(j) Preparation of operating and maintenance manuals.

(k) Master planning.

PART 1237—SERVICE CONTRACTING

Subpart 1237.1—Service Contracts—General

Sec.
1237.104 Personal services contracts.
1237.104–70 Taxes.
1237.104–71 Administrative treatment.
1237.110 Solicitation provisions and contract clauses.

Subpart 1237.2—Consulting Services

1237.204 Policy.
1237.205 Management controls.
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Subpart 1237.70—Mortuary Services

1237.7000 Scope of subpart.
1237.7001 Acquisition by contract.
1237.7002 Area of performance.
1237.7003 Schedule format.
1237.7004 Small purchases.
1237.7005 Solicitation provisions and contract clauses.

Authority: Sec. 205 (C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1237.1—Service Contracts General

1237.104 Personal services contracts.

1237.104-70 Taxes.

Where the individual is to render personal services, the compensation generally is subject to FICA (Social Security), FUTA (Unemployment Compensation), and Federal income withholding taxes. It may also be necessary to report or withhold state income tax under 5 U.S.C. 5517. The contracting officer shall take appropriate steps in coordination with the cognizant personnel office to have deductions and reports made where required by law.

1237.104-71 Administrative treatment.

Individuals who are to render personal services under contract are charged against personnel ceilings in the same way as experts and consultants employed by excepted appointments. Also, the cognizant personnel office must maintain certain records on individuals who render personal services. Therefore, the contracting officer shall effect necessary coordination with the cognizant personnel office before award of a contract for personal services and may also designate the appropriate personnel officer as her or his representative for the purpose of obtaining necessary data from the contractor for tax withholding purposes, for suitability investigation under Executive Order 10450, and for administering applicable conflict of interest provisions.

1237.110 Solicitation provisions and contract clauses.

Contracting officers shall insert the provision at 1252.237–71 "Qualifications of Employees" in all solicitations and contracts for services which require performance at a Government facility.

Subpart 1237.2—Consulting Services

1237.204 Policy.

In addition to the prohibitions regarding consulting services listed at FAR 37.204(c), the following apply:

(a) Consulting services shall normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

(b) Grants and cooperative agreements shall not be used to acquire consulting services.

1237.205 Management controls.

DOT management controls, including approvals required, are set forth in DOT Order 4200.15, Criteria and Guidelines for the Use of Consulting Services.

1237.270 Contracts for stenographic reporting services.

Stenographic reporting services normally are provided by Federal Government employees appointed under the usual civil service procedures. However, these services may be acquired by contract from individuals or firms pursuant to 5 U.S.C. 3109 or other statutory authority where there are variable requirements or insufficient qualified personnel, and necessity of economy to the Government demands acquisition by contract. Such contracts normally shall be written on an end-product basis and payment made according to delivered items (e.g., number of copies of transcript, words per page, etc.), and the contractor ordinarily shall be required to furnish the necessary material (typewriter, paper, bindings, etc.). These contracts are subject to all provisions of this subpart.

Subpart 1237.70—Mortuary Services

1237.700 Scope of subpart.

This subpart is applicable only to the Coast Guard. It sets forth acquisition procedures peculiar to contracts for mortuary services (the care of remains) of Coast Guard personnel.

1237.7001 Acquisition by contract.

(a) Where an existing contract for the care of remains is not available for Coast Guard use, acquisition of such services shall be accomplished by sealed bidding except where negotiation is authorized.

(b) The contract format and terms and conditions set forth in this subpart are appropriate for inclusion in a requirements type contract. They should be altered as deemed necessary by the contracting officer to fit a different contract type or acquisition situation.

1237.7002 Area of performance.

Each contract for care of remains shall clearly define the geographical area covered by the contract. The area shall be determined by the activity entering into the contract in accordance with the following general guidelines. It shall be an area using political boundaries, streets, and other features such as demarcation lines. Generally, this should be a size roughly equivalent to the contiguous metropolitan or municipal area enlarged to include the activities served. In the event the area of performance best suited to the needs of a particular contract is not large enough to include a carrier terminal commonly used by people within such area, the contract area of performance shall specifically state that it includes such terminal as a pickup or delivery point.

1237.7003 Schedule format.

Set forth below is an example of a schedule format suitable for use in solicitations.

Item No. and supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
1. For a type I casket, standard size, supplies and services in accordance with specifications		(1)		

Item No. and supplies, services, and transportation	Estimated quantity	Unit	Unit price	Amount
2. For a type II casket, standard size, supplies and services in accordance with specifications		(1)		
3. For a shipping case, standard size, supplies and services in accordance with specifications. (For use with items 1 and 2)		(1)		
4. For a type I casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
5. For type II casket, exceeding standard size, supplies and services in accordance with specifications		(1)		
6. For shipping case, exceeding standard size, in accordance with specifications. (To be used with items 4 and 5)		(1)		
7. For transportation of remains, in accordance with specifications and as provided for in parts (b) and (c) of the area of performance clause of this contract		(2)		

[1] Each.
[2] Loaded mile.

1237.7004 Small purchases.

Purchases under $25,000 which cannot be covered by any existing contract shall be handled in accordance with FAR Part 13.

1237.7005 Solicitation provisions and contract clauses.

(a) All the regulatory citations in this 1237.7005 are to the Department of Defense (DOD) FAR Supplement (except that to FAR 52.245-4 in paragraph (e) of this section).

(b) The contracting officer shall insert the DOD provision at 252.237-7100, "Award to Single Bidder," in sealed bid solicitations for mortuary services contracts.

(c) The contracting officer shall insert the DOD provision at 252.237-7101, "Award to Single Offeror," in negotiated solicitations for mortuary services contracts.

(d) The contracting officer shall insert the following DOD clauses in mortuary services solicitations and contracts except those for port of entry requirements:

252.237-7102, Requirements;
252.237-7103, Area of Performance;
252.237-7104, Specifications;
252.237-7105, Using Activities;
252.237-7106, Delivery Order and Invoices;
252.237-7107, Delivery and Performance;
252.237-7108, Subcontracting;
252.237-7109, Additional Default Provisions;
252.237-7110, Group Interment;
252.237-7111, Professional Requirements;
252.237-7112, Facility Requirements;
252.237-7113, Preparation History.

(e) In port of entry solicitations and contracts for mortuary services, the contracting officer shall insert the Government-Furnished Property (Short Form) clause at FAR 52.245-4 and all of the DOD clauses in paragraph (d) of this section except the "Area of Performance" and "Facility Requirements" clauses.

PART 1242—CONTRACT ADMINISTRATION

Subpart 1242.1—Interagency Contract Administration and Audit Services

Sec.
1242.101 Policy.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.
1242.203-70 Contract clauses.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.
1242.705-2 Auditor determination procedure.
1242.798 Quick-closeout procedure.

Subpart 1242.12—NOVATION and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.
1242.1203 Processing agreements.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1242.1—Interagency Contract Administration and Audit Services

1242.101 Policy.

It is the policy of the Department of Transportation to make optimum use of the contract administration, audit and related support functions available from the Department of Defense and other Government agencies. However, technical direction of all contracts awarded, regardless of the agency responsible for administration, shall remain with DOT.

Subpart 1242.2—Assignment of Contract Administration

1242.203 Retention of contract administration.

(a) Except as provided elsewhere in FAR 42.203, DOT contracting officers shall retain contract administration responsibility when it is clear that the contracting office can best perform this function.

(b) In all cases, the contracting officer shall retain the responsibility for contract administration related to the clause entitled "Contractor Testimony" (see 1242.203-70).

1242.203-70 Contract clauses.

(a) The contracting officer shall insert the clause at 1242.242-71 "Contractor Testimony" in all solicitations and contracts issued by the National Highway Traffic Safety Administration. The clause may be used by other administrations, as deemed appropriate.

(b) The contracting officer shall insert the clause at 1252.242-72 "Dissemination of Contract Information" in all DOT contracts except those whose statement of work requires the release or coordination of information.

(c) The contracting officer may use the clause at 1252.242-70 "Dissemination of Information—Educational Institutions" in lieu of the clause at 1252.242-72 in DOT research contracts with educational institutions, except those whose statement of work requires the release or coordination of information.

Subpart 1242.7—Indirect Cost Rates

1242.705 Final indirect cost rates.

1242.705-2 Auditor determination procedure.

DOT contracting officers shall request final indirect cost rate determinations in accordance with DOT Order 8000.1B, Office of Inspector General Audit and Investigation Report Findings, Recommendations and Follow-up Action.

1242.708 Quick-closeout procedure.

DOT contracting officers may utilize quick-closeout procedures, in accordance with 1204.804-5(b), on

contracts not exceeding $500,000 provided the stipulations at FAR 42.708(a) (1) through (3) are met.

Subpart 1242.12—Novation and Change-of-Name Agreements

1242.1202 Responsibility for executing agreements.

When more than one administration has outstanding contracts with a contractor seeking a novation or change of name agreement, a single agreement covering all such contracts shall be executed by the administration having the largest unsettled (unbilled plus billed but unpaid) dollar balance.

1242.1203 Processing agreements.

(a) The administration processing a proposed novation agreement shall promptly provide notice of the proposed agreement, including the list of contracts as required by FAR 42.1203(b)(2), to the other administrations having contracts with the contractor or contractors concerned. Such notice shall be transmitted to the appropriate addressee listed in 1242.1202 above. Within 30 days after receipt of such notice, the administration(s) may submit comments to the processing administration. These comments shall be considered prior to execution of the proposed agreement. The absence of comment from an administration within 30 days after its receipt of notice of a proposed novation agreement shall be construed as approval by that administration.

(b) Where substantial alteration or additions to the formats set forth in FAR 42.1204 and FAR 42.1205 are considered appropriate by the administration processing the proposed agreement, that administration shall coordinate the agreement with the other administrations affected by the agreement prior to execution. Any objection shall be resolved before the agreement is executed.

(c) A signed copy of the executed novation agreement or change of name agreement shall be forwarded to the contractor. A signed copy shall be retained in the administration executing the agreement. Where more than one administration is involved, two copies of the agreement shall be distributed to the appropriate addressee listed in 1242.1202.

(d) After execution and distribution of an agreement, a modification (Standard Form 30) shall be prepared by the processing activity incorporating a summary of the agreement and attaching a complete list of the contracts affected. For single administration agreements, three copies of the Standard Form 30 shall be furnished for each contract to the contracting offices concerned and, for multi-administration agreements, to the appropriate addressee listed in 1242.1202.

PART 1244—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: Sec. 205(c), Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1244.3—Contractors' Purchasing Systems Reviews

1244.302 Requirements.

In those cases where contractor purchasing system review (CPSR) approval may be required, the contracting officer will obtain the following information from prospective contractors:

(a) Date of most recent CPSR;

(b) Name, address, and telephone number of the administrative contracting officer who conducted the most recent CPSR; and

(c) Expected total dollar value of negotiated sales to the Government over the next 12 month period.

PART 1245—GOVERNMENT PROPERTY

Subpart 1245.1—General

Sec.
1245.101 Definitions.
1245.102 Policy.
1245.102–70 Reporting of contractor-held Government property by DOT administrations.
1245.102–71 Contract property control file.
1245.102–72 Special test equipment and special tooling.
1245.104 Review and correction of contractors' property control system.
1245.104–70 Evaluation and approval of contractors' property control system.
1245.104–71 Review of contractors' property control system during contract performance.

Subpart 1245.3—Providing Government Property to Contractors

1245.302–1 Policy.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.40 Non-Government use of plant equipment.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definitions.
1245.502–1 Receipts for Government property.
1245.505 Records and reports of Government property.
1245.505–4 Records of special tooling and special test equipment.
1245.505–5 Records of plant equipment.
1245.505–11 Records of transportation and installation costs of plant equipment.
Sec.
1245.505–14 Reports of Government property.
1245.505–70 Solicitation provisions and contract clauses.
1245.506 Identification.
1245.508 Physical inventories.

Subpart 1245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1245.603 Disposal methods.
1245.603–70 Plant clearance function.
1245.607 Scrap.
1245.607–2 Recovering precious metals.
1245.608–3 Agency screening.
1245.608–5 Special items screening.
1245.610–4 Contractor inventory in foreign countries.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)); 48 CFR 1.301; 49 CFR 1.59.

Subpart 1245.1—General

1245.101 Definitions.

"Capitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit cost of $1000 or more.

"Noncapitalized equipment" as used in this part, means personal property (plant equipment) of a nonexpendable nature having a unit acquisition cost of $50 or more but less than $1000, and other items of personal property regardless of cost when so designated by the Government.

1245.102 Policy.

1245.102–70 Reporting of contractor-held property by DOT administrations.

By October 31 each year, each DOT administration shall report the following information to the Director, Office of Administrative Services and Property Management (M–40).

(a) Name and address of each contractor with DOT property in its possession, or in the possession of their subcontractors (do not include grants, cooperative agreements, interagency agreements, or agreements with state or local governments).

(b) Contract number of each DOT contract with Government property.

(c) Date contractor's property management system was approved and by whom (DOT Office, Defense Contract Administration Service, etc.).

(d) Separate dollar totals of DOT real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) as reported in the contractor's annual financial report for each DOT contract administered by the contracting activity.

1245.102–71 Contract property control file.

Upon award of a contract, the property administrator will establish a

contract property control file which will include as a minimum:

(a) Copy of the contract or extract of provisions thereof establishing requirements for property administration (except when the property control file is maintained as an adjunct to the contract working file);

(b) Letters designating authorized representatives of the contracting officer for property matters;

(c) Report of initial review, evaluation, and approval of the contractor's property control system;

(d) Record of visits, property system examinations and analyses, and appropriate work papers;

(e) Documents evidencing the furnishings of Government property;

(f) Contractor's receipts for Government furnished property;

(g) Contractor's notices of acquisitions of contractor purchased or fabricated Government property;

(h) Contractor's physical inventory and financial property reports as prescribed;

(i) Documents evidencing the removal of Government property from the custody of the contractor, the transfer of Government property to another contract or another contractor, and the disposal of Government property;

(j) Documents evidencing relief of the contractor from responsibility for Government property due to loss, damage, destruction, or unreasonable wear or deterioration or unjustifiable consumption in the performance of the contract;

(k) Any other correspondence affecting that status of Govenment property under the contract; and

(l) Statement of closure of the contract property account.

1245.102-72 Special test equipment and special tooling.

Special test equipment and special tooling are not recognized in DOT as separate categories of property (see 1245.505-4). Property of this nature will be controlled in the same way as other items of plant equipment.

1245.104 Review and correction of contractors' property control system.

When review of the contractor's property control system is not delegated to DOD, the DOT contracting officer or property administrator will conduct the review as required by 1245.104-70 and 1245.104-71.

1245.104-70 Evaluation and approval of contractors' property control system.

(a) The choice of the methods to be used for evaluation and approval of the contractor's property control system is a matter of judgment by the property administrator, predicated on the nature and amount of Government property involved in any particular contract. Regardless of the methods used, it is the responsibility of the property administrator to determine that the contractor's system will meet the requirements of FAR Subpart 45.5, and of Subpart 1245.5 and other contract requirements, as appropriate.

(b) It is normal contractor practice to provide for the control of property by means of written procedures that communicate the organization's standards, techniques, and instructions to operational personnel for uniform application. However, depending on the number of contractor employees and the nature, quantity, and value of the property, a contractor may not need written procedures for effective management of Government property. In such cases, the property administrator, if he/she agrees that written procedures are not required, will evaluate the adequacy of the contractor's system on the basis of the contractor's explanation of its controls and prepare a brief description of the applicable procedures for inclusion in the contract property control file.

(c) Upon completing the evaluation of the contractor's system, the property administrator will prepare a written summary of findings to support approval of the system or requirement for corrective action prior to such approval. The property administrator will forward to the contractor a listing of any deficiencies found as a result of the evaluation. The contractor will be requested to indicate, within 30 days after receipt of the listing, its willingness to correct the deficiencies or to forward to the property administrator a statement of its position.

(d) When the property administrator is not successful in obtaining compliance with contract requirements, he/she will advise the contracting officer. The contracting officer shall take appropriate action in accordance with FAR 45.104(c). If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the contracting officer will so inform the contractor in writing, and state that approval of its property control system is withheld or withdrawn, as the case may be. A copy of that advisement shall be provided to the property administrator.

(e) When the contractor's property control system is acceptable, the property administrator will so advise the contractor in writing. When the contract involves Government property at subcontractor plants or prime contractor secondary locations, and the controls for the property at such locations have been determined to be adequate, the approval will be expanded to include the procedures governing Government property at such locations.

1245.104-71 Review of contractors' property control system during contract performance.

(a) While the contractor has an incurred obligation to comply with the property control requirements of the contract, it is incumbent upon the Government to ensure that the contractor does in fact comply. The preferred method for carrying out this responsibility is for the Government to periodically conduct system reviews at the contractor's premises. The need for, and frequency of, such reviews should be based on case-by-case determinations, considering the particular circumstances relative to a given contract or contractor. When the property administrator feels that a system review is necessary, then he/she must arrange for the conduct of such a review by an appropriate means.

(b) Notwithstanding the requirements of paragraph (a) of this section, it is the continuing responsibility of the property administrator to be alert to any indications that the contractor's property control system may be deficient. Examples of such indications are as follows:

(1) Failure of the contractor to acknowledge receipt of Government furnished property;

(2) Failure of the contractor to provide notices of contractor acquisitions of Government property when the contract provides for such acquisition;

(3) Failure of the contractor to submit the annual financial property and physical inventory reports specified in 1245.505-14 and 1245.508;

(4) Discrepancies in contractor's records and weaknesses in control as reflected by the contractor's physical inventory reports;

(5) Contractor's financial property reports do not reconcile with DOT financial control accounts;

(6) Analysis of contractor's costs indicates consumption of material in excess of that considered reasonable;

(7) Inability of the contractor to furnish property listings when requested to do so; or

(8) Analysis of contractor's request for relief of responsibility due to loss or damage indicates inadequate control.

(c) When the property administrator has reason to believe that the contractor's property control system is

deficient or inadequate, the property administrator must take prompt action to obtain correction of such problems. In some cases, discussions with the contractor may suffice. In other cases, it may be necessary to arrange for an on-site system review as discussed in paragraph (a) of this section. Another alternative is to request the conduct of an audit by the appropriate Government contract audit activity. If the situation demands, the procedures set forth in 1245.104-70(d) will be applied.

(d) Records and accounts of Government property will be audited by the Government as frequently as conditions warrant or as may be specifically requested by the contracting officer. Audits may take place at any time during the performance of the contract, upon completion or termination of the contract, or at any time thereafter. Audits will include records maintained by the contractor and Government-maintained records for the property involved. Government personnel and the contractor are required to make all property records, including correspondence related thereto, available to the auditors.

Subpart 1245.3—Providing Government Property to Contractors

1245.302—1 Policy.

Contracting officers have been designated to make determinations required by FAR 45.302-1(a)(4) on providing Government facilities.

Subpart 1245.4—Contractor Use and Rental of Government Property

1245.40 Non-Government use of plant equipment.

The prior written approval of the contracting officer is required for any non-Governmental use of active Government-owned plant equipment. Before non-Government use exceeding 25 percent may be authorized, prior approval of the head of the contracting activity shall be obtained.

Subpart 1245.5—Management of Government Property in the Possession of Contractors

1245.501 Definition.

To supplement the definition at FAR 45.501, "property administrator," as used in this subpart, means an authorized representative of the contracting officer, when designated, or the contracting officer.

1245.502-1 Receipts for Government property.

Immediately upon receipt of any Government-furnished property, the contractor shall sign and return the Government transfer document to the property administrator. For contractor-acquired capitalized equipment, the contractor shall submit itemized reports as a condition for the reimbursement of costs incurred in the purchase or fabrication of such property. Each item shall be adequately described, including unit cost. Reports shall be provided by the contractor not later than the time it submits its application for payment (public voucher) for the property. Upon request of the Government, the contractor shall submit supporting data for any material cost or noncapitalized equipment included in the voucher.

1245.505 Records and reports of Government property.

1245.505-4 Records of special tooling and special test equipment.

Since special test equipment and special tooling are not recognized in DOT as separate categories of property, no special property management controls will be established. Property of this nature shall be controlled in the same way as other items of "capitalized" and "noncapitalized" equipment.

1245.505-5 Records of plant equipment.

The individual records requirements of FAR 45.505 apply to capitalized plant equipment. Summary stock records may be maintained for noncapitalized plant equipment except where the property administrator determines that individual item records are necessary for effective control, calibration or maintenance.

1245.505-11 Records of transportation and installation costs of plant equipment.

The requirements of FAR 45.505-11 apply to capitalized plant equipment.

1245.505-14 Reports of Government property.

(a) *Control system.* The contractor's property control system shall be such as to provide, at any time, the dollar amount of Government property for which it is accountable under each contract in the following classifications:

(1) Real property;
(2) Capitalized equipment;
(3) Noncapitalized equipment; and
(4) Material maintained in stocks.

The contractor's accounts shall be susceptible to reconciliation in totals and subtotals as to whether contractor-acquired or Government-furnished.

(b) *Submissions of financial property reports.* (1) The contractors shall prepare a report as of July 31 each year, for each contract, showing the dollar amount of Government real property, capitalized equipment, and material maintained in stocks (when value is $50,000 or more) in the possession of the contractor and his subcontractors. Reports shall be prepared in the format shown below and shall be furnished to the property administrator not later than September 15 each year. Subcontract reports shall be consolidated with prime contract reports. The contractor shall certify that the reports have been reconciled and are in balance with the contract property records. If specifically requested by the property administrator, the contractor shall submit similar reports for Government noncapitalized equipment and material maintained in stocks when value is less than $50,000.

(2) Financial property report format.

	Real property	Capitalized equipment	Material ($50,000 or over)	Total
Balance beginning of period				
Acquisition during period				
Government furnished				
Contractor acquired				
Dispositions during period				
Government furnished				
Contractor acquired				
Balance end of period				

(3) Contractor's reports of physical inventory shall be submitted on an annual basis as set forth in 1245.508.

1245.505-70 Solicitation provisions and contract clauses.

Contracting officers shall insert the provision at 1252.245-70, Government Property Reports, in all solicitations and contracts under which government property is furnished to the contractor.

1245.506 Identification.

The requirements of FAR 45.506(b) apply to noncapitalized Government property. The requirements of FAR 45.506(c) apply to capitalized government property.

1245.508 Physical inventories.

(a) Annual inventories. The contractor shall perform an annual physical inventory of the following categories of Government property in its possession or control and shall require such inventories of any subcontractors that are in possession of Government property provided under the contract:

(1) Capitalized property;
(2) Noncapitalized property;
(3) Material maintained in stocks.

(b) Reporting results of annual inventories. Within 30 days after the completion of an annual inventory, the contractor shall submit the following information to the property administrator:

(1) A list, on both a quantitative and monetary basis, of all discrepancies disclosed by the inventory in each category of Government property.

(2) A signed statement that physical inventory of Government property under the contract was completed on a specified date and that the contractor's official property records were found to be in agreement with the physical inventory except for the discrepancies noted; and

(3) If specifically requested by the property administrator, a list of all items of capitalized equipment.

Subpart 1245.6—Reporting, Redistribution, and Disposal of Contractor Inventory

1245.603 Disposal methods.

1245.603-70 Plant clearance function.

If the plant clearance function has not been formally delegated to another Federal agency, the contracting officer must assume all responsibilities of the plant clearance officer identified in FAR 45.6.

1245.607 Scrap.

1245.607-2 Recovering precious metals.

DOT Order 4430.5, Recovery and Utilization of Precious Metals, establishes procedures for the recovery and acquisition of precious metals.

1245.608-3 Agency screening.

Excess and residual contract inventory is subject to the same Departmental redistribution requirements as are prescribed for internal Departmental excess property. Accordingly, contracting officers shall assure that excess and residual contract property are screened within the Department in accordance with DOT Order 4600.1E, Redistribution of Excess Personal Property.

1245.608-5 Special items screening.

Excess automatic data processing equipment shall be screened internally within the Department as required by DOT Order 4000.6A, Reassignment of Excess Automatic Data Processing Equipment.

1245.610-4 Contractor inventory in foreign countries.

DOT contractor inventory located in foreign countries shall be utilized and disposed of in accordance with FPMR 101-43.5.

PART 1246—QUALITY ASSURANCE

Subpart 1246.6—Material Inspection and Receiving Reports

Sec.
1246.601 Material inspection and receiving reports.

Subpart 1246.7—Warranties

1246.704 Authority for use of warranties.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1246.6—Material Inspection and Receiving Reports

1246.601 Material inspection and receiving reports.

Each administration shall use FAA Form 256 or an alternate procedure.

Subpart 1246.7—Warranties

1246.704 Authority for use of warranties.

Prior to solicitation of the requirement, the contracting officer shall make a written determination when a warranty clause is to be included. This determination shall document that the procurement request initiator has recommended inclusion of a warranty and identified the specific parts, subassemblies, assemblies, systems or contract line items to which a warranty should apply. The determination shall address the criteria set forth in FAR 46.703.

PART 1249—TERMINATION OF CONTRACTS

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1249.1—General Principles

1249.111 Review of proposed settlements.

All proposed settlement agreements shall be coordinated with legal counsel.

PART 1250—EXTRAORDINARY CONTRACTUAL ACTIONS

Subpart 1250.2—Delegation of and Limitations of Exercise of Authority

Sec.
1250.202 Contract adjustment boards.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 468(c)). 48 CFR 1.301; 49 CFR 1.59.

Subpart 1250.2—Delegation of and Limitations on Exercise of Authority

1250.202 Contract adjustment boards.

DOT Order 1100.60, Department of Transportation Organizational Manual establishes the Contract Appeals Board as the approving authority to consider and dispose of requests for extraordinary contractual adjustments for DOT contractors.

Subpart 1250.4—Residual Powers

1250.401 Standards for use.

It is DOT policy not to use the "residual powers" authorized by the Act and FAR Subpart 50.4. Conctracting officers shall not include in DOT contracts the clause at FAR 52.250-1, Indemnification Under Pub. L. 85-804, unless specifically authorized by the Secretary or designee.

PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.
1252.000 Scope of part.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.
1252.102 Incorporating provisions and clauses.
1252.102-2 Incorporation in full text.
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Subpart 1252.2—Texts of Provisions and Clauses

1252.207-70 Implementation of Right of First Refusal.
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1252.216-72 Estimated cost, base fee, and award fee.
1252.216-73 Payment of base and award fee.
1252.216-74 Determination of award fee earned.
1252.216-75 Performance evaluation plan.
1252.216-76 Distribution of award fee.
1252.217-70 Index for specifications.
1252.217-71 Delivery and shifting of vessel.
1252.217-72 Performance.
1252.217-73 Inspection and manner of doing work.
1252.217-74 Subcontracts.
1252.217-75 Lay days.
1252.217-76 Liability and insurance.
1252.217-77 Title.
1252.217-78 Discharge of liens.
1252.217-79 Delays.
1252.217-80 Department of Labor Safety and Health Regulations for Ship Repairing.
1252.217-81 Guarantee.
1252.222-70 Service Contract Act of 1965—Contracts of $2,500 or less.

Sec.
1252.222-71 Strikes or picketing affecting timely completion of the contract work.
1252.222-72 Strikes or picketing affecting access to FAA facility.
1252.222-73—1252.222-74 [Reserved]
1252.222-75 Service Contract Act of 1965 as amended.
1252.222-76 [Reserved]
1252.222-77 Fair Labor Standards Act and Service Contract Act—price adjustment (multi-year and option contracts).
1252.222-78 Fair Labor Standards Act and Service Contract Act—price adjustment.
1252.222-79 Service Contract Act requirements as to vacation pay.
1252.223-70 [Reserved]
1252.223-71 Accident and fire reporting.
1252.223-72 Protection of human subjects.
1252.228-70 [Reserved]
1252.228-71 Loss of or damage to leased aircraft.
1252.228-72 Fair market value of aircraft.
1252.228-73 Risk and indemnities.
1252.235-70 [Reserved]
1252.235-71 Recoupment of development costs.
1252.236-70 [Reserved]
1252.236-71 Special precautions for work at operating airports.
1252.237-70 [Reserved]
1252.237-71 Qualifications of employees.
1252.242-70 Dissemination of information—educational institutions.
1252.242-71 Contractor testimony.
1252.242-72 Dissemination of contract information.
1252.245-70 Government property reports.

Authority: Sec. 205(c) Federal Property and Administrative Services Act, as amended (40 U.S.C. 468(c)). 48 CFR 1.301; 49 CFR 1.59.

1252.000 Scope of part.

This part, in conjunction with FAR Part 52, contains the DOT provisions and clauses whose use is prescribed elsewhere in this regulation.

Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using FAR Part 52.

Administrations which prescribe or develop provisions or clauses under the authority of FAR 52.101(b)(2)(i) (B) or (C) shall ensure that the requirements of FAR Subpart 1.4 and Subpart 1201.4 are met.

1252.102 Incorporating provisions and clauses.

1252.102-2 Incorporation in full text.

All provisions and clauses prescribed or developed by administrations shall be incorporated in solicitations and/or contracts in full text as required by FAR 52.102-2(a)(4).

1252.104 Procedures for modifying and completing provisions and clauses.

TAR provisions and clauses shall not be modified (see FAR 52.101(a)) unless authorized by this regulation, and when so authorized, contracting officers must comply with the procedures in FAR 52.104.

Subpart 1252.2—Texts of Provisions and Clauses

1252.207-70 Implementation of Right of First Refusal.

As prescribed in 1207.305, and for any contract when contractor performance causes Federal employees in the Government commercial activity to be adversely affected, insert the following clause in solicitations and contracts:

Implementation of Right of First Refusal (Nov. 1987)

(a) *Policy.* The contractor shall give, and shall require every tier subcontractor to give, adversely affected Federal employees the right of refusal for all employment openings under this contract for which they are qualified. The contractor shall insert and shall cause to be inserted in each subcontract (at any tier) the substance of this clause.

(b) *Definitions.* (1) An "adversely affected Federal employee" is any Federal employee who is assigned to the Government commercial activity and who is, as a result of the contract, released from his or her competitive level, causing separation, reassignment, or downgrade, or is reassigned, downgraded, or separated.

(2) The term "contractor" as used in this clause shall include the prime contractor and all subcontractors, at all tiers. The term "subcontractors" as used in this clause shall include any person or firm which assumes a legal obligation to perform all or part of the contract work at any tier.

(3) "Employment openings" are position vacancies in the contractor's organization created by the award of this contract which the contractor is unable to fill with personnel on the contractor's active payroll, at the time of the contract award, including positions within the local commuting area of the commercial activity which arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(4) The "contract start date" is the first day of the contractor's performance as specified either by a written notice to proceed or as provided in the contract.

(5) The "contract award date" is the day the contract is signed by the contracting officer.

(c) *Filling employment openings.* (1) For a period beginning with the contract award date and ending 180 days after all adversely affected Federal employees have been separated, reassigned, or downgraded as a result of the award of the contract, no person, other than an adversely affected Federal employee, shall be offered a job filling an employment opening until all qualified, adversely affected Federal employees identified in the most current list provided to the contractor under paragraph (e) of this clause have been offered the job and refused it or have waived their right of first refusal.

(2) For a period beginning with the issuance of reduction-in-force notices and ending with the Contract start date, the contractor shall, in filling employment openings, communicate written offers of employment to adversely affected Federal employee(s) identified in the most current list provided to the contractor under paragraph (e). Such offers shall specify at a minimum the following:

(i) Title, description, and location of employment opening being offered;

(ii) Pay and benefits (i.e., paid leave, holidays, health and life insurance, retirement and any other benefits such as stock options that would contribute to the total monetary value of the position);

(iii) Hours of work and leave schedule;

(iv) Final date employee may accept job offer;

(At a minimum, adversely affected Federal employees shall be given five working days, excluding mail time, after receipt of an offer to accept or reject the offer. At the contractor's request, the contracting officer, after consulting with the agency personnel office, shall determine whether any adversely affected employee has waived his or her right of first refusal by not responding to a job offer in a timely manner).

(3) If there are no qualified, available, adversely affected Federal employees on the current list provided by the contracting officer or designee, the contractor may select for an employment opening any person not disqualified by any other provision in this contract.

(d) *Contractor reporting requirements.* (1) No later than 5 working days after the contract award date, the contractor shall furnish the contracting officer or designee with the following:

(i) A list of employment openings along with a brief description of duties and qualification requirements for each position; and

(ii) Sufficient job application forms for adversely affected Federal employees.

(2) For the period beginning with the issuance of reduction-in-force notices and ending with the contract start date, the contractor shall inform the contracting officer or designee by telephone within 24 hours after an employment offer is made to an adversely affected Federal employee. Written notification shall be made by certified mail to the contracting officer or designee no later than 5 working days after the employee's acceptance or refusal of the offer and shall contain the following:

(i) The name and social security number of each adversely affected Federal employee offered an employment opening;

(ii) The date the offer was made;

(iii) The salary and benefits contained in the offer (benefits as defined in (c)(2) (ii));

(iv) A brief description of the position;

(v) The date of acceptance of the offer and the effective date of employment;

(vi) The date of refusal of the offer, if applicable; and

(vii) The names and social security numbers of any adversely affected Federal employees who applied for, but were not offered, employment and the reason(s) for withholding an offer.

(3) The contractor shall promptly inform the contracting officer or designee of the

names and social security numbers of each adversely affected employee hired by the contractor during the 90-day period beginning with the day after the date of the separation from Federal employment of the last of the adversely affected Federal employees, and shall also inform the contracting officer or designee of the date or dates of such hiring or hirings.

(e) *Information provided to the contractor.*

(1) No later than 10 working days after issuance of reduction-in-force notices, the contracting officer or designee shall furnish the prime contractor a current list of adversely affected Federal employees who wish to exercise their right of first refusal.

(2) Between the issuance of reduction-in-force notices and the contract start date, the contracting officer or designee shall inform the contractor of the unavailability of any adversely affected Federal employees due to reassignment or transfer to other Government positions, lack of interest, or other reason within 5 working days after this unavailability is known to the contracting officer or designee.

(3) For the period between the initial issuance of reduction-in-force notices and the contract start date, the contracting officer or designee shall periodically provide the contractor with an updated listing of adversely affected Federal employees, reflecting employees recently released from their competitive level as a result of the contract award.

(f) *Record of compliance.* Upon request, the contractor shall make available for examination by the contracting officer, all pertinent books, documents, papers and records required to determine compliance with this clause.

(g) *Qualifications determination.* The contractor has the right to determine the adequacy of the qualifications of adversely affected Federal employees for any employment opening. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to, or is not significantly different from, an employment opening under this contract shall be considered qualified for that job, unless the contractor adequately documents the employee's lack of qualifications. In the event the Government and the contractor disagree as to whether the contractor has adequately documented an employee's lack of qualifications, the contracting officer, after consulting with the agency personnel office, shall make a determination, which shall be final and binding on all parties, subject to the contractor's right of appeal under the "Disputes" clause hereof.

(h) *Relation to other statutes, regulations and employment policies.* (1) The requirements of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses concerning non-discrimination, hiring and employment based on veterans status, race, color, religion, sex, age, handicap, or national origin.

(2) The contractor shall be aware of the post-employment restrictions prohibiting certain types of representations before, or communications to, the Federal Government by former employees (18 U.S.C. 207).

(i) *Penalty for noncompliance.* Failure of the Contractor to comply with any provision of this clause may be grounds for termination of the contract for default.

(End of clause)

1252.207-71 Financial and technical ability.

As prescribed in 1207.305, insert the following provision in A-76 solicitations:

Financial and Technical Ability (Nov 1987)

a. If a bid submitted in response to this solicitation is favorably considered, a two-part preaward survey may be conducted to determine the bidder's ability to perform. Part one will be conducted by *(Insert name of office)*, who may contact you to determine your financial capability to perform. Current financial statements and pertinent data should be available at that time. Part two of the survey will be conducted at *(Name Location)* shortly after bid opening by government personnel.

b. If a preaward survey is conducted, you will be requested to have management officials, of the appropriate level, represent your firm. In addition, your proposed project manager should be available to respond to questions raised during the preaward survey. You should also be prepared to present a briefing regarding the manner in which you intend to accomplish your contractual obligations. As a minimum, you should address the following items of information in your presentation (a written copy of the presentation with the backup data below must be submitted to the contracting officer 5 work days before the presentation):

(1) Startup and phase-in schedule.

(2) Key personnel letters of intent and résumés.

(3) Availability of labor force, plan for recruiting, type and extent of training.

(4) The role of the project manager and the extent of his/her authority.

(5) Organizational and functional charts reflecting line of management responsibility.

(6) Manning charts in a format requested by the contracting officer (only to be used to ensure that you understand the workload).

(7) Plans and management procedures for logistical administrative support of all functions; that is, contractor furnished supplies and equipment and procedures for timely payment of personnel.

(8) Procedures to be used to ensure contract requirements are met (quality control program).

(9) Corporate experience, as evidenced by past and present contracts.

(10) Other purchases for which you have bid and for which you are apparent low bidder.

(End of clause)

1252.209-71 Disclosure of conflicts of interest.

As prescribed in 1209.508-1 and 1215.407 insert the following provision in solicitations for negotiated acquisitions:

Disclosure of Conflicts of Interest (Apr. 1984)

It is the Department of Transportation's (DOT's) policy not to award contracts to offerors whose objectivity may be impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by DOT or in organizations whose interests may be substantially affected by Departmental activities. Based on this policy:

(a) The offeror shall provide a statement in its technical proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by DOT, or with an organization whose interests may be substantially affected by Departmental activities, and which is related to the work under the request. The interest(s) described shall include those of the proposer, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Affected organizations shall include, but are not limited to, the insurance industry. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

(b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.

(c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its technical proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to DOT will be used to determine whether an award to the offeror may create a conflict of interest. If such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

(e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to this contract which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer which shall include a description of the action the contractor has taken or proposes to take to avoid or mitigate such conflict. The DOT Contracting Officer

may, however, terminate the contract for convenience if it deems that termination is in the best interest of the Government.

(End of Provision)

1252.210-70 Brand name or equal.

As prescribed in 1210.011-70 insert the following provision when a "brand name or equal" purchase description is used in the solicitation:

Brand Name or Equal (Jan. 1985)

(As used in this provision, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this solicitation have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is intended to indicate the quality and characteristics of products that will be satisfactory. Offers offering "equal" products (including products of the brand name manufacturer other than the one described by brand name) will be considered for award if such products are clearly identified in the offers and are determined by the Government to meet fully the salient characteristics requirements listed in the solicitation.

(b) Unless the offeror clearly indicates in its offer that it is offering an "equal" product, its offer shall be considered as offering the brand name product referenced in the solicitation.

(c)(1) If the offeror proposed to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the invitation for bids, or such product shall be otherwise clearly identified in the offer. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its offer as well as other information reasonably available to the contracting office. CAUTION TO OFFERORS: The contracting office is not responsible for locating or securing any information which is not identified in the offer and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of its offer all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to: (i) Determine whether the product offered meets the salient characteristics requirement of the solicitation, and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to acquire by making an award. The information furnished may include specific reference to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the solicitation, it shall: (i) Include in its offer a clear description of such proposed modifications, and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after sealed bid opening to make a product conform to a brand name product reference in the solicitation will not be considered.

(End of Provision)

1252.212-70 [Reserved]

1252.212-71 Notice of delay.

As prescribed at 1212.7001, insert the following clause in all contracts:

Notice of Delay (Apr. 1984)

If the Contractor becomes unable to complete the contract work at the time(s) specified because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in the performance of the work called for hereunder, the Contractor shall give the Contracting Officer written notice of the anticipated delay and the reasons therefor. Such notice and reasons shall be delivered promptly after the condition creating the anticipated delay becomes known to the Contractor but in no event less than forty-five (45) days before the completion date specified in this contract, unless otherwise directed by the Contracting Officer. When notice is so required, the Contracting Officer may extend the time specified in the Schedule for such period as deemed advisable.

(End of Clause)

1252.215-70 [Reserved]

1252.215-71 Key personnel and facilities.

As prescribed in 1215.106-70 insert the following clause in appropriate contracts:

Key Personnel and Facilities (Apr. 1985)

The personnel and/or facilities as specified in the Schedule of this contract are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; provided, that the Contracting Officer may ratify in writing the change and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities as specified in the Schedule of this contract may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of Clause)

1252.215-72 Cost proposal instructions.

As prescribed in 1215.407(b) a provision substantially as follows may be inserted in RFPs when cost or pricing data are to be obtained:

Cost Proposal Instructions (Jan. 1985)

Offerors are instructed to prepare their cost proposals in sufficient detail to permit thorough and complete evaluation by the Government. Where proposed rates are not based upon catalog or list prices, the basis for the proposed rates shall be identified.

The cost proposal shall be submitted on Standard Form 1411, Contract Pricing Proposal Cover Sheet, prepared in accordance with the instructions in FAR 15.804-6. Summary data shall be placed on SF 1411 and the line item summaries (by element of cost) described in paragraph 7.A of FAR Table 15-3. The following format shall be followed in preparing the supporting attachments referenced in column (4) of the line item summaries. Clearly identify all subcontracted items and include the name and address of the proposed subcontractor. Written quotation for all subcontracted services must be included with the cost proposal.

1. Direct material

a. Purchased Parts provide a consolidated price summary of individual material quantities for the proposed contract. Give details on an attached schedule.

b. Subcontracted Items Show the total cost of subcontract effort in line b. below and provide supporting data for each subcontractor.

c. Other: (1) Raw Material show total cost on line c. (1) below and give details on an attached schedule.

(2) Standard Commercial Items show total cost on line c. (2) below and give details on an attached schedule.

Directed material	Estimated cost (dollars)	Reference
1.		
a. Purchased parts		
b. Subcontracted items		
c. Others		
(1) Raw material		
(2) Your standard commercial items		
Total direct material		

2. Material overhead

Show cost here only if your accounting system provides for such cost segregation and only if this cost is not computed as part of labor overhead or G&A.

Material Overhead Rate_____% × $ _____ base= _____ Reference _____

3. Direct labor

Show the hourly rate and the total hours for each category of direct labor proposed. Indicate whether actual rates or projected rates are used.

Direct labor	Estimated hours	Rate/hour	Estimated cost (dollars)	Reference
Total direct labor				

4. Labor overhead

Use the overhead rate(s) and base(s) approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising overhead and the base(s) upon which the burden(s) is (are) computed.

Labor overhead	Overhead rate	Time base equals	Estimated cost (dollars)	Reference
Total labor overhead				

5. Equipment

Identify specific equipment and unit prices or usage rates as shown below. Equipment rates may be proposed on any basis (i.e., hourly, daily, weekly, monthly).

Description	Estimated Usage	Rates (dollars)	Estimated Cost (dollars)
Total equipment cost			

6. Travel

Identify each trip proposed and the persons (or labor categories) designated to make each trip. Identify transportation and per diem rates.
(a) Transportation:

Number of persons	Location		Mileage or fare	Cost per trip	Estimated cost (dollars)
	From	To			
Transportation subtotal					

(b) Subsistence:

Number of persons	Days	Per diem	Estimated cost (dollars)	Reference

(c) Miscellaneous Travel Expenses (incl. car rental, taxis, airport limos., etc):

Types of expense	Estimated cost (dollars)
Miscellaneous subtotal:	
Total travel and per diem	

7. Individual consultant service.

Identify the contemplated consultant(s). State the amount of service estimated to be required and the consultant's quoted daily or hourly rate.

Name	Estimated hours/days	Rate	Estimated cost (dollars)
Total consultant			

8. Other direct costs.

List all other direct charge costs not otherwise included in the categories described above (e.g., services of specialized trades, computer services, preservation, packaging and packing, leasing of equipment) and provide bases for pricing.

Item description	Estimated quantity	Unit amount	Estimated cost (dollars)	Reference
Total other direct costs				

9. General and administrative expenses.

Use the G&A rate and base approved by a Government audit agency for use in proposals. If no such approval has been given, or if the approval is more than 12 months old, furnish data supporting the proposed rates. The data shall include a breakdown of the items comprising G&A and the base(s) upon which the burden(s) is (are) computed.

G&A Rate _____% of Cost Element Nos. _____Reference _____

10. Royalties $ _____

11. Contract facilities capital cost of money $_____

12. Profit or fee $_____

1252.216-70 [Reserved]

1252.216-71 Evaluation of proposals subject to economic price adjustment.

As prescribed in 1216.203-471 insert the following provision in all solicitations that contain an economic price adjustment clause:

Evaluation of Proposals Subject to Economic Price Adjustment (Apr. 1984)

Notwithstanding the requirements of the clause entitled "(insert the title of the clause for economic price adjustment)", proposals shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Proposals which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis, but any resultant award will be made at the lower ceiling. Proposals which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a

downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

1252.216-72 Estimated cost, base fee, and award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Estimated Cost, Base Fee, and Award Fee (Apr. 1984)

The estimated cost of this contract is $(insert amount). A base fee of $(insert amount) and a maximum Award Fee of $(insert amount) are payable in accordance with 1252.216-73 "Payment of Base and Award Fee."

(End of clause)

1252.216-73 Payment of base and award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitiations and contracts when a cost plus award fee contract is contemplated:

Payment of Base and Award Fee (Apr. 1985)

(a) The Government will make payment of the base fee in (insert number) increments. The amount payable shall be based on the progress as determined by the Contracting Officer and shall be subject to any withholdings as may be provided for elsewhere in this contract.

(b) The Government will promptly make payment of any Award Fee upon the submission by the Contractor to the Contracting Officer, or his authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated as specified in the clause 1252.216-74 "Determination of Award Fee Earned". Payment shall be made without the need for a contract modification.

(End of clause)

1252.216-74 Determination of award fee earned.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated.

Determination of Award Fee Earned (Apr. 1985)

(a) The Government shall, at the conclusion of each specified evaluation period(s), evaluate the Contractor's performance for a determination of award fee earned. The Contractor agrees that the determination as to the amount of award fee earned will be made by the Government Fee Determination Official (FDO) and such determination concerning the amount of award fee earned is binding on both parties and shall not be subject to appeal under the "Disputes" clause or to any board or court.

(b) It is agreed that the evaluation of Contractor performance shall be in accordance with the Performance Evaluation Plan referenced in the clause entitled "Performance Evaluation Plan" and that the contractor shall be promptly advised in writing of the determiniation and the reasons why it was or was not earned. It is further agreed that the Contractor may submit a self-evaluation of performance of each period under consideration. While it is recognized that the basis for determination of the fee shall be the evaluation by the Government, any self-evaluation which is received within (insert number) days after the end of the period being evaluated may be given such consideration, if any, as the FDO shall find appropriate.

(c) The FDO may, in his/her discretion, specify in any fee determination that fee not earned during the period evaluated may be accumulated and be available for allocation to one or more subsequent periods. In that event, the clause 1252.216-76 "Distribution of Award Fee" shall be adjusted to reflect such allocations.

(End of clause)

1252.216-75 Performance evaluation plan.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Performance Evaluation Plan (Apr. 1984)

(a) A Contractor Performance Evaluation Plan, upon which the determination of award fee shall be based (including the criteria to be considered under each area evaluated and the percentage of award fee, if any, available for each area), will be unilaterally established by the Government. A copy of the plan shall be provided to the Contractor (insert number) calendar days prior to the start of the first evaluation period.

(b) The Performance Evaluation Plan shall set forth the criteria upon which the Contractor will be evaluated for perfomance relating to any: (1) Technical (including Schedule) requirements if appropirate; (2) Management; and (3) Cost Functions selected for evaluation.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the Contractor (insert number) calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

1252.216-76 Distribution of award fee.

As prescribed in 1216.404-270(b), insert the following clause in solicitations and contracts when a cost plus award fee contract is contemplated:

Distribution of Award Fee (Apr. 1984)

(a) The total amount of award fee available under this contract is assigned to the following evaluation periods in the following amounts:

Evaluation Period

Available Award Fee

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro-rata distribution associated with evaluation period activities or events as determined by the Fee Determination Official.

(End of clause)

1252.217-70 Index for specifications.

As prescribed at 1217.7001(c), insert the following clause in solicitations and contracts:

Index for Specifications (Jan. 1985)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specification. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

1252.217-71 Delivery and shifting of vessel.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Delivery and Shifting of Vessel (Jan. 1985)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the contracting officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

1252.217-72 Performance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Performance (Jan. 1985)

(a) The Contractor shall make the necessary arrangements for receiving the vessel on the specified date, such arrangements to be satisfactory to the contracting officer or his duly authorized representative.

(b) The Contractor shall promptly commence the work required by the contract and shall diligently prosecute same to completion to the satisfaction of the contracting officer.

(c) Except as otherwise provided in this contract, the Contractor shall furnish all necessary material, labor, services, equipment, supplies, power, accessories, facilities and such other things and services as are necessary for accomplishing the work specified in this contract subject to the right reserved in the Government under the "Government-furnished Property" clause of the contract.

(d) The Contractor shall without charge and without specific requirement therefor:

(1) Make available at the plant to personnel of the vessel, while in drydock or on a marine railway, toilet and similar facilities acceptable to the contracting officer as adequate in number and sanitary standards. For vessels fitted with pollution abatement systems, provide for disposal of shipboard waste (non-oily) by installing a portable hose between the vessel's weather deck sewage overboard discharge connection and either a shore-side holding facility, sewage treatment plant, or a municipal sewage system. Directing of shipboard waste to waters covered by the Federal Water Pollution Control Act, as amended, will not be allowed. In freezing conditions the Contractor will provide protection to the hook up system.

(2) Supply and maintain, in such condition as the contracting officer may reasonably require, suitable brows and gangways from the pier, drydock or marine railway to the vessel (access to vessel shall be lighted by the Contractor during the periods of darkness).

(3) Treat salvage, scrap, or other ship's material of the Government resulting from performance of work as though they were items of Government-furnished property in accordance with provisions of the "Government-Furnished Property" clause of this contract.

(4) Perform, or pay the cost of, any repairs, reconditioning or replacements necessary as a result of the use by the Contractor of any of the vessel's machinery, equipment or fittings including, but not limited to winches, pumps, rigging, or pipelines.

(e) The Contractor shall conduct dock and sea trials of the vessel as required by the specifications. Unless otherwise expressly provided in the contract, during the conduct of such trials the vessel shall be under the control of the vessel's commander and crew with representatives of the Contractor and the Government on board to determine whether or not the work done by the Contractor has been satisfactorily performed. Dock and sea trials not specified herein which the Contractor requires for his own benefit shall not be undertaken by the Contractor without prior notice to and approval of the contracting officer; any such dock trials shall be conducted at the risk and expense of the Contractor. The Contractor shall provide and install all fittings and appliances which may be necessary for the dock and sea trials, to enable the representatives of the Government to determine whether the requirements of the contract, plans and specifications have been met, and the Contractor shall be responsible for the care, installation and removal of instruments and apparatus furnished by the Government for such trials.

(End of clause)

1252.217-73 Inspection and manner of doing work.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Inspection and Manner of Doing Work (Jan. 1985)

(a) All work and material shall be subject to the approval of the contracting officer or his/her duly authorized representative. Work shall be performed in accordance with the plans and specifications of this contract as modified by any change order issued under the "Changes" clause in this contract.

(b) Unless otherwise specifically provided for herein, all operational practices of the Contractor and all workmanship and material, equipment and articles used in the performance of work thereunder shall be in accordance with Amerian Bureau of Shipping Rules for Building and Classing Steel Vessels, U.S. Coast Guard Marine Engineering Regulations and Material Specifications (Subchapter J, 46 CFR), U.S. Coast Guard Electrical Engineering Regulations (Subchapter J, 46 CFR), U.S. Coast Guard Navigation and Vessel Inspection Circular No. 4-60 (Part IV—Notes on Repair), and U.S.P.H.S. Handbook on Sanitation in Vessel Construction, in effect at the time of the Contractor's submission of bid (or execution of the contract, if negotiated), and the best commercial maritime practices, except when Navy specifications are specified, in which case such standards of material and workmanship shall be followed. Where the detailed specifications do not require a Navy standard, or the requirements are not clearly or specifically covered by one of the aforementioned standards, the contracting officer or their designated representative shall prescribe a Navy or industrial standard for the work wherever applicable, and the decision shall be final: *Provided, however,* That where the requirements of the representative for development of detailed drawings, selection of materials and equipment, standards of workmanship, which are not specifically required in the specifications result in a change in unit price, total contract price, quantity, or delivery schedule, the contracting officer will be advised accordingly and the Contractor will not proceed with the work until specifically directed to do so by the contracting officer.

(c) All material and workmanship shall be subject to inspection and test at all times during the Contractor's performance of the work to determine their quality, and suitability for the purpose intended and compliance with the contract. In case any material or workmanship furnished by the Contractor is found to be defective prior to redelivery of the vessel, or not in accordance with the requirements of the contract, the Government, in addition to its rights under any "Guarantee" clause which may be contained in this contract shall have the right prior to redelivery of the vessel to reject such material or workmanship, and to require its correction or replacement by the Contractor at the Contractor's cost and expense. If the Contractor fails to proceed promptly with the replacement or correction of such material or workmanship, as required by the contracting officer, the Government may, by contract or otherwise, replace or correct such material or workmanship and charge to the Contractor the excess cost occasioned the Government thereby. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work specified in the contract. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of the contract and for a period of sixty days after completion of all work required by the contract.

(d) No welding, including welding and brazing, shall be permitted in connection with repairs, completions, alterations, or additions to hulls, machinery, or components of vessels, by a welder or procedure not qualified in accordance with MIL-STD-248C. Procedure qualifications tests shall be conducted in accordance with the requirements of MIL-STD-248C.

(e) The Contractor shall exercise reasonable care to protect the vessel from fire, and the Contractor shall maintain a reasonable system of inspection over the activities of welders, burners, riveters, painters, plumbers and similar workers, particularly where such activities are undertaken in the vicinity of the vessel's magazine, fuel oil tanks or storerooms containing flammable material. A reasonable number of hose lines shall be maintained by the Contractor ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in drydock or on a marine railway. All tanks under alteration or repair shall be cleaned, washed and steamed out or otherwise made safe by the Contractor if and to the extent necessary, and the contracting officer shall be furnished with "gas-free" or "safe-for-hotwork" certificate before any hotwork is done on a tank. Unless otherwise provided in this contract, the Contractor shall at all times maintain a reasonable fire watch about the vessel, including a fire watch on the vessel while work is being performed thereon.

(f) The Contractor shall place proper safeguard and/or effect such safety precautions as necessary, including suitable and sufficient lighting for the prevention of accidents or injury to persons or property during the prosecution of work under this contract and/or from time of receipt of the vessel until acceptance of work performed by the Government.

(g) Except as otherwise provided in this contract, when the vessel is in the custody of the Contractor or in drydock or on a marine railway and the temperature becomes as low

as 35 degrees Fahrenheit, the Contractor shall keep all pipelines, fixtures, traps, tanks, and other receptacles on or hooked up to the vessel drained to avoid damage from freezing, or if this is not practical, the vessels shall be kept heated to prevent such damage. It shall be the Contractor's responsibility to insure adequate circulation in the fire main water supply to prevent freezing of the water lines. The vessel's stern tube and propeller hubs shall be protected from frost damage by applied heat through the use of a salamander or other proper means.

(h) The work shall, whenever practicable, be performed in such manner as not to interfere with the berthing and messing of civilian or military personnel attached to the vessel, and provisions shall be made so that personnel assigned shall have access to the vessel at all times, it being understood that such personnel will not interfere with the work or the Contractor's workmen. The Contractor shall provide messing and sanitary facilities for its employees, subcontractors and agents separate from the vessel.

(i) The Government does not guarantee the correctness of the dimensions, sizes and shapes given in any sketches, drawings, plans or specifications prepared or furnished by the Government. The Contractor shall be responsible for the correctness of the shape, sizes and dimensions of parts to be furnished hereunder, other than those furnished by the Government.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by his employees or the work, and at the completion shall remove all rubbish from and about the site of the work and shall leave the work in its immediate vicinity "broom clear" unless more exactly specified in this contract.

(k) Any question regarding or rising out of the interpretations of plans and specifications of this contract or any discrepancies between the plans and specifications shall be determined by the contracting officer or his/her duly authorized representative; Provided, however, that any interpretations or determinations by the authorized representative which affect the price or delivery time specified in this contract must be approved in writing by the contracting officer prior to proceedings with the requirements of such interpretations or determinations.

(l) While in drydock or on a marine railway, the commanding officer of the vessel, if then in commission, shall be responsible for the proper closing of openings to the ship's bottom upon which no work is being done by the Contractor. The Contractor shall be responsible for the closing, before the end of working hours, of all valves and openings upon which work is being done by its workmen when such closing is practicable. The Contractor shall keep the commanding officer cognizant of the closure status of all valves and openings upon which the Contractor's workmen have been working.

(End of clause)

1252.217-74 Subcontracts.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Subcontracts (Jan. 1985)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissons of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

1252.217-75 Lay days.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Lay Days (Apr. 1984)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or Marine Railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No cost for lay day time shall be paid until all accepted items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all cost except for the direct cost of performing the changed work.

(End of clause)

1252.217-76 Liability and Insurance.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Liability and Insurance (Jan. 1985)

(a) The Contractor shall exercise reasonable care and use his or her best efforts to prevent accidents, injury or damage to all employees, persons and property, in and about the work, and to the vessel or part thereof upon which work is done.

(b) The Contractor shall not, unless otherwise directed or approved in writing by the Contracting Officer, carry or incur the expense of any insurance against any form of loss or damage to the vessels or to the materials or equipment therefor to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to the vessels and such materials and equipment. The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to procure or maintain insurance, if available, as required or approved by the Contracting Officer; Provided, further, that under this clause the Government does not assume any risk with respect to, and will not pay for any costs of the Contractor for the inspection, repair, replacement, or renewal of any defects themselves in the vessel(s) or such materials and equipment due to (1) defective workmanship or defective materials or equipment performed by or furnished by the Contractor or its subcontractors or, (2) workmanship or materials or equipment performed by or furnished by the Contractor or its subcontractors which do(es) not conform to the requirements of the contract, whether or not any such defect is latent or whether or not any such non-conformance is the result of negligence; Provided, further, that under this clause the Government does not assume the risk of and will not pay for the costs of any loss, damage, liability or expense caused by, resulting from, or incurred as a consequence of delay or disruption of any type whatsoever; or willful misconduct or lack of good faith on the part of any of the Contractor's managers, superintendents or other equivalent representatives who have supervision or direction of (i) all or substantially all of the Contractor's business or (ii) all or substantially all of the Contractor's operation at any one plant; Provided, however, that as to such risk assumed and borne by the Government, the Government shall be subrogated to any claim, demand or cause of action against third persons which exists in favor of the Contractor, and the Contractor shall, if required, execute a formal assignment or transfer of claims, demands or causes of action; Provided, further, that nothing contained in this paragraph shall create or give rise to any right, privilege or power in any person except the Contractor, nor shall any person (except the Contractor) be or become entitled thereby to proceed directly against the Government, or join the Government as a codefendant in any action against the Contractor's liability or for any other purpose. Notwithstanding the foregoing the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident the risk of which the Government otherwise would have assumed under the provisions of this paragraph.

(c) The Contractor indemnifies and holds harmless the Government, its agencies and instrumentalities, the vessel and its owners, against all suits, actions, claims, costs or demands, (including, without limitation, suits, actions, claims, costs or demands resulting from death, personal injury, and property

damage) to which the Government, its agencies and instrumentalities, the vessel or its owner may be subject or put by reason of damage or injury (including death) to the property or person of any one other than the Government, its agencies, instrumentalities and personnel, the vessel or its owner, arising or resulting in whole or in part from the fault, negligence, wrongful act or wrongful omission of the Contractor, or any subcontractor, his or their servants, agents or employees; Provided, that the Contractor's obligation to indemnify under this paragraph (c) shall not exceed the sum of $300,000 on account of any one accident or occurrence in respect of any one vessel. Such indemnity shall include, without limitation, suits, actions, claims, costs or demands of any kind whatsoever, resulting from death, personal injury or property damage occurring during the period of performance of work on the vessel or within ninety (90) days after redelivery of the vessel; and with respect to any such suits, actions, claims, costs, or demands resulting from death, personal injury or property damage occurring after the expiration of such period, the rights and liabilities of the Government and the Contractor shall be as determined by other provisions of this contract and by law; Provided, however, that such indemnity shall apply to death occurring after such period which results from any personal injury received during the period covered by the Contractor's indemnity as provided herein.

(d) The Contractor shall, at his or her own expense, procure, and thereafter maintain such casualty, accident and liability insurance, in such forms and amounts as may be approved by the contracting officer, insuring the performance of his obligations under paragraph (c) of this clause. Further, the Contractor shall procure and maintain in force Workmen's Compensation Insurance (or its equivalent) covering his employees engaged on the work and shall insure the procurement and maintenance of such insurance by all subcontractors engaged on the work. The Contractor shall provide such evidence of such insurance as may be, from time to time, required by the Government.

(e) No allowance shall be made to the Contractor in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self insurance for coverage against any risk assumed by the Government under this clause.

(f) As soon as practicable after the occurrence of any loss or damage the risk of which the Government has assumed, written notice of such loss or damage shall be given by the Contractor to the Contracting Officer. This notice shall contain full particulars of such loss or damage. If claim is made or suit is brought thereafter against the Contractor as a result or because of such event, the Contractor shall immediately deliver to the Government every demand, notice, summons or other process received by him or his representatives. The Contractor shall cooperate with the Government and, upon the Government's request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Government shall pay to the Contractor the expense, other than the cost of maintaining the Contractor's usual organization, incurred in so doing. The Contractor shall not, except at its own cost, voluntarily make any payment, assume any obligation, or incur any expense other than shall be imperative for the protection of the vessel or vessels at the time of said occurrence of such event.

(g) In the event of loss of or damage to any of the vessels or any of the materials or equipment therefor which may result in a claim against the Government under the insurance provisions of this contract, the Contractor promptly shall notify the Contracting Officer of such loss or damages, and the Contracting Officer may, without prejudice to any other right of the Government, either:

(1) Order the Contractor to proceed with replacement or repair in which event the Contractor shall effect such replacement or repair. The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of such replacement or repair together with such supporting documentation as the Contracting Officer may reasonably require, and shall identify such request as being submitted under the "Insurance" Clause of the contract. If the Government determines that the risk of such loss or damages is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable, allowable cost of such replacement or repair, plus a reasonable profit (if the work of replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause. Payments by the Government to the Contractor under this Insurance Clause are outside the scope and shall not affect the pricing structure of the contract (firm fixed-price or incentive-type arrangement, as applicable), and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) In the event the Contracting Officer decides that the loss or damage shall not be replaced or repaired, (i) Modify the contract appropriately consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage, or (ii) Terminate the repair of any part or all of the vessel(s) under the clause of this contract entitled "Termination for Convenience of the Government."

(End of clause)

1252.217-77 Title.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Title (April 1984)

Unless title to materials and equipment acquired or produced for, or allocated to, the performance of this contract shall have vested previously in the Government by virtue of other provisions of this contract, title to all materials and equipment to be incorporated in any vessel or part thereof, or to be placed upon any vessel or part thereof in accordance with the requirements of the contract, shall vest in the Government upon delivery thereof at the plant or such other location as may be specified in the Contract for the performance of the work: Provided, however, that the provisions of this clause or other provisions of this contract shall not be construed as relieving the Contractor from the full responsibility for all such Contractor-furnished materials and equipment or the restoration of any damaged work or as a waiver of the right of the Government to require the fulfillment of all the terms of this contract, it being expressly understood and agreed that the Contractor shall assume without limitation the risk of loss for any such materials and equipment until such time as all work is completed and accepted by the Government and the vessel is redelivered to the Government. Upon completion of the contract, or with the approval of the contracting officer at any time during the performance of the contract, all such Contractor-furnished materials and equipment not incorporated in any vessel or part thereof or not placed upon any vessel or part thereof, in accordance with the requirements of the contract, shall become the property of the Contractor, except those materials and equipment the cost of which has been reimbursed by the Government to the Contractor.

(End of clause)

1252.217-78 Discharge of liens.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Discharge of Liens (Apr. 1984)

The Contractor shall immediately discharge or cause to be discharged any lien or right in rem of any kind, other than in favor of the Government, which at any time exists or arises in connection with work done or materials furnished under this contract with respect to the machinery, fittings, equipment or materials for any vessel. If any such lien or right in rem is not immediately discharged, the Government may discharge or cause to be discharged such lien or right at the expense of the Contractor.

(End of clause)

1252.217-79 Delays.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Delays (Apr. 1984)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring addional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

1252.217-80 Department of Labor safety and health regulations for ship repairing.

As prescribed at 1217.7001(a) insert the following clause in solicitations and contracts:

Department of Labor Safety and Health Regulations for Ship Repairing (Apr. 1984)

Attention of the contractor is directed to Pub. L. 85-742, approved August 23, 1958 (72 Stat. 835, 33 U.S.C. 941), amending section 41 of the Longshoremen's and Harbor Worker's Compensation Act and to the Safety and Health Regulations for Ship Repairing promulgated thereunder by the Secretary of Labor (29 CFR Part 1501). These regulations apply to all ship repair and related work, as defined in the regulations, performed under this contract on the navigable waters of the United States including any drydock or marine railway. Nothing contained in this contract shall be construed as relieving the Contractor from any obligations which it may have for compliance with the aforesaid regulations.

(End of clause)

1252.217-81 Guarantee.

As prescribed at 1217.7001(b), insert the following clause in solicitations and contracts:

Guarantee (Apr. 1984)

In case any work done or materials furnished by the Contractor under this contract on or for any vessel or the equipment thereof shall, within* days from date of delivery of the vessel by the Contractor, prove defective or deficient, such defects or deficiencies shall, as required by the Government, be corrected and repaired by the Contractor at his or her expense to the satisfaction of the contracting officer: Provided, however, that with respect to any individual work item incomplete at the delivery of the vessel the guarantee period shall run from the date of completion of such item. The Government shall, if and when practicable, afford the Contractor an opportunity to effect such corrections and repairs themself, but when, because of conditions or the location of the vessel or for any other reason, it is impractical or undesirable to return it to the Contractor, or the Contractor fails to proceed promptly with any such repairs as directed by the contracting officer, such corrections and repairs shall be effected at the Contractor's expense at such other locations as the Government may determine. Where corrections and repairs are to be effected by other than the Contractor, due to nonreturn of the vessel to him or her, the Contractor's liability may be discharged by an equitable deduction in the price of the job. The Contractor's liability under this clause shall, however, in no event extend beyond the correction of such defects or deficiencies or payment for the cost thereof: Provided, however, that nothing in this clause shall be deemed to limit or relieve the Contractor of his or her responsibilities as set forth in the clause entitled "Liability and Insurance" and the clause entitled "Inspection" of this contract. At the option of the contracting officer, defects and deficiencies may be left in their then condition, and an equitable deduction from the Contract price, as agreed by the Contractor and contracting officer, shall be made therefor. If the Contractor and contracting officer fail to agree upon the equitable deduction from the contract price to be made, the dispute shall be determined as provided in the "Disputes" clause of this contract.

*To be inserted by the contracting officer (see 1217.7001(b)).

(End of clause)

1252.222-70 Service Contract Act of 1965 as amended, contracts of $2,500 or less.

As prescribed in 1222.1070-2(a), insert the following clause in solicitations and contracts:

Service Contract Act of 1965 as amended, Contracts of $2,500 or Less (Jan. 1985)

Except to the extent that an exemption, variation, or tolerance would apply under 29 CFR Part 4.6 if this contract were in excess of $2,500, the Contractor and any subcontractor shall pay all employees working 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 (29 U.S.C. 201-206). All regulations and interpretations of the Service Contract Act of 1965 expressed in 29 CFR Part 4 are hereby incorporated by reference in this contract.

(End of clause)

1252.222-71 Strikes or picketing affecting timely completion of the contract work.

As prescribed in 1222.101-71(a), insert the following clause in solicitations and contracts:

Strikes or Picketing Affecting Timely Completion of the Contract Work (Apr. 1984)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such disputes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

1252.222-72 Strikes or picketing affecting access to FAA facility.

As prescribed in 1222.101-71(b), insert the following clause in solicitations and contracts:

Strikes or Picketing Affecting Access to FAA Facility (Apr. 1984)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (1) Is directed at the Contractor or any subcontractor or any employee of either, and (2) impedes or threatens to impede access by any person to the DOT facility or facilities where the site(s) of the work is (are) located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board of the utilization of any other available judicial or administrative remedies.

(End of clause)

1252.222-73—1252.222-74 [Reserved]

1252.222-75 Service Contract Act of 1965 as amended.

As prescribed in 1222.7002-2(b), insert the following clause in solicitations and contracts:

Service Contract Act of 1965 as amended (Nov. 1987)

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. 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.

(b) *Conforming procedure.* (1) 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. (The information collection requirements contained in the following paragraphs of this clause have been approved by the Office of Management and Budget under OMB control number 1215—0150.)

(2) 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 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 determinaion 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.

(3) 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.

(4)(i) 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 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 classification based on the skill required and the duties performed.

(ii) 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 clause, 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 (b)(2) of this clause need not be followed.

(iii) 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.

(5) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(1) and (2) 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.

(6) Upon discovery of failure to comply with paragraphs (b)(1) through (5) 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.

(c) *Adjustment.* 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 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.

(d) *Obligation to furnish fringe benefits.* The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment of 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 Suppart D of 29 CFR Part 4, and not otherwise.

(e) *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.

(f) *Obligations attributable to predecessor contracts.* If this contract exceeds 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 a minimum wage attachment for this contract setting forth such collectively bargaining 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 agreement, 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 4.1(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in section 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 section 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.

(g) *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. (Approved by the Office of Management and Budget under OMB control number 1215–0150.)

(h) *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.

(i) *Records.* (1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified in the following paragraphs (i)(1) (i) through (vi) of this clause 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. [Items (i)(1) (i) through (iv) approved by the Office of Management and Budget under OMB control number 1215-0017 and items (i)(1) (v) and (vi) approved under OMB control number 1215-0150.]:

(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 benefits payments in lieu thereof, and total daily and weekly 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 (b) of this clause. A copy of the report required by paragraph (b)(2) 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 (q).

(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 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.

(j) *Interviews with employees.* The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(k) *Timing of payments.* 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.

(l) *Withholding of payment 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 this clause 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.

(m) *Subcontracts.* The contractor agrees to insert this clause relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in this clause in any subcontract be deemed to refer to the subcontractor, except in the term "Government prime contractor."

(n) *Service employees.* 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.

(o) *Civil Service rates.* 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

Other Fringe Benefits

Annual Leave: Two hours per week for service of less than three years; three hours per week for service of three years but less than 15 years or more.

Paid Holidays: Ten per year.

Government's contribution to sick leave and to life, accident, and health insurance: 5.1 percent of basic hourly rate.

Government's contribution to retirement pay: 7 percent of basic hourly rate.

Note.—The wage rates and fringe benefits listed in this clause are included in the contract as required by section 2(a)(5) of the Service Contract Act of 1965, as amended, and are not minimum wage rates and fringe benefits required to be paid on this contract.

(p) *Contractor report on collective bargaining agreement.* 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 of amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and budget under OMB control number 1215-0150.)

(q) *Contractor list of employee names.* Not less than 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 (section 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. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(r) *Rulings and interpretations.* Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(s) *Ineligible contractors and subcontractors.* (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 purusant to section 5 of the Act.

(t) *Penalty for false statements.* The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(u) *Special employees.* Notwithstanding any of the provisions in paragraphs (a) through (r) of this clause relating to the Service Contract Act of 1965, the following employees may be employed in acordance 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 Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) 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 aht 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).

(2) 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).

(3) The Administrator will also withdraw, annual, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(v) *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 workforce under the registered program.

(w) *Tip credit.* An employee engaged in an occupation in which he or she customarily and regularly receives more than $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:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) 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);

(3) The employer must be able to show by records that the employer receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) 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.

(x) *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)

1252.222-76 [Reserved]

1252.222-77 Fair Labor Standards Act and Service Contract Act—Price adjustment (multiyear and option contracts).

As prescribed in 1222.7002-2(b), insert the following clause in solicitations and contracts:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) (Jan. 1985)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contigency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued under the Service Contract Act of 1965 (41 U.S.C. 351-358), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made applicable to this contract, then the current Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to any renewal of this contract.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) The Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (c) above, and to the concomitant increases or decreases in social security and unemployment taxes and worker's compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

1252.222-78 Fair Labor Standards Act and Service Contract Act—price adjustment.

As prescribed in 1222.7002-2(b), insert the following clause in solicitations and contracts:

Fair Labor Standards Act and Service Contract Act—Price Adjustment (Jan. 1985)

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

1252.222-79 Service Contract Act requirements as to vacation pay.

As prescribed in 1222.7002-2(b), insert the following clause in solicitations and contracts:

Service Contract Act Requirements as to Vacation Pay. (Jan. 1985)

(a) *Employee Credit for Service with a Predecessor Contractor.* This paragraph (a) applies if the contract wage determination contains a provision referring to a "successor" contractor, as, e.g., "1 week paid vacation after 1 year of service with a contractor or successor." "Successor" as used in such provision means the Contractor on this contract when the Contractor employs, without a break in service, a service employee formerly employed by the immediately preceding contractor under a similar Government contract at the same location ("predecessor contractor"). Consequently, if the Contractor employs without a break in service, any service employee who was employed by its predecessor contractor for similar work at the same location, the Contractor in computing the employee's "year of service" shall include all continuous service for the predecessor contractor subsequent to the later of the following dates: (1) the date of employment by the predecessor contractor; or (2) if, while employed by the predecessor contractor, the employee had an anniversary date or dates on which the employee became entitled to vacation benefits, the most recent of such anniversary dates. Thus, the Contractor is liable for such employee's full vacation benefit on such anniversary date even though during part of the "year of service" the employee had been employed by the predecessor contractor.

(b) *When Predecessor Contractor Not Involved.* This paragraph (b) applies if the contract wage determination does not refer to a "successor" contractor, but contains a provision such as "1 week paid vacation after 1 year of service with an employer." The term "an employer" in such provision means the Contractor on this contract. The Contractor in computing a service employee's "year of service" shall include all continuous service performed by the employee subsequent to the later of the following dates: (1) The date of employment by the Contractor, or (2) the employee's most recent anniversary date for which a paid vacation was granted.

(c) *Part-time Employees.* If the contract wage determination contains either type of provision quoted in paragraph (a) or (b) above, part-time service employees working a regularly scheduled work week shall receive a paid vacation on a pro-rata basis. For example, an employee who has worked for the Contractor two days per week for a year [or, without a break in service, for the Contractor and a predecessor contractor where the wage determination contains language like that quoted in (a) above] shall be entitled to two days paid vacation or two-fifths of the vacation benefits to which full-time employees are entitled.

(d) *Break in Service.* For purposes of this provision, the term "break in service" does not include an employee's change in employment status from an employee of a predecessor contractor to an employee of the Contractor.

(End of clause)

1252.223-70 [Reserved]

1252.223-71 Accident and fire reporting.

As prescribed in 1223.7001(a) insert the following clause in solicitations and contracts:

Accident and Fire Reporting (Apr. 1984)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work which causes:

(1) A fatality or as much as one lost workday on the part of any employee of the Contractor or any subcontractor at any tier;

(2) Damage of $1,000 or more to Federal property either real or personal;

(3) Damage to Contractor or subcontractor owned or leased motor vehicles or mobile equipment;

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal property (either real or personal) the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his authorized representative and shall be confirmed by telegram within 24 hours to the Contracting Officer. Such telegram shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or contractor accident report form which provides for the statement of: (i) The extent of injury; and (ii) the damage and cause of the accident or fire. Such report shall be mailed or otherwise delivered to the Contracting Officer within 48 hours of the occurrence of the accident or fire.

(c) The contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

1252.223-72 Protection of human subjects.

As prescribed in 1223.7001(b) insert the following clause in solicitations and contracts:

Projection of Human Subjects (Nov. 1987)

The contractor shall comply with the NHTSA principles and procedures (in accordance with NHTSA Orders 700-1, 700-3, and 700-4) for the protection of human subjects participating in activities supported directly or indirectly by grants or contracts from NHTSA. In fulfillment of its assurance:

A committee competent to review projects and activities that involve human subjects shall be established and maintained by the contractor.

The committee shall be assigned responsibility to determine for each activity planned and conducted that:

The rights and welfare of subjects are adequately protected.

The risks to subjects are outweighed by potential benefits.

The informed consent of subjects shall be obtained by methods that are adequate and appropriate.

Committee reviews are to be conducted with objectivity and in a manner to ensure the exercise of independent judgment of the members. Members shall be excluded from reviews of projects or activities in which they have an active role or a conflict of interest.

Continuing constructive communication between the committee and the project directors must be maintained as a means of safeguarding the rights and welfare of subjects.

Facilities and professional attention required for subjects who may suffer physical, psychological, or other injury as a result of participation in an activity shall be provided.

The committee shall maintain records of committee reviews of applications and active projects, of documentation of informed consent, and of other documentation that may pertain to the selection, participation, and protection of subjects. Detailed records shall be maintained of circumstances of any reviews that adversely affect the rights or welfare of the individual subjects. Such materials shall be made available to NHTSA upon request. The retention period for such records and materials shall be as specified at FAR 4.703.

Periodic reviews shall be conducted by the contractor to assure, through appropriate administrative overview, that the practices and procedures designed for the protection of the rights and welfare of subjects are being effectively applied.

Note: If the contractor has a Department of Health and Human Services approved Institutional Review Board (IRB) which can appropriately review this contract in accordance with the technical requirements and NHTSA Orders 700-1, 700-3, and 700-4, that IRB will be considered acceptable for the purposes of this contract.

(End of clause)

1252.228-70 [Reserved]

1252.228-71 Loss of or damage to leased aircraft.

As prescribed in 1228.306-70-1 (a) and (b) insert the following clause in solicitations and contracts:

Loss of or Damage to Leased Aircraft (Apr. 1984)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor the sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in the clause "Fair Market Value of Aircraft", less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor certifies that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be: (1) credited to the Government in determining the amount of the Government's liability; or (2) for an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.

(End of clause)

1252.228-72 Fair market value of aircraft.

As prescribed in 1228.306-70-1(c) insert the following clause in solicitation and contracts.

Fair Market Value of Aircraft (Apr. 1984)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft", it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $_____ or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

1252.228-73 Risk and indemnities.

As prescribed in 1228.306-70-1(d) insert the following clause in solicitations and contracts:

Risk and Indemnities (Apr. 1984)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, a Certificate of Insurance shall be delivered to the Contracting Officer.

(End of clause)

1252.235-70 [Reserved]

1252.235-71 Recoupment of development costs.

As prescribed in 1235.070 insert the following clause in solicitations and contracts:

Recoupment of Development Costs (Apr. 1984)

(a) As may be determined by the contracting officer to be fair, reasonable and equitable, the contractor shall pay to the Government up to five percent (5%) of sums hereafter received by or credited to the Contractor or its privies (including subcontractors) on sales or leases (exclusive of sales or leases to the U.S. Government, either directly or indirectly through Government prime contractors of subcontractors) of any product which is substantially the same in design as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(b) In selling or leasing the product identified in paragraph (a) above to the Government, either directly or indirectly through Government prime Contractors or subcontractors, the Contractor or its privies (including subcontractors) shall notify the purchaser or lessee in writing that the product was developed under a Department of Transportation contract containing a Recoupment of Development Costs clause and that the purchase or lease price of such product is less than the price of such product when sold or leased to other than the Government by an amount no less than the Government's share under the Recoupment of Development Costs clause. A copy of each such notice shall be sent to the Contracting Officer. In the event the product is sold or leased to the Government, the amount by which the sales or lease price was reduced by virtue of this clause shall be credited to the amount recoverable under this clause.

(c) As may be determined by the Contracting Officer to be fair, reasonable and equitable, the Contractor shall also pay to the Government up to 33 percent of all sums hereafter received by, or credited to, the Contractor or its privies (including subcontractors) as payments under technical agreements permitting others (1) to sell, lease, or manufacture the product identified in paragraph (a) above, and (2) to use any process which is substantially the same as, or which is directly derived from, that developed by the Contractor or any of its subcontractors in the performance of this contract.

(d) Recoupment by the Government under this cluase shall be limited to amounts paid and credited to the Contractor under this contract. Payments to the Government under this clause shall not be so high as to destroy the Contractor's competitive position for the product involved, provided that the product is otherwise reasonably priced and efficiently and economically produced.

(e) The Contractor shall report to the Government all sales, leases, licensing agreements, royalties and receipts which might reasonably be considered to be subject to this clause; and the Contractor shall promptly render accurate, certified accounts thereon to the Government at reasonable intervals.

(End of clause)

1252.236-70 [Reserved]

1252.236-71 Special precautions for work at operating airports.

As prescribed in 1236.570 insert the following clause in solicitations and contracts:

Special Precautions for Work at Operating Airports (Apr. 1984)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to intefere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be electric type of not less than 100 watts intensity placed and supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and materials in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and, when directed by the Contracting Officer, with red obstruction lights at night. All equipment operating on the apron, taxiway, runway and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flagmen shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. The maximum speed allowed at the airport shall be as established by the airport management. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and tail lights during the hours of darkness.

(End of clause)

1252.237-70 [Reserved]

1252.237-71 Qualifications of employees.

As prescribed in 1237.110 insert the following clause in solicitations and contracts:

Qualifications of Employees (Apr. 1964)

The Contracting Officer may require dismissal from work of those employees which he/she deems incompetent, careless, insubordinate, unsuitable or otherwise objectionable, or whose continued employment he/she deems contrary to the public interest or inconsistent with the best interest of national security. The Contractor shall fill out, and cause each of its employees on the contract work to fill out, for submission to the Government, such forms as may be necessary for security or other reasons. Upon request of the Contracting Officer, the Contractor's employees shall be fingerprinted. Each employee of the contractor shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form 1-151, or who presents other evidence from the Immigration and Naturalization Service that employment will not affect his/her immigration status.

(End of clause)

1252.242-70 Dissemination of information—educational institutions.

As prescribed in 1242.203-70(c), the following clause may be used in research contracts with educational institutions in lieu of the clause 1252.242-72.

Dissemination of Information—Educational Institutions (Jan. 1955)

The Department desires widespread dissemination of the results of funded transportation research. The contractor, therefore, may publish (subject to the provisions of the "Data Rights," and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results as dissemination will not be sufficiently widespread.) All costs of publication pursuant to this clause shall be borne by the contractor and shall not be charged to the Government under this or any other Federal contract. Any copy of material published under this clause must contain acknowledgment of the Department of Transportation's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of the Department of Transportation. Articles for publication or papers to be presented to professional societies do not require the authorization of the contracting officer prior to release.

However, two copies of each article shall be transmitted to the contracting officer at least two weeks prior to release or publication. Press releases concerning the results or conclusions from the research under this contract, shall not be made or otherwise distributed to the public without prior written approval of the contracting officer. Publication under the terms of this clause does not release the contractor from the obligation of preparing and submitting to the contracting officer a final report containing all findings and results of research, as set forth in the schedule of this contract.

(End of clause)

1252.242-71 Contractor testimony.

As prescribed in 1242.203-70(a) insert the following clause in solicitations and contracts:

Contractor Testimony (Apr. 1984)

All requests for the testimony of the contractor or its employees, and any intention to testify as an expert witness relating to: (1) Any work required by, and/or performed under, this contract; or (2) any information provided by any party to assist the contractor in the performance of this contract, shall be immediately reported to the contracting officer. Neither the contractor nor its employees shall testify on a matter related to work performed or information provided under this contract, either voluntarily or pursuant to a request, in any judicial or administrative proceeding unless approved by the contracting officer or required by a judge in a final court order.

(End of clause)

1252.242-72 Dissemination of contract information.

As prescribed in 1242.203-70(b) insert the following clause in solicitations and contracts:

Dissemination of Contract Information (Apr. 1964)

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. (Two copies of any material proposed to be published or distributed shall be submitted to the Contracting Officer.)

(End of clause)

1252.245-7 Government property reports.

Insert the following clause in Section H of all solicitations and contracts when Government property is provided to a contractor.

Government Property Reports ( )

(a) The Contractor shall prepare a report as of July 31 each year listing all Government property (under the purview of this contract) in its possession and in the possession of all subcontractors during the previous 12 months. The report shall be prepared in the format outlined in Transportation Acquisition Regulation (TAR) 1245.505-14(b)(2). The

contractor shall submit the report to the Contracting officer no later than September 15 of each year.

(b) The report shall include the following types of property:

(1) Capitalized Equipment, as defined at TAR 1245.

(2) Real property, as defined at FAR 101(a).

(3) Material maintained in stock, when the value is $50,000 or more.

(c) The report may include property from the following categories when so stipulated by the Contracting Officer in solicitations and contracts:

(1) Noncapitalized equipment, as defined at TAR 1245.

(2) Material maintained in stock, when its value is less than $50,000.

(End of clause)

PART 1253—FORMS

Sec.
1253.000 Scope of part.

Subpart 1253.1—General

1253.103 Exceptions.
1253.107 Obtaining forms.

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.
1253.204 Administrative matters.
1253.204–2 Contract reporting (DOT F. 4220.11).
1253.204–70 Procurement request forms (DOT F. 4200.1 and 4200.2).
1253.213 Small purchase and other simplified purchase procedures.
1253.213–70 Small purchase summary (DOT F. 4230.1).
1253.215 Contracting by negotiation.
1253.215–70 Price negotiation (DOT F. 4220.21; DOT F. 4220.32; and DD 1861).
1253.219 Small business and labor surplus area set-asides.
1253.219–70 Information to offerors or quoters (DD Form 1707). The DD Form 1707, Information to Offerors, may be used as prescribed by administration procedures.
1253.222 Application of labor laws to Government acquisitions.
1253.222–70 Labor standards interview (DD Form 1567).
1253.222–71 Employee claim for wage restitution (DOT F. 4220.7).
1253.222–72 Labor standards investigation summary sheet (DD Form 1568).
1253.222–73 Summary of underpayments (DOT F. 4220.8).
1253.222–74 Establishment of additional wage rates (DOT F. 4220.10).
1253.227 Patients, data, and copyrights.
1253.227–70 Report of inventions and subcontracts (DD Form 882).
1253.236 Construction and architect-engineer contracts.
1253.236–70 Preconstruction conference agenda and checklist (DOT F. 4220.3).
1253.242 Contract administration (FAA Form 4450–2 and DD Form 375).
1253.242–70 Contract close-out (DOT F. 4220.4, 4220.5 and 4220.6).
1253.246 Quality assurance.
1253.246–70 Material inspection and receiving (FAA 256).

Subpart 1253.3—Illustrations of Forms

Sec.
1253.300 Scope of subpart.
1253.370 Agency forms.
1253.370–4200.1 Form DOT F 4200.1, Procurement Request.
1253.370–4200.2 For DOT F 4200.2, Procurement Request Continuation Sheet.
1253.370–4220.3 Form DOT F 4220.3, Preconstruction Conference Checklist.
1253.370–4220.4 Form DOT F 4220.4, Contractor's Release.
1253.370–4220.5 Form DOT F 4220.5, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
1253.370–4220.6 Form DOT F 4220.6, Cumulative Claim and Reconciliation.
1253.370–4220.7 Form DOT F 4220.7, Employee Claim for Wage Restitution.
1253.370–4220.8 Form DOT F 4220.8, Summary of Underpayments.
1253.370–4220.10 Form DOT F 4220.10, Establishment of Additional Wage Rates.
1253.370–4220.11 Form DOT F 4220.11, Contract Information System Data Input Sheet.
1253.370–4220.21 DOT F 4220.21, ADP Equipment and Services.
1253.370–4220.32 Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective.
1253.370–4230.1 Form DOT F 4230.1, Small Purchase Summary.
1253.370–FAA–256 FAA Form 256, Inspection Report of Material and/or Services.
1253.370–FAA–4450–2 FAA Form 4450–2, Post-Award Conference Report.
1253.370–FHWA–1140 FHWA Form 1140, Additional Classification and Wage Rate Request.
1253.370–DD–375 DD Form 375, Production Progress Report.
1253.370–DD–882 DD Form 882, Report of Inventions and Subcontracts.
1253.370–DD–1567 DD Form 1567, Labor Standards Interview.
1253.370–DD–1568 DD Form 1568, Labor Standards Investigaton Summary Sheet.
1253.370–DD–1707 DD Form 1707, Information to Offerors or Quoters.
1253.370–DD–1861 DD Form 1861, Contract Facilities Capital and Cost of Money.

Authority: Sec. 205(C) Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(c)). 48 CFR 1.301; 49 CFR 1.59.

Editorial note: Forms referenced in Part 1253 do not appear in the Code of Federal Regulations.

1253.000 Scope of part.

This part (a) prescribes Department of Transportation (DOT) forms for use in acquisition of supplies and services, including construction and (b) contains procedures for exceptions to forms prescribed in FAR Part 53 or this Part 1253.

Subpart 1253.1—General

1253.103 Exceptions.

(a) Requests for exceptions to standard forms in FAR Part 53 shall be submitted, as prescribed in FAR 53.103, to the Senior Procurement Executive for further action.

(b) Requests for exceptions to DOT forms in Part 1253 shall be handled as deviations (see 1201.4).

(c) Computer-generated DOT forms are permissable provided that these forms are duplicted in their entirety.

1253.107 Obtaining forms.

(a) Copies of the DOT forms are available from the Chief, Procurement Management Division, Office of the Secretary, 400 7th Street SW., Washington, DC 20590.

(b) Requests for any Department of Labor forms or publications required for compliance with the following FAR subparts should be addressed to the offices indicated below.

(1) *Subparts 22.2, 22.3, 22.4, 22.6, and 22.10*

Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210.

(2) *Subparts 22.8, 22.9, 22.13, and 22.14*

Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, Washington, DC 20210.

Subpart 1253.2—Prescription of Forms

1253.200 Scope of subpart.

Consistent with the approach used in FAR Subpart 53.2, this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the TAR in which the form usage requirements are addressed.

1253.204 Administrative matters.

1253.204–2 Contract reporting (DOT F.4220.11)

The DOT Form F.4220.11, prescribed in DOT Order 1340.5C, Contract Information System, shall be used to provide acquisition records and statistics in lieu of the SF279, Individual Contract Action Report (over $10,000). A copy of each Data Input Form shall be retained in the individual contract file.

1253.204–70 Procurement request forms (DOT F.4200.1 and 4200.2).

Procurement request forms DOT F.4200.1 and DOT F.4200.2 (Continuation sheet) shall be used to request the acquisition of supplies, services, or construction, and may be used to request items obtained through FEDSTRIP, MILSTRIP, or similar single- or multi-line requisitioning methods.

1253.213 Small purchase and other simplified purchase procedures.

1253.213-70 Small purchase summary (DOT F.4230.1).

DOT Form F.4230.1 may be used to satisfy the small purchase documentation requirements set forth in FAR 13.106.

1253.215 Contracting by negotiation.

1253.215-70 Price negotiation (DOT F.4220.21; DOT F.4220.32; and DD1861).

(a) ADP equipment and services. As prescribed in 1215.407(c), the form DOT F.4220.21 shall be included in solicitations and required to be completed by offerors in addition to SF 1411 and other supporting documents.

(b) Weighted guidelines profit/fee objective. The following forms shall be used to compute profit or fee for actions covered under 1215.905-70 and FAR 15.9:

(1) DOT F.4220.32 Weighted Guidelines Profit/Fee Objective.

(2) DD 1861 Contract Facilities Capital and Cost of Money.

1253.219 Small business and labor surplus area set-asides.

1253.219-70 Information to offerors or quoters (DD Form 1707).

The DD Form 1707, Information to Offerors, may be used as prescribed by administration procedures.

§ 1253.322 Application of labor laws to Government acquisitions.

The following forms are prescribed for use in connection with DOT construction contracts.

1253.222-70 Labor standards interviews (DD Form 1567).

The DD Form 1567 shall be used to record the results of interviews with contractor employees working at the construction site. Sec. 5.6(a)(3) of the Labor Department regulations (29 CFR) requires Federal agencies to make such investigations as are deemed necessary to ensure compliance with the labor standards provisions contained in the contract. These investigations include interviews with employees to ascertain whether laborers and mechanics are being or have been properly classified and paid.

1253.222-71 Employee claim for wage restitution (DOT F.4220.7).

The DOT Form F.4220.7 shall be used by contractor employees to file claim for unpaid wages when contract funds have been transferred to the General Accounting Office to cover such underpayment. (Even though contract funds have been transferred to GAO to cover the underpayment, GAO requires that a claim be submitted before it will make payment directly to the employee.)

1253.222-71 Labor standards investigation summary sheet (DD Form 1568).

The DD Form 1568 shall be used as the first page of reports on special labor standards investigations to summarize the findings of the ivestigation.

1253.222-73 Summary of underpayments (DOT F.4220.8).

The DOT Form F. 4220.8 shall be used to summarize the findings of wage underpayment and liquidated damages and shall be included in the investigation report when a special labor standards investigation is made.

1253.222-74 Establishment of additional wage rates. (DOT F.4220.10 and FHWA-1140).

(a) Except as provided in (b) below, DOT Form F.4220.10 shall be used by the contractor to obtain the contracting officer's approval or disapproval of the contractor's proposed classification and wage rate for any category of laborers or mechanics not listed in the contract wage determination but needed in performance of the contract work. Procedures shall be established to assure contracting officer approval of additional classifications and rates prior to their use by the contrator.

(b) FHWA Form 1140 may be used by the Federal Highway Administration for direct Federal contracts and Federal-aid contracts in lieu of DOT Form F. 4220.10.

1253.227 Report of inventions and subcontracts (DD Form 882).

The DD Form 882, Report of Inventions and Subcontracts, may be used as prescribed in administration procedures.

1253.227-70 Report of inventions and subcontracts (DD Form 882).

1253.236 Construction and architect-engineer contracts.

1253.236-70 Preconstruction conference agenda and checklist (DOT F. 4220.3).

The DOT Form F. 4220.3 Preconstruction conference agenda and checklist, or a similar checklist, shall be used as prescribed in 1236.305(b).

1253.242 Contract administration (FAA Form 4450-2 and DD Form 375).

The following forms may be used in the administration of contracts as prescribed by administration procedures.

Post-Award Conference Record (FAA Form 4450-2).

Production Progress Report (DD Form 375).

1253.242-70 Contract close-out (DOT F. 4220.4, 4220.5 and 4220.6).

The following forms shall be used to facilitate and document the close-out of cost-reimbursement contracts. Form DOT F. 4220.4 Contractor's Release shall also be used for construction contracts when the contracting officer requires a release, and may be used for any other type of contract when the contracting officer determines its use to be appropriate.

(a) DOT Form 4220.4 Contractor's Release.

(b) DOT Form 4220.5 Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts.

(c) DOT Form 4220.6 Cumulative Claim and Reconciliation.

1253.246 Quality assurance.

1253.246-70 Material inspection and receiving (FAA Form 256).

The FAA Form 256, Inspection Report of Material and/or Services, or a substantially similar form, shall be used as prescribed in 1246.6.

Subpart 1253.3—Illustrations of Forms

1253.300 Scope of subpart.

This subpart contains illustrations of Department of Transportation (DOT) and other agency forms referenced in this regulation.

1253.370 Agency forms.

The forms are illustrated in numerical order. The subsection numbers correspond with the DOT or other agency form number.

1253.370-4200.1 Form DOT F-4200.1, Procurement Request.
1253.370-4200.2 Form DOT F 4220.2, Procurement Request Continuation Sheet.
1253.370-4220.3 Form DOT F 4220.3, Preconstruction Conference Checklist.
1253.370-4220.4 Form DOT F 4220.4, Contractor's Release.
1253.370-4220.5 Form DOT F 4220.5, Contractor's Assignment of Refunds, Rebates, Credits, and Other Amounts.
1253.370-4220.6 Form DOT F 4220.6, Cumulative Claim and Reconcillation.
1253.370-4220.7 Form DOT F 4220.7, Employee Claim for Wage Restitution.
1253.370-4220.8 Form DOT F 4220.8, Summary of Underpayments.
1253.370-4220.10 Form DOT F 4220.10, Establishment of Additional Wage Rates.
1253.370-4220.11 Form DOT F 4220.11, Contract Information System Data Imput Sheet.
1253.370-4220.21 Form DOT F 4220.21, ADP Equipment and Services.
1253.370-4220.32 Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective.
1253.370-4230.1 Form DOT F 4230.1, Small Purchase Summary.

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1253.370-FAA-256 FAA Form 256, Inspection Report of Material and/or Services.

1253.370-FAA-4450-2 FAA Form 4450-2, Post-Award Conference Report.

1253.370—FHWA-1140 FHWA Form 1140, Additional Classification and Wage Rate Request.

1253.370-DD-375 DD Form 375, Production Progress Report.

1253.370-DD-882 DD Form 882, Report of Inventions and Subcontracts.

1253.370-DD-1567 DD Form 1567, Labor Standards Interview.

1253.370-DD-1568 DD Form 1568, Labor Standards Investigation Summary Sheet.

1253.370-DD-1707 DD Form 1707, Information to Offerors or Quoters.

1253.370-DD-1861 DD Form 1861, Contract Facillties Capital and Cost of Money.

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federal register

Thursday
November 19, 1987

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Alabama Cave Shrimp, Palaemonias Alabamae

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Alabama cave shrimp, *Palaemonias alabamae*, to be an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). This obligate cave dweller has been found in only two caves in Madison County, Alabama. Groundwater contamination, low population levels, and collecting represent major threats to this small shrimp. The shrimp was not observed in Shelta Cave during the past year, despite biweekly surveys of aquatic cave life. In Bobcat Cave, only two or three shrimp have been observed on any single visit. This proposal, if made final, would implement the protection of the Act for the Alabama cave shrimp. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by January 19, 1988. Public hearing requests must be received by January 4, 1988.

ADDRESS: Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965-4900, FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The Alabama cave shrimp, *Palaemonias alabamae*, is an albinistic cave shrimp known from only two caves in Madison County, Alabama, (J.E. Cooper, pers. comm.). This obligate cave shrimp was first collected in 1958 by Dr. Thomas Poulson and described in 1961 by A.E. Smalley from a series of 20 shrimp collected in Shelta Cave (Cooper 1975). The Alabama cave shrimp is colorless and nearly transparent and has a total length of up to 20 mm (0.8 in.) (Cooper 1975, Smalley 1961). The only other species of *Palaemonias* is the endangered Kentucky cave shrimp, *P. ganteri*, known only from the Flint-Mammoth Cave System, Kentucky. *Palaemonias alabamae* is very similar to *P. ganteri*, but is smaller in size, has a shorter rostrum, generally lacks ventral rostral spines, and has fewer dorsal rostral spines (Smalley 1961). A search of over 200 caves in north Alabama has failed to find the Alabama cave shrimp anywhere but at the two known localities (J.E. Cooper, pers. comm.). The type locality, Shelta Cave, lies within the northwest limits of Huntsville, Alabama. It is located in Warsaw Limestone of Mississippian age in the Interior Low Plateau (Cooper 1975). Shelta Cave consists of three large rooms with smaller alcoves. Water is present in all of the cave areas during wet periods of the year. Water levels fluctuate several feet during the year and some areas of the cave become seasonally dry. The two pit entrances to Shelta Cave are owned by the National Speleological Society and are gated to control activity in the cave. The only other known population is in Bobcat Cave, located on Redstone Arsenal, which is under the control of the U.S. Army. The available information indicates that the population in Shelta Cave has declined and may be extirpated. Over an 11-year period, Cooper and others collected or observed from one to 25 shrimp on each of 19 visits (Cooper 1975). On two of these visits the shrimp were not counted, but were described as plentiful. During the period from December 1985 to April 1986, biologists made monthly trips to observe aquatic life in Shelta Cave but did not find any shrimp. In April 1986, a study to observe aquatic life in Shelta Cave twice a month for one year was initiated. No cave shrimp have been observed in Shelta Cave during this period.

Threatened status was proposed for the Alabama cave shrimp on January 12, 1977 (42 FR 2507-2515). That proposal was withdrawn on December 10, 1979 (44 FR 70796-70797), for administrative reasons stemming from new listing requirements of the 1978 amendments to the Act.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alabama cave shrimp (*Palaemonias alabamae*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The only known populations of Alabama cave shrimp occur in Shelta and Bobcat Caves. The only population trend data are discussed in the "Background" section. Groundwater contamination represents a major threat to this cave-dwelling species. Both caves are within the Huntsville Spring Branch and Indian Creek drainages, known areas of DDT contamination (Environmental Protection Agency 1986). They are not known to be in the direct path of the contaminated flow at the present time. In any area where sinkholes occur, however, surface pollutants can easily and rapidly enter the sub-surface aquifer.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Its apparent low reproductive abilities, confined habitat, and inability to elude captors make the Alabama cave shrimp very susceptible to collecting. Cooper (1975) found only eight attached eggs on Alabama cave shrimp and indicated that females of this species produced only one third to one half as many eggs as females of the endangered Kentucky cave shrimp. Other cave species are known to have extremely low reproductive rates compared to closely related surface species (Poulson 1961, Cooper 1975). As a result, any collection of adults can significantly affect population levels. There are few known collections of the Alabama cave shrimp, and these were made when the species was apparently more common (see Background).

C. *Disease and predation.* The Alabama cave shrimp occurs with the southern cavefish, *Typhlichthys subterraneus*, the cave salamander, *Gyrinophilus palleucus*, and the cave crayfish, *Aviticambarus jonesi* in one or both caves (Cooper 1975). It is probable that all three prey upon young cave shrimp (Barr and Kuehne 1971, Cooper 1975).

D. *The inadequacy of existing regulatory mechanisms.* The Alabama Department of Conservation and Natural Resources recognizes the Alabama cave shrimp as a "species of special concern" but does not provide any legal protection (Bouchard 1976). Shelta Cave is owned by the National Speleological Society and is currently gated to exclude unauthorized visitors. Bobcat Cave is owned by Redstone Arsenal and admittance is controlled. While admittance to the caves is

restricted by the owners, adequate regulations do not exist to discourage collection of the species by those who are able to gain entrance to the caves.

E. *Other natural or manmade factors affecting its continued existence.* Its very small population levels and low reproductive capabilities are natural limitations to the ability of this species to recover from any adversity. Only two populations are known and no shrimp have recently been observed in Shelta Cave despite twice monthly observations of the aquatic fauna for almost a year.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Alabama cave shrimp as an endangered species. Endangered status was chosen because the species has only been found in two caves and is in obvious decline in one of these caves. Therefore, the species requires the greatest possible protection under the Act. The reason critical habitat is not designated is discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," the Alabama cave shrimp is endangered by taking, an activity difficult to prevent. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. All involved parties and land owners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for the Alabama cave shrimp at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Examples of recovery actions that might be implemented include management agreements with Redstone Arsenal and cooperation with the National Speleological Society to protect existing populations of this shrimp, studies to understand the groundwater recharge patterns, and attempts to develop safeguards against potentially damaging contamination of groundwater entering the caves. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement with this species is expected to be minimal. The continuing development of this region could lead to sub-surface water degradation that may involve the Environmental Protection Agency or other agencies with jurisdiction over groundwater. The Federal Housing Authority may be required to consult with the Service on Federal loans for housing development within the cave's recharge area. Development on Redstone Arsenal may require consultation with the U.S. Army.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Alabama cave shrimp;

(2) The location of any additional populations of the Alabama cave shrimp and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such

requests must be made in writing and addressed to Endangered Species Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Barr, T.C., Jr., and R.A. Kuehne. 1971. Ecological studies in the Mammoth Cave System of Kentucky, II. The ecosystem. International Journal of Speleology 26(1):47–96.

Bouchard, R.W. 1976. Crayfishes and shrimps pp. 14–20. *In:* H. Boschung (ed.), Endangered and Threatened Plants and Animals of Alabama. Alabama Museum of Natural History Bulletin No. 2. 92 pp.

Cooper, J.E. 1975. Ecological and Behavioral Studies in Shelta Cave, Alabama, with emphasis on decapod crustaceans. Ph.D. Dissertation, University of Michigan. University Microfilms International. Ann Arbor, Michigan. 364 pp.

Environmental Protection Agency. 1986. Report on the Remedial Action to Isolate DDT from People and the Environment in the Huntsville Spring Branch-Indian Creek System Wheeler Reservoir, Alabama. EPA, Region IV, Atlanta, Georgia. 38 pp. and appendices.

Poulson, T.L. 1961. Cave Adaptations in Amblyopsid fishes. Ph.D. Dissertation, University of Michigan. University Microfilms International, Ann Arbor, Michigan. 185 pp.

Smalley, A.E. 1961. A new cave shrimp from Southeastern United States (Decapoda, Atyidae). Crustaceana III(2):127–130.

Author

The primary author of this proposed rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Shrimp, Alabama cave	*Palaemonias alabamae*	U.S.A. (AL)	NA	E		NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–26713 Filed 11–18–87; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Solanum Drymophilum (Erubia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the plant *Solanum drymophilum* (erubia) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Solanum drymophilum* is now limited to the lower montane region of southeastern Puerto Rico. The species is affected by housing construction and deliberate eradication. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Solanum drymophilum*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 19, 1988. Public hearing requests must be received by January 4, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/331–3583 or FTS 242–3583).

SUPPLEMENTARY INFORMATION:

Background

Solanum drymophilum was first collected in 1885 by Paul Sintenis in the Sierra de Cayey, a range of foothills extending to the southeast from the Central Cordillera of Puerto Rico. The species was later found at several scattered locations in these mountains and to the northeast in the Sierra de Naguabo. In the 1950's, R.O. Woodbury found the species near Lares, a town in the lower mountains of western Puerto Rico (Vivaldi and Woodbury 1981). The species has never been observed between these widely disjunct locations. Since its discovery, *Solanum drymophilum* has been extirpated from all known sites except one in the Sierra de Cayey, where approximately 200 plants survive.

Solanum drymophilum is a tall evergreen shrub occasionally reaching 18 feet (5.5 meters) in height, sometimes having a single stem, but often branching from the base. Young twigs, leaves, and flowers are covered with whitish, star-shaped hairs, and the leaves and inflorescences are also armed with numerous yellowish, stiff

spines nearly one-half inch (1.25 centimeters) in length. The leaves are alternate, lanceolate to oblanceolate, with entire margins. The bisexual flowers are white, wheel-shaped, fan-folded, and borne in subterminal racemes. The fruits are round, shiny-black berries one-quarter inch (6 to 8 millimeters) in diameter. The species is endemic to evergreen forests on volcanic soils from 1,000 to 3,000 feet (300 to 900 meters) in elevation. The site where the single population remains is an area of volcanic outcrops known as Las Tetas de Cayey. This site is at an elevation of 2,760 feet (840 meters), where there is a mosaic of pasture, remnants of native evergreen forest in draws and on hilltops, and several cleared homesites.

Although the extensive deforestation of the region has caused the loss of known *Solanum drymophilum* populations and probably of other plant species, it is not certain what the actual or potential range and abundance of the species was in the past. It is possible that it was once at least locally common in many parts of eastern Puerto Rico, and may have also been numerous in the western mountains. The loss of plants to land clearing and deliberate eradication has been documented in the Cayey area (Vivaldi and Woodbury 1981).

Solanum drymophilum was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980. The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened), and was retained in category 1 in the November 28, 1983, update (48 FR 53640) of the 1980 notice, and the September 27, 1985, revised notice (50 FR 39526).

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service made subsequent petition findings in October of 1983, 1984, 1985, and 1986 that listing *Solanum drymophilum* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes a final required petition finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Solanum drymophilum* Schulz (erubia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Modification of habitat and direct destruction of plants appear to have been, and continue to be, significant factors reducing the numbers of *Solanum drymophilum.* Of four populations documented by the collection of specimens, only one is known to survive. All of the approximately 200 known individuals at the remaining site occur on private land, most within a pasture surrounded by lots being cleared and developed for private homes, as well as one communications facility operated by the Puerto Rico Telephone Company. It is likely that deforestation prior to creation of pasturelands destroyed many plants at this and other sites in the region. However, it is also possible that, given this species' apparent ability to recolonize disturbed sites, new plants became established within these pastures, and were subsequently eradicated because of their perceived threat to livestock. It has been reported (Vivaldi and Woodbury 1981) that this species is viewed as a pest, and is cut whenever encountered in the fields. *Solanum drymophilum* is extremely spiny, and in some cases the concern for injury to livestock may be justified. Nevertheless, mature plants become progressively less spiny, and the foliage is generally out of the reach of most browsers. Only the young plants are readily accessible to animals, and these were observed to be quite numerous in the remaining pasture supporting most of the known population. Thus, either the species reproduces more rapidly than it can be cut, or there is now less concern regarding its threat to animals.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes has not been a documented factor in the decline of this species.

C. *Disease or predation.* Disease and predation have not been documented as factors in the decline of this species.

D. *The inadequacy of existing regulatory mechanisms.* The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Solanum drymophilum* is not yet on the Commonwealth list. Federal listing would provide interim protection and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. *Other natural or manmade factors affecting its continued existence.* The most important factor affecting this species' continued survival is its restricted distribution, with approximately 200 plants known to inhabit a five-acre area that is subject to commercial development. Continued cutting of the plants to alleviate perceived threats to livestock may not drive the species to extinction, but intensive land alteration at the only known population site could lead to that result. The species appears well-adapted to low levels of disturbance, and readily reseeds open areas. However, total land clearance, as is being practiced on surrounding lands, would eliminate potential sources of seed.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Solanum drymophilum* as endangered. Although the species seems to produce viable seed in good quantity, and may only require protection from land clearing and deliberate cutting to survive and increase its numbers in the Cayey area, only this single population and limited area of occurrence are known. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this

time. The number of individuals of *Solanum drymophilum* is sufficiently small that vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been or will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Solanum drymophilum* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Solanum drymophilum*, as discussed above. Federal involvement is not expected where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for *Solanum drymophilum* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Solanum drymophilum*;

(2) The location of any additional populations of *Solanum drymophilum*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject areas and their possible impacts on *Solanum drymophilum*.

Final promulgation of the regulation on *Solanum drymophilum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R.A. Defilipps. 1978. Endangered and Threatened Plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC. xv + 403 pp.

Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Solanum drymophilum* Schulz. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 24 pp.

Author

The primary author of this proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851-7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Solanaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Solanaceae—Nightshade family:						
Solanum drymophilum	Erubia	U.S.A. (PR)	E		NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–26714 Filed 11–18–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for Marshallia Mohrii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Marshallia mohrii* (Mohr's Barbara's-buttons), to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Marshallia mohrii* is currently known from 13 sites in north Alabama (three counties) and one site in northwest Georgia. Five of these populations are confined to roadside rights-of-way and are threatened by routine maintenance practices or any future road expansion at these sites. Remaining populations are threatened by the potential conversion of their habitat for agricultural purposes. This proposed rule, if made final, will extend the Act's protection to *Marshallia mohrii.* The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by January 19, 1988. Public hearing requests must be received by January 4, 1988.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Jackson Field Office, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wendell A. Neal at the above address (601/965–4900 or FTS 490–4900).

SUPPLEMENTARY INFORMATION:

Background

Marshallia mohrii, a member of the sunflower family, is an erect perennial herb, 3–7 decimeters (1–2.3 feet) tall, arising from a thickened crown or caudex. Leaves are alternate, firm-textured, 3-nerved, 8–20 centimeters (3.2–7.8 inches) long, lanceolate-ovate in shape and gradually reduced in size upwards. Flowers are produced in several heads and are pale pink to lavender in color. Flowering occurs from mid-May through June, with fruiting in July and August (Kral 1983, McDaniel 1981).

Marshallia mohrii differs from other broad-leaved species of *Marshallia* primarily by its cymosely branched inflorescence of 2 to 10 heads. Although the inflorescence of *Marshallia grandiflora* is occasionally branched (L. Watson, University of Oklahoma, pers. comm. 1987), this closely related species can be distinguished by its larger flowers and dilated corolla tubes (Channel 1955, 1957).

Marshallia mohrii typically occurs in moist prairie-like openings in woodlands and along shale-bedded streams. Other populations are located in swales on roadside rights-of-way (ROWs). The soils are sandy clays, which are alkaline, high in organic matter and seasonally wet. Common associates include various grasses (*Andropogon, Panicum*), sedges (*Rhynchospora, Carex*) and prairie species including *Silphium confertifolium, Ruellia pinetorum, Allium cernuum, Physostegia,* and *Asclepias engelmanniana.* The surrounding forest type is mixed hardwoods with Shumard oak, willow oak and pine (Kral 1983, McDaniel 1981). The endangered *Clematis socialis* and *Sarracenia oreophila* occur with *Marshallia mohrii* at two separate sites. *Lysimachia graminea,* a candidate plant, is an associate of *Marshallia mohrii* at several sites in Alabama.

Marshallia mohrii was first collected by Mohr in Cullman County, Alabama in 1893 and later described by Beadle and Boynton (1901). Several collections of this species were made near Cullman around the turn of the century and one record during this time exists for Walker County, Alabama, and Lookout Mountain, Georgia (Channel 1957, McDaniel 1981). Only vague locality information exists with these specimens and with the exception of Walker County, Alabama, no collections of this species have been made in these areas in recent times.

Kral's (1973) discovery of this species in Cherokee County, Alabama in 1969, marked the first time this species had been observed since 1941. Extensive searches of suitable habitat in northeast Alabama and adjacent Georgia have been conducted. Currently *Marshallia mohrii* is known to exist at only one site in Georgia (Floyd County) and 13 sites in Alabama, including one population in Bibb County (Watson pers. comm. 1986), eight populations in Cherokee County, and four populations in Etowah County. Five relatively recent records of *Marshallia mohrii* in Alabama were not relocated during field searches in June of 1985 or 1986, including a collection from Bibb County (A. Sessler, Auburn University, pers. comm. 1986), two in Walker County (Whetstone 1979, Kral pers. comm. 1986), and two in Cherokee County (Whetstone pers. comm. 1987). Verbal reports of *Marshallia mohrii* in Murray and Bartow Counties, Georgia have not been confirmed (Kral pers. comm. 1987).

Five populations are confined to roadside ROWs where the number of individuals range from two to 50. At the remaining nine sites, plants occur in more typical habitat; however, plants extend onto ROW swales at several areas. Populations appear to be concentrated primarily in two areas, eastern Etowah County and central Cherokee County, Alabama. Here, populations are within 0.5 mile to two

miles of one another. The largest populations occur in Cherokee County, with an estimated 1,000 plants at two sites. Three sites support limited populations (12–50 individuals) and four have moderate-sized populations (100–200 individuals).

Federal actions involving *Marshallia mohrii* began with section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2), now section 4(b)(3)(a), of the Act and of its intention thereby to review the status of those plants. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Marshallia mohrii* was included in the Smithsonian petition and the 1976 proposal. General comments received in relation to the 1976 proposal were summarized in an April 26, 1987, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Marshallia mohrii* was included as a category 1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species. On November 28, 1983, the Service published a supplement to the Notice of Review for Native Plants in the **Federal Register** (48 FR 53640); the plant notice was again revised September 27, 1985 (50 FR 39526). *Marshallia mohrii* was included as a category 2 species in the 1983 supplement and the 1985 revised notice. Category 2 species are those for which listing as endangered or threatened species may be warranted but for which substantial data on biological vulnerability and threats are not currently known or on file to support a proposed rule. Extensive field searches by the author and others now support its reelevation to category 1 and listing as threatened. The data demonstrate a limited distribution and continuing threats to the species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case of *Marshallia mohrii* because of the acceptance of the 1975 Smithsonian report as a petition. In October of 1983, 1984, 1985, 1986, and 1987, the Service found that the petitioned listing of *Marshallia mohrii* was warranted, but that listing this species was precluded due to other higher priority listing actions and additional data were being gathered. Publication of the present proposal constitutes the next 1-year finding required on or before October 13, 1988.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Marshallia mohrii* Beadle and Boynton (Mohr's Barbara's-buttons) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Marshallia mohrii* is endemic to the southern Appalachians of Alabama and Georgia where it is known to occur at 14 sites (see "Background" for specific locality information). Seven other historical sites have not been relocated and may have been destroyed. *Marshallia mohrii* is threatened by the potential destruction or adverse modification of its habitat. Many plants occur on roadside rights-of-way and are vulnerable to accidental disturbances. Any future road improvements (expansion) or roadside maintenance activities (i.e., herbicide treatment, bulldozing, planting of competitive grasses, mowing during flowering) at these sites, could adversely impact or destroy populations if proper planning does not occur. One such population in Cherokee County, Alabama was destroyed by clearing for road construction. The Service will work in cooperation with the Alabama Highway Department in order to provide these sites with protection.

Plants on privately-owned sites are potentially threatened by the conversion of their habitat to improved pastureland through drainage, seeding with forage grasses or plowing and discing (Kral 1983, McDaniel 1981). Much of its suitable habitat has been converted to pastureland or row crops.

Marshallia mohrii maintains itself only in areas which are naturally or artificially cleared and probably was maintained naturally through occasional fire or local soil conditions that promoted a grass-sedge community (Kral 1983). Mechanical disturbance of soil if unaccompanied by drainage might prepare openings for seeds to germinate (Kral 1983). Research into this aspect of the species' biology is needed in order to perpetuate appropriate habitat conditions.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Marshallia mohrii* is currently not a significant component of the commercial trade of native plants; however, the species has potential for horticultural use (McCartney pers. comm. 1987) and publicity from its listing could generate an increased demand. Taking and vandalism pose two risks to this species due to its visibility when in flower and accessibility of the sites.

C. *Disease or predation.* Although cattle will feed on *Marshallia mohrii* (Kral 1983), predation is not thought to be a significant threat to the species. *Marshallia mohrii* is not known to be threatened by disease.

D. *The inadequacy of existing regulatory mechanisms.* There are no State or Federal laws protecting *Marshallia mohrii* or its habitat. It is unofficially recognized as endangered in Alabama (Freeman 1984) and Georgia (T. Patrick, Georgia Natural Heritage Program, pers. comm. 1987). The Act would provide protection (see "Available Conservation Measures" below) and encourage active management for this species. Its listing would encourage its addition to the official list of endangered and threatened plants by the Georgia Department of Natural Resources, thereby affording it protection under the Wildflower Preservation Act of 1973. This legislation prohibits taking of plants from public land (without a permit) and regulates the sale and transport of plants within the State.

E. *Other natural or manmade factors affecting its continued existence.* *Marshallia mohrii* is vulnerable due to its limited distribution and small number of individuals at many of the sites. Its survival is dependent upon the maintenance of prairie-like openings (McDaniel 1981); therefore, woody succession poses an insidious threat to this species and its habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Marshallia mohrii* as a threatened species. Threatened status seems appropriate since the populations are not imminently in danger of destruction; however, *Marshallia mohrii* is not currently protected by law and, if protective measures are not taken for this species, it could become endangered in the foreseeable future. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Publication of exact locations of *Marshallia mohrii* would increase public interest and possibly lead to additional threats to the species from collecting and vandalism (see Factor B in the "Summary of Factors" section). Furthermore, *Marshallia mohrii* would not be protected from taking under the Act since it does not occur on lands under Federal jurisdiction. No benefit can be identified through critical habitat designation that would outweigh these potential threats. The State agency (Alabama Highway Department) which has jurisdiction over some of this species' habitat has been notified of the plant's locations and has agreed to work with the Service to protect *Marshallia mohrii* on the rights-of-way. The involved private landowners will be informed of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for this species at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only potential Federal involvement with *Marshallia mohrii* at this time would be Federal funds or other Federal involvement with the highway rights-of-way maintenance. Highway maintenance crews are working cooperatively with the Service to find rights-of-way maintenance techniques that are compatible with protecting this *Marshallia*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and

addressed to Field Supervisor, Jackson Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Cary Norquist (see **ADDRESSES** section) (601/965–4900 or FTS 490–4900).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under ASTERACEAE, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
Marshallia mohrii	Mohr's Barbara's-buttons	U.S.A. (AL, GA)	T		NA	NA

Dated: October 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–26715 Filed 11–18–87; 8:45 am]

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federal register

Thursday
November 19, 1987

Part IV

The President

Proclamation 5743—African American Education Week, 1987

Proclamation 5744—National Family Caregivers Week, 1987

Federal Register
Vol. 52, No. 223
Thursday, November 19, 1987

Presidential Documents

Title 3—

The President

Proclamation 5743 of November 17, 1987

African American Education Week, 1987

By the President of the United States of America

A Proclamation

Because teachers are among the most important role models in our society, it is truly fitting that we set aside African American Education Week to encourage young African Americans to pursue careers in the field of education.

Americans have always deeply valued the rewards and the advancement that education makes possible. No task is more vital to the strength and security of our Nation than that of providing good education for all our citizens. So that America continues to remain a land of opportunity for all people, we should encourage a wide representation of African Americans as teachers and continued concern for African American students. The National Alliance of Black School Educators is committed to these goals. By inspiring students with a vision of excellence, we can touch the lives of countless youngsters in present and future generations for the better.

The Congress, by Senate Joint Resolution 174, has designated the week beginning November 15, 1987, as "African American Education Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 15, 1987, as African American Education Week. I call upon officials of government at every level, educators, private sector groups, and all Americans to observe this week with appropriate programs, ceremonies, and activities in support of the achievement of academic excellence among African Americans.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-26886
Filed 11-18-87; 10:39 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5744 of November 17, 1987

National Family Caregivers Week, 1987

By the President of the United States of America

A Proclamation

The week in which Thanksgiving falls is a most appropriate time in which to pay proud and grateful tribute to the millions of Americans who care for aging members of their families. The care these family members offer to those who once cared for them, or who share other ties of family life and love, is a beautiful reminder for all of us of the strength of love, of selflessness, and of the family.

Many family caregivers are women—wives, daughters, and daughters-in-law. Many must forego employment to have the time for the family care. Many are aged spouses, and some are in need of care themselves. All family caregivers can use assistance in their duties and respite from them. Countless families work together to provide care for aging members, sharing expenses and aiding with daily tasks such as hygiene, medical needs, transportation, shopping, and household maintenance.

During National Family Caregivers Week we can all recognize the achievements of our Nation's devoted family caregivers and express our gratitude to them for their kindness, compassion, and hard work. We can do so, of course, both in word and in deed, helping in our own families, among our friends, and in our neighborhoods. In this way we can befriend, honor, and show our love to family caregivers—and to the elderly family members and other senior citizens who have done so much for us and for our communities and our country through the years.

The Congress, by Public Law 100-165, has designated the week beginning November 22, 1987, as "National Family Caregivers Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning November 22, 1987, as National Family Caregivers Week. I call upon the people of the United States to observe this occasion with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and twelfth.

Ronald Reagan

[FR Doc. 87-26887
Filed 11-18-87; 10:40 am]
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